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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 June 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2016) 3946 final
Subject:	COMMISSION DELEGATED REGULATION (EU) …/... of 29.6.2016 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

Delegations will find attached document C(2016) 3946 final.

Encl.: C(2016) 3946 final

EUROPEAN
COMMISSION

Brussels, 29.6.2016
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COMMISSION DELEGATED REGULATION (EU) …/...

of 29.6.2016

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

(Text with EEA relevance)

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 lays down measures for monitoring trade in drug precursors within the EU, while Regulation (EC) No 111/2005 governs trade in drug precursors between the EU and third countries.

In December 2013 these two Regulations were amended in order to strengthen the efficiency of the control measures for drug precursors. The empowerment to adopt delegated acts to add new substances to the list of scheduled substances was introduced allowing a quick adaptation of the Regulations to new trends in diversion of drug precursors.

The use of the substances chloroephedrine and chloropseudoephedrine as precursors for the production of methamphetamine (better known under its street name 'crystal meth') was first observed on the territory of the Union in 2013. In the meantime, more than 3 tonnes of chloroephedrine and chloropseudoephedrine were seized in EU Member States and it is known that these substances are also increasingly being used in certain third countries to produce methamphetamine. At the same time, there are no major known legal uses of the substances. In several Member States the increasing consumption of the drug methamphetamine (crystal meth) is generating significant social and public health problems.

Scheduling chloroephedrine and chloropseudoephedrine under Regulations 273/2004 and 111/2005 allows increased controls on the use of those substances, with a view to prevent their diversion to illicit manufacture of methamphetamine (crystal meth). The easiness with which methamphetamine can be made from chloroephedrine and chloropseudoephedrine, the dimension of the subsequent social and public health problems related to the consumption of methamphetamine (crystal meth), the absence of significant economic impacts on licit uses and the limited additional workload for the competent authorities justify their inclusion into the list of scheduled substances under Regulations 273/2004 and 111/2005.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out in the preparation of this delegated act. The relevant documents have been transmitted in a timely and appropriate manner to the European Parliament and to the Council. The Group of Experts on Drug Precursors was consulted in the meetings held on 22 May 2015 and on 9 November 2015.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

On the basis of Regulation (EC) No 273/2004 of the European Parliament and of the Council, as amended by Regulation (EU) No 1258/2013, the Commission is empowered to adopt delegated acts in order to adapt the Annexes to new trends in diversion of drug precursors.

On the basis of Council Regulation (EC) No 111/2005, as amended by Regulation (EU) No 1259/2013 of the European Parliament and of the Council, the Commission is empowered to adopt

delegated acts in order to adapt the Annex hereto to new trends in diversion of drug precursors, in particular substances which can be easily transformed into scheduled substances.

Regulations 273/2004 and 111/2005 are closely linked. They 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. Common implementing rules for Regulations 273/2004 and 111/2005 have been adopted through Commission Delegated Regulation (EU) 2015/1011 and Commission Implementing Regulation (EU) 2015/1013.

In the light of the above, the bundling of two different empowerments based on different basic legislative acts into one single delegated act is justified by the close material link between the empowerments in question.

COMMISSION DELEGATED REGULATION (EU) …/...

of 29.6.2016

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

(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) 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 a number of harmonised control and monitoring measures provided for by those Regulations.

(2) 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.

(3) The strictest control and monitoring measures are provided for in respect of the substances scheduled in category 1. Operators and users must hold a licence in order to possess those substances and to carry out any kind of transaction involving them.

(4) It is possible to convert chloroephedrine and chloropseudoephedrine directly into methamphetamine with a high yield rate. Member States have demonstrated that since 2013 chloroephedrine and chloropseudoephedrine have been used on several occasions in the Union as precursors for the illicit manufacture of methamphetamine (also known as crystal meth). Additionally, several cases of use of those two substances for the production of methamphetamine have been reported outside the Union.

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

(5) Trade in and possession of chloroephedrine and chloropseudoephedrine are currently not subject to any legal restrictions, and their control is limited to a voluntary commitment by Union operators to monitor trade and report suspicious transactions involving such substances.

(6) There were no significant licit uses of chloroephedrine and chloropseudoephedrine identified during the consultation of Member States and representatives of the chemical industry. More than 3 tonnes of those substances were seized in 2013 and 2014 by the competent authorities of the Member States to prevent them from being used for the illicit manufacture of methamphetamine.

(7) In the light of the high diversion risk posed by chloroephedrine and chloropseudoephedrine, and considering that their scheduling will have no significant impact on licit trade, those substances should be listed under category 1 in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005.

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

(9) Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 jointly implement certain provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988[3]. In view of the close material link between those Regulations it is justified to adopt the amendments by way of one single delegated act,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment to Regulation (EC) No 273/2004

In Annex I to Regulation (EC) No 273/2004, in the table for Category 1 scheduled substances, the following rows are added:

"(1R,2S)-(-)-chloroephedrine		2939 99 00	110925-64-9
(1S,2R)-(+)-chloroephedrine		2939 99 00	1384199-95-4
(1S,2S)-(+)-chloropseudoephedrine		2939 99 00	73393-61-0
(1R,2R)-(-)-chloropseudoephedrine		2939 99 00	771434-80-1".

Article 2
Amendment to Regulation (EC) No 111/2005

In the Annex to Regulation (EC) No 111/2005, in the table for Category 1 scheduled substances, the following rows are added:

"(1R,2S)-(-)-chloroephedrine		2939 99 00	110925-64-9
(1S,2R)-(+)-		2939 99 00	1384199-95-4

[3] OJ L 326, 24.11.1990, p. 57.

chloroephedrine			
(1S,2S)-(+)-chloropseudoephedrine		2939 99 00	73393-61-0
(1R,2R)-(-)-chloropseudoephedrine		2939 99 00	771434-80-1".

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, 29.6.2016

For the Commission
The President
Jean-Claude JUNCKER