

SECTION - TWO
EUROPEAN UNION PRECURSOR CONTROL MECHANISM

EUROPEAN UNION (EU) LEGISLATION ON PRECURSOR CONTROL: EU GUIDELINES ON CHEMICAL TRADE

One of the many reasons that impelled the nations of the world to adopt the 1988 UN Convention was the realization that "measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances" to prevent their diversion into illicit channels. As these chemicals are diverted generally in the course of or garb of legitimate domestic and international trade, cooperation amongst the authorities of different countries is a prerequisite for any monitoring to succeed. This will be possible only with proactive cooperation and concerted action on the part of various countries, both regionally and globally. EU legislation on precursor control lays down the framework for such concerted action at regional level. It is hoped that this Chapter on EU legislation helps us appreciate the systems of control over precursor chemicals in the SAARC region better and learn from the EC's experience in framing or amending our own laws.

EU legislation consists of the COUNCIL REGULATION (EEC) No 3677/90 of 13 December 1990 as amended by COUNCIL REGULATION No 900/92 (EEC) of 31 March 1992 and implemented by COMMISSION REGULATION (EEC) no 3769/92 of 21 December 1992.

Regulation No 3677/90 refers to the precursor chemicals covered by the EC regulations as 'scheduled substances'. A scheduled substance has been defined in the regulation as 'any substance listed in the Annex, including mixtures containing such substances'. The Annex contains 23 substances, classified into three categories as under:

ANNEX

Name of Substances		
CATEGORY 1	CATEGORY 2	CATEGORY 3
Ephedrine Ergometrine Ergotamine Lysergic acid 1-phenyl-2-propanone Pseudoephedrine N-acetyl anthranilic acid 3,4-methylenedioxyphenylpropan-2-one Isosafrole (cis+trans) Piperonal Safrole Norephedrine The salts of the substances listed in this category whenever the existence of such salts is possible.	Acetic anhydride Anthranilic acid Phenylacetic acid Piperidine Potassium permanganate The salts of the substances listed in this category whenever the existence of such salts is possible	Acetone (*) Ethyl ether (*) Methyl ethyl ketone (MEK) (*) Toluene (*) Sulphuric acid Hydrochloric acid (*)The salts of these substances whenever the existence of such salts is possible.

The EC regulations seek to monitor the trade in precursor chemicals between the European Community and third countries through:

- Proper documentation, records and labeling.
- Licensing and registration of operators trading in scheduled substances.
- Notification by operators of suspicious transactions in precursor chemicals.
- Issue of export authorizations for all Category 1 substances.
- Request for PEN from third countries to Community.
- Issue of open authorizations (covering several transactions) for Category 2 substances
- Specific means of controlling Category 3 substances.
- Competent authorities and their legal powers.
- Stringent controls in free trade zones/free ports.
- Penal provisions.
- Periodic meetings of the committee of experts responsible for monitoring the regulations.

PROPER DOCUMENTATION, RECORDS AND LABELLING

The EC regulations mandate proper documentation of all imports, exports and transit operations of precursor chemicals. In particular, they require commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents to contain sufficient information positively to identify:

- The name of the scheduled substance as given in the Annex.
- The quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of the mixtures as well as the quantity and weight or the percentage of any substances listed in the Annex which are contained in the mixture.
- The name and address of the exporter, the importer, the distributor and the ultimate consignee.

If the operator affixes labels indicating the type of the product or its trade name to scheduled substances in import, export or transit operations, such labels must show the names of the substances as given in the Annex. All operators involved in import, export and transit of scheduled substances have to keep detailed records of those activities and retain the documents and records for a period of three years from the end of the calendar year in which the operation relating to imports, exports and transit took place, and keep them readily available for inspection by the competent authorities upon request.

LICENSING AND REGISTRATION OF OPERATORS TRADING IN SCHEDULED SUBSTANCES

Licensing for category 1 substances:

Operators (other than customs agent, warehouse depositors and transporters) engaged in the import, export or transit of Category 1 substances have to obtain a

license from the Member State wherein they are established. Procedure of licensing including conditions has to be determined by each Member State in respect of its territory. The competence and integrity of the applicants for licenses shall be taken into account to see if they deserve the license. If subsequently they are not found fit to hold license, the license can be suspended or revoked.

Registration of premises for Category 2 and 3 substances:-

Operators engaged in import, export or transit of Category 2 controlled substances or export of Category 3 substances have to register and update with competent authorities their premises from which they operate. However, the operators engaged in export of small quantities of Category 3 substances can be exempted from registration requirements. Small quantities (sum total in a calendar year) entitled to exemption have been prescribed as under:

Substances	Quantity
Acetone	50 kg
Ethyl ether	20 kg
Methyl ethyl ketone	50 kg
Toluene	50 kg
Potassium permanganate	5 kg
Sulphuric acid	100 kg
Hydrochloric acid	100 kg

As soon as, the above quantity is exceeded by an operator in a calendar year, his registration becomes necessary.

NOTIFICATION BY OPERATORS OF SUSPICIOUS TRANSACTIONS

EC Regulations lay great stress on cooperation between competent authorities and operators in the substances so that the latter:

- notify the competent authorities immediately about suspicious transactions which are likely to be diverted for illicit manufacture of drugs.
- provide the competent authorities in summary form such information about their export transactions as the competent authorities may require.

ISSUE OF EXPORT AUTHORISATIONS FOR ALL CATEGORY 1 SUBSTANCES

EC regulations mandate that exportation of category 1 substances shall be subject to authorization in the prescribed format to be issued by competent authorities in respect of each transaction. Already a model export authorization has been prescribed in the Annex IV to Regulation No 3769/92. It shall be in A4 format and in

one of the languages of the Community in accordance with the provisions of the domestic law of the exporting State. Member States can themselves print or authorize approved printers to print it. Export authorization shall be prepared in 3 copies with disposal thereof as under:

- No. 1 copy to be retained by the authorization issuing authority.
- No. 2 copy to accompany the goods and be presented to Custom office where export declaration is lodged.

- No. 3 copy to be kept by the operator to whom the authorization was granted

The application for export authorization shall contain following information:

- (a) Name and address of exporter.
- (b) Name and address of importer in the third country.
- (c) Name and address of the ultimate consignee.
- (d) Name of the scheduled substance as given in Category 1 of the Annex.
- (e) Quantity and weight of the substance.
- (f) Details of the transport arrangements, methods of transport, Custom office where the export authorization is to be lodged, expected points of exit in Community territory and the point of entry into the importing country.

Export authorization shall be granted within 15 working days unless authorities are obliged to make further inquiry. Export authorization can also be refused if:

- (a) there are reasons to suspect that the information supplied in application is false or incorrect.
- (b) importation of the substance has not been properly authorised in the importing country.
- (c) There are reasonable grounds for suspecting that the substances in question are intended for illicit manufacture of narcotic drugs or psychotropic substances.

Export authorization is to be produced in the custom office where custom export declaration is lodged. A copy of the export authorization is to accompany the substances until the custom office at the point of the exit from the community custom territory.

Export authorization can be revoked or suspended when there is reasonable ground to suspect that substances might be diverted for illegal purposes.

REQUEST FOR PEN FROM THIRD COUNTRIES TO COMMUNITY

Requests for PEN addressed to the community by a third country in terms of paragraph 10 of article 12 of the 1988 UN Convention shall be immediately forwarded by the Commission to the competent authorities of the Member States. Competent authority of the Member State concerned shall convey the information (similar information as required for application for export authorization) to the competent authority of that country with a copy to the Commission for circulation to the Member States. The competent authorities furnishing the information shall require the authority in the third country to keep the information confidential.

When there is agreement between the community and a third country that

exports shall not be authorised unless an import permit has been issued by the competent authorities of the latter country for the substances in question:

- a) The Commission shall communicate to the competent authorities in the Member States the name and address of the competent authority in the third country together with any operational information obtained from that country.
- b) The competent authorities in the Member States shall satisfy themselves that any importation has been properly authorised, if necessary, by requesting confirmation from the authority referred to under point (a) above.

ISSUE OF OPEN INDIVIDUAL AUTHORISATION (COVERING SEVERAL TRANSACTIONS) FOR CATEGORY 2 SUBSTANCES.

As regards export of Category 2 substances, they can be allowed under two kinds of export authorisations:

- i) specific export authorisation
- ii) open individual authorisation.

Specific authorisation shall be required where the Category 2 substances appear to be intended directly or indirectly for a third country which has been identified to be concerned by the illicit manufacture of narcotic drugs and psychotropic substances. Such identification shall be made on the request of the third country. The same provisions as applicable in respect of Category 1 substances shall apply *mutatis mutandis* to such export authorisation. Following identification has been already been made:

Substance	Destination	
Acetic anhydride	Argentina	Malaysia
	Benin	Mexico
	Bolivia	Moldova
	Brazil	Myanmar (Burma)
	Colombia	Nigeria
	Chile	Paraguay
	Costa Rica	Peru
	Cyprus	Singapore
	Czech Republic	Saudi Arabia
	Ecuador	South Africa
	Ethiopia	Sri Lanka
	Guatemala	Syria
	Hong Kong, SAR China	Tajikistan
	India	Thailand
	Indonesia	The Cayman Islands
	Iran	The Philippines
	Jordan	The Russian Federation
	Lebanon	Turkey
	Macao	United Arab Emirates
		Venezuela

Anthranilic acid	Bolivia Chile Colombia Ecuador India	Mexico Peru United Arab Emirates Venezuela
Phenylacetic Acid Piperidine	Bolivia Chile Colombia Ecuador Mexico	Peru United Arab Emirates United States of America Venezuela

Open individual authorizations can be issued following the same general procedure as applicable to Category 1 substances but the authorisation would be on global basis. The applicant for open individual authorisation shall have to furnish a number of details about him, details of exports preceding 12 months and details of precautions he has taken to prevent the diversion of the substances. Such authorisations can also be revoked or suspended or even refused if there are reasonable grounds for suspecting that:

- (a) information supplied was not correct;
- (b) precautions taken are not sufficient to prevent the diversion of the precursor chemicals.

The holder of export authorisation for Category 2 substances shall comply with the same obligation as applicable to holder of export authorisation for Category 1 substances. Further, he would have to comply with the following obligations -

- (a) To enter the number of authorisation in relevant customs documents.
- (b) To carry out entry into the records as soon as the consignment leaves the premises of the supplier.
- (c) To ensure that entry of the import permit issued by the destination country would be made where prior issue of import permit by the destination is a requirement for issue of the export authorisation.
- (d) To ensure that consignment is always accompanied during transportation by the export authorisation and the export authorisation is submitted to the custom office at the exit point of Community custom territory.
- (e) To furnish, by the end of each quarter, summary information on the export operations carried on under the authorisation. Failure to do so may result in suspension/revocation of the export authorisation.
- (f) To inform the issuing authority about any change in the already furnished information.

SPECIFIC MEANS OF CONTROLLING CATEGORY 3 SUBSTANCES:

Wherever the export of scheduled substances listed in Category 3 of the Annex is intended, directly or indirectly, for any third country:

- (a) with which the community has concluded an agreement whereby no export from the community to that country shall be authorized unless the competent authority of that country has issued an import permit in respect of the consignment in question; or
- (b) which has been identified as a country concerned by the illicit manufacture of heroin or cocaine on its territory or as a sensitive country as regards the possible diversion of the said substances,

such export shall be subject to an authorization to be issued by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

Further, an open individual authorization cannot be granted in respect of following Category 3 substances when they are intended to be exported to destinations mentioned against them:

Substance	Destination	
Methylethyl ketone(MEK) Toluene Sulphuric acid	Argentina Bolivia Brazil Chile Colombia Costa Rica Ecuador El Salvador Guatemala Honduras	Hong Kong, SAR China Panam Paraguay Peru Syria Thailand Uruguay United Arab Emirates Venezuela
Potassium permanganate	Argentina Benin Bolivia Brazil Chile Colombia Costa Rica Cyprus Czech Republic Ecuador El Salvador Ethiopia Guatemala Honduras Hong Kong, SAR China	Moldova Nigeria Panama Paraguay Peru Saudi Arabia South Africa Sri Lanka Syria Tajikistan Thailand The Cayman Islands The Philippines The Russian Federation Turkey

	Jordan Macao Malaysia	Uruguay United Arab Emirates Venezuela
Acetone Ethyl ether	Argentina Bolivia Brazil Chile Colombia Costa Rica Ecuador El Salvador Guatemala Honduras Hong Kong, SAR China Iran Lebanon	Mexico Myanmar (Burma) Panama Paraguay Peru Singapore Syria Thailand Turkey United Arab Emirates Uruguay Venezuela
Hydrochloric acid	Argentina Bolivia Brazil Chile Colombia Costa Rica Ecuador Elsalvador Guatemala Honduras Hong Kong, SAR China Iran	Lebanon Myanmar (Burma) Panama Paraguay Peru Singapore Syria Thailand Turkey United Arab Emirates Uruguay Venezuela

COMPETENT AUTHORITIES AND THEIR LEGAL POWERS:

In order to ensure the correct application of control measures, EC regulations enjoin each Member State to take, within the framework of its domestic law, the measures necessary to enable the competent authorities:

- to obtain information on any order for or operations involving scheduled substances;
- to enter operators' business premises in order to obtain evidence of irregularities.

Further, the competent authorities can also prohibit introduction into or departure from the Community customs territory of a substance if there are reasonable grounds for suspecting that substances are intended for illicit manufacture of drugs.

STRINGENT CONTROLS IN FREE ZONES/FREE PORTS

EC regulations also urge that in order to prevent specific risks of diversion in free trade zones or other sensitive areas such as bonded warehouses, the Member States shall ensure that controls in these areas are always effective and not less stringent than those applied to other parts of the custom territory.

PENAL PROVISIONS:

EC regulation requires that each Member State determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

PERIODIC MEETINGS OF A COMMITTEE OF EXPERTS FOR MONITORING THE REGULATIONS:

In order to assist the Commission, EC regulation provides for constitution of a committee comprising the representatives of the Member States and chaired by the representative of the Commission. The committee shall examine any matter concerning the implementation of EC regulations raised by its chairman either on his own initiative or at the request of a representative of a Member State. The representative of the Commission shall submit to the committee a draft of the measures to be taken. Committee shall deliver its opinion on the draft within a time limit set by the chairman. Opinion shall be delivered by a majority as laid down in article 148(2) of the Treaty.

The Commission is authorised to adopt a position on behalf of the community, in favour of amendments of Table I and Table II of the 1988 UN Convention.