EUROPEAN
COMMISSION

Brussels, XXX
[…](2023) XXX draft

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

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 the drug precursor isopropylidene (IMDPAM) and other substances in the list of scheduled substances

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Drug precursors are chemicals which may be used for the illicit manufacture of narcotic drugs or psychotropic substances. Regulation (EC) No 273/2004 of the European Parliament and of the Council[1] lays down measures for monitoring trade in drug precursors within the EU, while Council Regulation (EC) No 111/2005[2] governs trade in drug precursors between the EU and third countries.

The two Regulations jointly implement the measures envisaged by Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988[3] (the '1988 UN Convention').

Drug precursors may be scheduled substances (listed in the Annexes of the two Regulations, with various legal obligations attached depending on their category - license, registration, export/import authorisation etc.). Drug precursors may also be non-scheduled substances, meaning they are not listed in the Annexes. Each Member State may adopt the measures necessary to enable its competent authorities to control and monitor suspicious transactions involving non-scheduled substances.

National competent authorities have indicated the seizure of sodium salt of isopropylidene (IMDPAM). Certain esters of two scheduled substances could also be used in the illicit production of drugs.

These substances should be added to the list of scheduled substances in the Regulations, to reinforce their control and monitoring.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the Interinstitutional Agreement on Better Law-Making of 13 April 2016[4], appropriate and transparent consultations, including at expert level, have been carried out in the preparation of this delegated act. The Group of Experts on Drug Precursors has discussed and well received the proposal during its meeting on 1-2 June 2023.

The draft has been published for feedback on 'Have-your-say' portal. [to add details on the contributions received].

The draft has been notified based on Article 2(9)(2) of the Agreement on Technical Barriers to Trade. [to add details on the contributions received]

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Based on Article 15 of Regulation (EC) No 273/2004 and Article 30a of Regulation (EC) No 111/2005, the Commission is empowered to adopt delegated acts in order to adapt the Annexes to new trends in diversion of drug precursors.

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1 Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, OJ L 47, 18.2.2004, p. 1.

2 Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, OJ L 22, 26.1.2005, p. 1.

3 OJ L 326, 24.11.1990, p. 57.

4 OJ L 123, 12.5.2016, p. 10

Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 are closely linked. They jointly implement the measures envisaged by Article 12 of the 1988 UN Convention. Therefore, the bundling of two empowerments based on different basic legislative acts into one single delegated act is justified by the close material link between the empowerments in question.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors[1], and in particular Article 15 thereof,

Having regard to Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors[2], and in particular Article 30a thereof,

Whereas:

(1) Regulation (EC) No 273/2004 lays down measures for monitoring trade in drug precursors within the Union, while Regulation (EC) No 111/2005 governs trade in drug precursors between the Union and third countries. Annex I to Regulation (EC) No 273/2004 and the Annex to Regulation (EC) No 111/2005 each contain a list of scheduled substances, which are subject to several harmonised control and monitoring measures provided for by those Regulations.

(2) National competent authorities have reported the seizure of the sodium salt of isopropylidene (2-(3,4methylnedioxyphenyl)acetyl)malonate (IMDPAM) in the context of illicit manufacture of narcotic drugs.

(3) IMDPAM is used to produce 3,4-Methylenedioxyphenylpropan-2-one), which, in turn, is a precursor of 3,4-methylenedioxymethamphetamine (MDMA), commonly known as ‘ecstasy’.

(4) MDMA is one of the most common drugs illicitly produced in the Union. It is known to pose significant risks to human health.

(5) Therefore, IMDPAM should be included in the list of scheduled substances at Union level to reinforce its control and monitoring.

(6) In addition, seven esters of 2-methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid) and six esters of Ethyl 3-(2H-1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (PMK ethyl glycidate) have been identified as possible substitutes of BMK glycidic acid and PMK ethyl glycidate in the illicit production of drugs. Those esters can be easily designed to avoid the control and monitoring measures applicable

[1] OJ L 47, 18.2.2004, p. 1.
[2] OJ L 22, 26.1.2005, p. 1.

to BMK glycidic acid and PMK ethyl glycidate, Category 1 scheduled substances. They are also easily convertible into the two scheduled substances. To ensure their control and monitoring, the respective esters should also be added to the list of scheduled substances in Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005.

(7) The scheduled substances listed in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005 are divided into categories for which different measures apply, so as to achieve a proportionate balance between the level of threat posed by each specific substance and the burden on licit trade. The strictest control and monitoring measures apply to substances of Category 1.

(8) IMDPAM and the identified esters of BMK glycidic acid and PMK ethyl glycidate pose a significant social and public health threat in the Union. They have no known licit production, trade, or use, except for research purposes. Therefore, including these substances in Category 1 of Annex I to Regulation (EC) No 273/2004 and in Category 1 of the Annex to Regulation (EC) No 111/2005 would be an adequate response to prevent their use in the illicit manufacture of narcotic drugs whilst, at the same time, not entailing any significant extra administrative burden for economic operators and competent authorities in the Union.

(9) Regulations (EC) No 273/2004 and (EC) No 111/2005 should therefore be amended accordingly.

(10) Commission Implementing Regulation (EU) 2020/1577[3] reclassified red phosphorus in the Combined Nomenclature ('CN'). The CN codes in Regulations (EC) No 273/2004 and (EC) No 111/2005 should therefore be amended accordingly.

(11) Regulations (EC) No 273/2004 and (EC) No 111/2005 jointly implement certain provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988 and approved by Council Decision 90/611/EEC[4]. In view of the close substantive link between the empowerments contained in those Regulations, it is appropriate to adopt the amendments by way of one single delegated act,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 273/2004

Annex I to Regulation (EC) No 273/2004 is amended in accordance with Annex I to this Regulation.

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3 Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020).

4 Council Decision 90/611/EEC of 22 October 1990 concerning the conclusion, on behalf of the European Economic Community, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (OJ L 326, 24.11.1990, p. 56).

Article 2

Amendments to Regulation (EC) No 111/2005

The Annex to Regulation (EC) No 111/2005 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN