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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the delegation of power under Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors

1. INTRODUCTION

Regulation (EU) No 273/2004 establishes harmonised measures for the intra-Union control and monitoring of certain substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances (hereinafter referred to as drug precursors) for the purpose of preventing the diversion of such substances. Articles 15 and 15a of the Regulation empower the Commission to adopt delegated acts for certain purposes and under certain conditions, for a period of five years from 30 December 2013. Article 15a(2) of the Regulation calls on the Commission to present a report to the European Parliament and to the Council in respect of the delegation of power conferred on it, not later than nine months before the end of the five-year period, i.e. by 31 March 2018.

Regulation (EU) No 111/2005 lays down rules for the monitoring of trade between the Union and third countries in the above-mentioned substances. It applies to imports, exports and intermediary activities. Similarly to Regulation (EU) No 273/2004, in accordance with Articles 30a and 30b of Regulation (EU) No 111/2005, the Commission is empowered to adopt delegated acts for certain purposes and under certain conditions, for a period of five years from 30 December 2013. Article 30b(2) of the Regulation calls on the Commission to present a report to the European Parliament and to the Council in respect of the delegation of power conferred on it, not later than nine months before the end of the five-year period, i.e. by 31 March 2018.

Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 jointly implement article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988 (hereinafter referred to as the UN Convention). This article obliges the Parties to the Convention to take the appropriate measures to prevent the diversion of substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and to co-operate with one another.. The premise underlying this provision is that the denial of these substances to producers and manufacturers of illicit drugs will result in a reduction in illicit drug manufacture.

In view of the close material link between those Regulations, the amendments to both have been adopted by way of single delegated acts covering both Regulations. Consequently, the two above-mentioned reporting requirements have also been merged into one report.

2. EXERCISE OF THE POWER TO ADOPT DELEGATED ACTS

In accordance with Article 15a of Regulation (EC) No 273/2004, the Commission is empowered to adopt delegated acts referred to in Articles 3(8), 4(4) and 5(7), the second paragraph of Article 7, Articles 8(3) and 13(2). Additionally, in accordance with Article 15, the Commission is empowered to adopt delegated acts in order to adapt Annexes I, II and III of the Regulation to new trends in diversion of drug precursors and to follow any amendment to the tables in the Annex to the United Nations Convention.

Similarly, in accordance with Article 30b of Regulation (EU) No 111/2005, the Commission is empowered to adopt delegated acts referred to in the third subparagraph of Article 6(1), the third subparagraph of Article 7(1), Article 8(2), the second subparagraph of Article 9(2), Article 10(5), Article 11(1) and (3), Articles 19 and Article 32(2). Additionally, in accordance with Article 30a, the Commission is empowered to adopt delegated acts in order to adapt the Annex of the Regulation to new trends in diversion of drug precursors, in

particular substances which can be easily transformed into scheduled substances, and to follow any amendment to the tables in the Annex to the United Nations Convention.

During the period under consideration, namely from 30 December 2013 to the date of adoption of this report, the Commission exercised its power to adopt delegated acts three times:

1) Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) No 1277/2005

This Regulation lays down conditions for granting licences and registrations; determines cases where a licence and a registration are not required; establishes the criteria to demonstrate the licit purpose of a transaction; determines the information required to monitor trade; fixes the conditions for determining the lists of the countries of destination for exports of scheduled substances of Categories 2 and 3; establishes the criteria for determining simplified procedures for pre-export notifications and for export authorisations; and specifies the requirements concerning the information to be provided on the implementation of the monitoring measures as regards trade in drug precursors.

These provisions were previously included in Commission Regulation (EC) No 1277/2005 but were transferred to a Commission Delegated Regulation further to the entry into force of the Lisbon Treaty. When preparing the delegated act, the Commission consulted extensively the EU Group of Experts on Drug Precursors in writing and during its 14th, 15th and 16th meetings which took place on 5 May 2014, 10 November 2014 and 22 May 2015 respectively. The members of the Group of Experts supported the amendments.

2) Commission Delegated Regulation (EU) 2016/1443 of 29 June 2016 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances

This Regulation adds chloroephedrine and chloropseudoephedrine to the list of scheduled drug precursors in Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005. Chloroephedrine and chloropseudoephedrine are substances that can be used for the production of methamphetamine. This addition was proposed by a number of Member States. When preparing the delegated act, the Commission consulted extensively the EU Group of Experts on Drug Precursors in writing and during its 16th, 17th and 18th meetings which took place on 22 May 2015, 9 November 2015 and 3-4 May 2016 respectively. The Commission consulted also the concerned industry stakeholders in writing. There was broad support for this proposal.

3) Commission Delegated Regulation (EU) 2018/XXXX[1] of 26 February 2018 amending Regulation (EC) No 273/2004 of the European Parliament and of the Council and Council Regulation (EC) No 111/2005 as regards the inclusion of certain drug precursors in the list of scheduled substances

[1] At the time of the adoption of this report, the 2 month scrutiny period - possibly extended by a further 2 months - for the European Parliament and the Council was still on-going.

This Regulation adds 4-anilino-*N*-phenethylpiperidine (ANPP) and *N*-phenethyl-4-piperidone (NPP) to the list of scheduled drug precursors in Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005. 4-anilino-*N*-phenethylpiperidine (ANPP) and *N*-phenethyl-4-piperidone (NPP) are substances that can be used for the production of fentanyl and fentanyl analogues. This addition is required further to a decision of the United Nations Commission on Narcotic Drugs to include both substances in Table I of the UN Convention. When preparing the delegated act, the Commission consulted extensively the EU Group of Experts on Drug Precursors in writing and during its 20th and 21st meetings which took place on 11-12 May 2017 and 23 October 2017 respectively. The Commission consulted also the concerned industry stakeholders in writing. Additionally, the proposal has been published on the Better Regulation Portal of the European Commission for stakeholder feedback. There was broad support for adding the substances to Category 1 of Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005.

In all three cases the Commission ensured the timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

3. CONCLUSION

New trends in diversion and illegal trade in drug precursors continue to emerge rapidly. It can even be argued that the pace of change is accelerating. It is thus essential that Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 can continue to be amended swiftly by means of delegated acts.

Therefore, the Commission is of the view that the power to adopt delegated acts conferred on it by Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 should be tacitly extended for a period of five years, in accordance with Article 15a(2) of Regulation (EC) No 273/2004 and Article 30b(2) of the Regulation (EC) No 111/2005 respectively.