Monitoring intra-EU trade in drug precursors

2012/0261(COD) - 27/09/2012 - Legislative proposal

PURPOSE: to prevent the diversion from the EU-internal trade of acetic anhydride, the main drug precursor for heroin, by extending the registration requirement to include users of the substance, and amending Regulation (EC) No 273/2004 on drug precursors

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: drug precursors are chemical substances having a wide variety of licit uses, such as in the synthesis of plastics, pharmaceuticals, cosmetics, perfumes, detergents, or aromas. They are traded for legitimate purposes on global markets, but some of them can also be diverted from the licit distribution channels for the illicit manufacture of narcotic drugs. Taking into account the wide legitimate uses of drug precursors, their trade cannot be prohibited. However, in order to prevent their diversion to illicit drug production, a specific regulatory framework has been set up on international level through Article 12 of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The EU is a Party to the Convention and has implemented its obligations through Regulation (EC) No 273 /2004 governing the monitoring of the intra-EU trade in drug precursors and Regulation (EC) No 111/2005 governing the external trade. The Union regulatory framework provides for the monitoring and control of the legitimate trade in drug precursors. Operators, i.e. manufacturers, distributors, brokers, importers, exporters and wholesalers of chemicals engaged in the legitimate trade of drug precursors are required to take measures against theft, check their customers, detect suspicious transactions and notify the authorities thereof.

In 2010, the European Commission adopted a Report on the implementation and functioning of the existing EU legislation on drug precursors, and recommended analysing ways to **strengthen the control of the trade of acetic anhydride** (scheduled substance in Category 2) in order to better prevent the diversion of acetic anhydride for the illicit production of heroin.

Heroin use accounts for the greatest share of morbidity and mortality-related drug use in the EU. Even though the quantities of acetic anhydride seized in the EU have decreased very substantially since 2008, certain reports consider that the European legislative control measures are not sufficiently strict to prevent the diversion of the main heroin precursor from the intra-EU trade.

IMPACT ASSESSMENT: the main problem driver being the insufficient control by competent authorities over all economic players involved in the legitimate trade with drug precursors, all policy options examined seek to improve control via enhanced reporting, notification or registration obligations imposed on the economic players. The impacts of the following six policy options have been analysed:

- ***Option 1 (baseline option):*** no action: the current EU legislation will remain unchanged;
- ***Option 2:*** strengthened reporting obligations;
- ***Option 3:*** strengthened rules and obligations on operators related to customer declarations from end-users;
- ***Option 4:*** require operators to systematically notify new end-users to the authorities to allow verification;
- ***Option 5:*** require registration for end-users and reinforce requirements regarding registration;
- ***Option 6:*** move acetic anhydride from category 2 to category 1 scheduled substances.

Option 5 is the preferred option. The overall conclusion of the impact assessment was that both, Option 4 and Option 5 would be good choices, but Option 5 would be less burdensome than Option 4 in terms of

annual costs for enterprises (provided authorities do not pass on all costs to registrants by imposing fees), an argument which is particular relevant for SMEs. All in all the strong political support which Option 5 has from most Member States, combined with views expressed on international level that a more systematic control of (all) **acetic anhydride** end-users is lacking in the European legislation, and the somewhat lower burden on SMEs tip the balance in favour of Option 5.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal aims to address a specific weakness which has been detected in the European Union, when large quantities of acetic anhydride ("AA"), the main drug precursor for heroin, were diverted from the EU- internal trade: in 2008, 75% of the global seizures of Acetic anhydride happened in the EU. Until now only EU companies producing or trading Acetic anhydride have to register with their national authorities.

The Commission proposes to:

- **extend the registration requirement**, which so far applies only to operators placing Acetic anhydride on the market, to include users of the substance;

- **enhance the harmonised registration provisions** to achieve a more robust level playing field preserving the internal market and avoiding adoption of divergent national measures. More detailed rules on registration are introduced to ensure uniform conditions of registration in all Member States for scheduled substances in category 2 of Annex I. For substances scheduled in a new subcategory 2A of Annex I, not only operators but also users will be subject to a registration requirement.

By ensuring that operators and users engaged in the legal trade of drug precursors are subject to harmonised rules, the proposal will ensure a proper functioning of the Union market by avoiding unnecessary barriers to such legitimate trade and by reducing administrative burdens for operators and competent authorities.

Additionally the Commission proposes to establish and maintain a **European Database on Drug Precursors** in order to modernize the collection of the information provided by Member States on drug precursor seizures and stopped shipments, in accordance with current Article 13 of Regulation (EC) No 273/2004, and to maintain a list of EU licensed or registered operators and users legally trading or using drug precursors, as well as to enable operators to provide competent authorities in summary form with information about their transactions involving scheduled substances in accordance with current Article 8 (2) of Regulation (EC) No 273/2004.

In addition, it should be noted that the proposal is:

- subject to a notification to the WTO in the framework of the TBT Agreement;

- relevant for the European Economic Area (EEA);

- contains a transitional period for the coming into force of the new registration obligations for end-users of Acetic anhydride;

- includes a review clause to assess whether the amended Regulation will have been effective to prevent the diversion of Acetic anhydride.

Annex: the proposal does not extend the provisions for acetic anhydride to other scheduled substances in category 2. Acetic anhydride, currently scheduled in category 2 of Annex I, will be included in a new subcategory 2A of Annex I to allow increased control of its trade. The remaining substances of category 2 will be listed as subcategory 2B.

BUDGETARY IMPLICATIONS: the proposal has no impact on the European Union budget because no additional resources are required to implement the action proposed. The necessary resources to implement the European database are already included in the allocations granted during the budget procedure and within the Internal Market line.

DELEGATED ACTS: the Commission shall have the power, in accordance with Article 290 of the Treaty on the Functioning of the European Union, to adopt certain acts for which provision is made in the proposal.