

## Legislative considerations regarding the national legal frame of drug precursors

Ioana-Teodora Popescu<sup>1</sup>, Cristina-Luiza Erimia<sup>2\*</sup>

<sup>1</sup> Sf. Apostol Andrei County Emergency Clinical Hospital, Constanța, Romania

<sup>2</sup> Ovidius University of Constanta, Faculty of Pharmacy, Constanta, Romania

\*Corresponding author: cristinaerimia@gmail.com

**Abstract.** Drug precursors are the chemical substances used in the illicit manufacture of drugs, psychotropic and narcotic substances - their salts, as well as mixtures containing such substances, with the exception of pharmaceutical preparations and other preparations with these substances, which cannot be recovered or used for this purpose by laboratory methods.

Taking into account the fact that the National Anti-Drug Agency, subordinate to the Ministry of Internal Affairs, through the Precursors Service, is the competent authority in the sense of European regulations, having the obligation to ensure compliance at national level with all the obligations established by them, this article aims to analyze the legislative measures taken at the national level in the matter of drug precursors.

At the same time, the present work aims to analyze how operations with drug precursors are authorized, as well as the sanctioning regime.

**Keywords.** drug precursors, classified substances, national legislation, National Anti-Drug Agency, placing on the market

### 1. Introduction

Drug precursors [1] are the chemical substances used in the illicit manufacture of drugs, psychotropic and narcotic substances - their salts, as well as mixtures containing such substances, with the exception of pharmaceutical preparations and other preparations with these substances, which cannot be recovered or used for this purpose by laboratory methods.

As a rule, precursors cannot be obtained in illegal laboratories because they are difficult to obtain without substantial infrastructure. Thus, the traffickers try to intercept the precursors of the legal trade.

The monitoring of the legitimate trade in drug precursors is specifically regulated both at the international level - the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988, whose provisions are aimed at preventing the diversion of substances frequently used in the manufacture illicit drugs, as well as at the level of the European Union.

Law no. 142/2018 [2] contains provisions on the legal regime of drug precursors and establishes the measures necessary to implement at national level the provisions contained in Delegated Regulation (EU) 2015/1.011 [3] and in the Implementing Regulation (EU) 2015/1.013 [4].

**2. Theory**

The National Anti-Drug Agency, subordinate to the Ministry of Internal Affairs, through the Precursors Service, is the competent authority within the meaning of the European regulations, having the obligation to ensure compliance at the national level with all the obligations established by them.

The contact of the operators and users of drug precursors with the relevant national authorities, in order to fulfill the obligations stipulated by law, is carried out through the Precursors Service, which acts as a one-stop shop for drug precursors.

General functions and responsibilities of the Precursor Service are as follows:

- monitors operators and operations with classified and unclassified substances, in order to ensure the legality of operations with drug precursors and applies, for this purpose, the administrative control measures provided by law;
- coordinates, at the national level, the activities carried out by the national authorities and institutions with attributions in the field of preventing the diversion of drug precursors;
- ensures cooperation with civil society and international authorities and bodies in the field of drug precursors, by organizing or participating in meetings or working groups with their representatives, information, data exchanges, as well as any other activities necessary to fulfill specific functions;
- establishes and manages the national database on drug precursors;

The National Anti-Drug Agency ensures that operators with drug precursors are informed of the list of unclassified substances, by any method it deems appropriate to fulfill their purpose.

The Commission develops and continuously updates guidelines to facilitate cooperation between competent authorities, operators and the chemical industry, in particular with regard to non-classified substances.

The guidelines must provide in particular: information on the means of recognizing and reporting suspicious transactions; a regularly updated list containing non-classified substances to enable industry to control trade in these substances; other information deemed useful.

Competent authorities shall ensure that the guidelines and the list of non-classified substances are disseminated periodically in the manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

Regulation (EC) no. 111/2005 [5] implements the EU's obligations under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which requires measures to be taken to monitor the manufacture and distribution of drug precursors.

The regulation sets out measures to control and monitor trade between EU and non-EU countries. It also distinguishes between classified and unclassified substances, thus:

<b>Category 1:</b>	the most sensitive substances, from which illicit drugs can be produced most easily;
<b>Category 2:</b>	less sensitive substances;
<b>Category 3:</b>	bulk chemicals that have different types of uses in the manufacturing process;
<b>Category 4:</b>	from December 2013, substances covering medicinal products for human and veterinary use.

The classified substance is any substance mentioned in Annex I to Regulation no. 111/2005 which 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 containing these scheduled substances and which are combined in such a way that the scheduled substances cannot be readily used or extracted by readily applicable or economically viable means: medicinal products for human use as defined in Directive 2001/83/EC and medicinal products for veterinary use as defined in Directive 2001/82/EC.

Unclassified substance is any substance which, although not listed in Annex I to the regulation, is identified as a substance used in the illicit manufacture of narcotic drugs or psychotropic substances.

### **3. Results and discussion**

In order to verify the legitimacy of operations with drug precursors or the reality of the data contained in the requests made by operators or users of drug precursors, the National Anti-Drug Agency may request relevant data and information from public or private entities that hold such data.

The operator is a natural or legal person who carries out operations of manufacturing, production, treatment, synthesis, extraction, conditioning, distribution, putting on sale, placing on the market, delivery, procurement, use, packaging, transport, storage-storage, handling or any other legal activity of import, export, transit or intermediation of precursors, hereinafter referred to as operations with precursors.

Operators with substances classified as precursors communicate to the National Anti-Drug Agency the contact details of the person responsible for this activity and, as the case may be, of their replacement. The responsible person has attributions expressly established by the operator for supervising operations with classified substances and carrying them out in compliance with the regulations in force. Any change regarding the responsible person or his/her substitute is immediately communicated to the National Anti-Drug Agency.

The operator has the obligation to immediately communicate to the National Anti-Drug Agency any unusual event or operation with classified substances that may cause these substances to be diverted for the illicit manufacture of narcotic or psychotropic substances. The competent authorities ensure the confidentiality of the data provided by the operator.

Operators (other than customs agents and carriers) must obtain an authorization from the competent authorities of the country in which they are established if they are engaged in import, export or intermediary activities involving Category 1 substances.

When examining prior to the granting of an authorisation, the competent authority takes into account in particular the competence and integrity of the applicant.

The authorization can be suspended or revoked by the authorities whenever the conditions under which the authorization was issued are no longer met or if there are good reasons to suspect the existence of a risk of diversion of classified substances.

The license for carrying out operations with precursors is granted by the National Anti-Drug Agency for a period of 3 years and, in order to grant a new license, the holder has the obligation to submit a request in this regard at least 30 days before the expiry of the period for which he was released.

Once renewed, the license is granted for an unlimited period, with certification every 3 years of maintaining the conditions for which it was granted. The manner in which the certification of the maintenance of the conditions is carried out is established by the implementing regulation of Law no. 142/2018.

According to art. 3 paragraph (6) sentence I and II of Regulation no. 273/2004 and art. 7 para. (1) from Regulation no. 111/2005, pharmacies, veterinary dispensaries, certain categories of public authorities or the armed forces may be subject to a special registration,

which is valid only for the use of precursors in the official fields of activity of the operators in question.

The special registration is granted for an unlimited period, with certification every 3 years of maintaining the conditions for which it was granted.

According to art. 11 of Regulation no. 111/2005, all exports of classified substances, included in categories 1,2, 3, 4 to certain countries of destination are preceded by a prior export notification, transmitted by the competent authorities of the Union, to the competent authorities of the country of destination.

The destination country can respond within 15 working days, after which the export operation can be authorized by the competent authorities of the exporting EU country. This can only happen if no recommendations are received from the competent authorities of the country of destination indicating that this export operation may be intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Simplified pre-export notification procedures may be applied by competent authorities when they are satisfied that this will not result in any risk of diversion of classified substances.

In order to respond to prior notifications, the National Anti-Drug Agency may request motivated information from the territorially competent anti-drug units of the Romanian Police.

The refusal to grant licenses, their suspension or revocation, is carried out by reasoned decision of the National Anti-Drug Agency, which is immediately communicated to the applicant or holder through any means of communication that ensures the transmission of the decision and confirmation of its receipt.

If a decision to refuse the granting of the license has been issued, the applicant can submit a new request to the National Anti-Drug Agency only after fulfilling the legal conditions, the non-compliance of which was the basis of the decision to refuse the granting of the license.

If a decision has been issued to suspend or revoke the license, the holder has the obligation to stop operations with drug precursors and to inform the National Anti-Drug Agency about the stocks of the substance at his disposal, from the moment of communication of that decision. If the suspension or revocation of the license occurs during an operation or a production cycle, which cannot be suspended, the holder immediately informs the National Anti-Drug Agency about this.

The suspension of the license operates until the termination of the reasons that were the basis of this measure.

In case of revocation of licenses or registrations or import or export authorizations, the holder is obliged to send the relevant licenses, registrations or authorizations in original to the National Anti-Drug Agency within 10 days from the date of learning about the revocation.

Any modification of the data and information is immediately communicated to the National Anti-Drug Agency, but no later than 5 days from the date on which the modification occurred.

The provision of physical protection measures for classified substances in the locations where they are used and stored is carried out in accordance with the provisions of Law no. 333/2003 [6], failure to comply with this obligation incurring the liability of operators and users under its conditions.

In the rooms where the classified substances are stored, it is not allowed to store other materials or products, except in cases where the respective spaces are authorized, according to the law, for the storage of toxic or narcotics substances.

Control of compliance with the legal regime of drug precursors, including in the locations of operators and users, is exercised by the National Anti-Drug Agency, the General

Inspectorate of the Romanian Police, the General Inspectorate of the Border Police or by their subordinate units, as the case may be, as well as by the competent customs authority, according to their attributions in their fields of activity.

#### **4. Conclusions**

At the national level, the National Anti-Drug Agency is the competent authority in the sense of the European regulations, having the obligation to ensure compliance at the national level with all the obligations established by them. The contact of the operators and users of drug precursors with the relevant national authorities, in order to fulfill the obligations stipulated by law, is carried out through the Precursors Service, which acts as a one-stop shop for drug precursors.

The regulation is made according to classified and unclassified substances, and in Annex I of Regulation 111/2005 there are 4 categories of classified substances, depending on their sensitivity - from which illicit drugs can most often be produced.

Any natural or legal person engaged in placing classified substances on the market must document the import, export and transit of a classified substance. They must also keep records of transactions for a period of 3 years.

Operators must obtain an authorization from the competent authorities of the country in which they are established if they are engaged in import, export or intermediary activities involving Category 1 substances.

For Category 2 and 3 substances, operators must obtain registration from the competent authorities of the EU country in which they are established, if they are engaged in import, export or intermediary activities involving Category 2 substances or in the export of Category 3 substances.

The authorization can be suspended or revoked by the authorities whenever the conditions under which the authorization was issued are no longer met or if there are good reasons to suspect the existence of a risk of diversion of classified substances.

#### **References**

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- [5] Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, published in the Official Journal of the European Union L 22 of 26.1.2005.
- [6] Law no. 333/2003 regarding the protection of objectives, goods, values and the protection of persons, republished in the Official Gazette no. 189 of March 18, 2014.