Commission Delegated Regulation (EU) 2020/1737 of 14 July 2020 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)

COMMISSION DELEGATED REGULATION (EU) 2020/1737

of 14 July 2020

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) By means of Decisions 62/10, 62/11 and 62/12 of the Commission on Narcotic Drugs of the United Nations (CND), taken at its sixty-second session on 19 March 2019, the three substances methyl 3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (PMK methyl glycidate), 3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylic acid (PMK glycidic acid) and alpha-phenylacetoacetamide (APAA) have been added to Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988[(3)] ('the 1988 UN Convention'). Additionally, by means of Decision 63/1 of the CND, taken at its sixty-third session on 4 March 2020, the substance methyl alpha-phenylacetoacetate (MAPA) has been added to Table I of the 1988 UN Convention.

(3) One of the purposes of Regulations (EC) No 273/2004 and (EC) No 111/2005 is to implement Article 12 of the 1988 UN Convention in the Union. PMK methyl glycidate, PMK glycidic acid, APAA and MAPA should consequently be included in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005.

(4) 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

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1737. (See end of Document for details)*

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. For example, substances of category 1 need to be stored in secured premises and each operator dealing with such substances needs a licence.

(5) PMK methyl glycidate and PMK glycidic acid are immediate precursors of 3,4-methylenedioxymethamphetamine (MDMA), commonly known as 'ecstasy'. APAA and MAPA are immediate precursors of amphetamines. In other words, those substances can be easily transformed into MDMA or amphetamines.

(6) The misuse and abuse of MDMA and amphetamines are causing serious social and public health problems in some regions of the Union. Additionally, organised crime groups in the Union produce vast amounts of MDMA and amphetamines. Large quantities of MDMA and amphetamines are also exported to third countries.

(7) There is no known licit production, trade or use of PMK methyl glycidate, PMK glycidic acid, APAA and MAPA in the Union. Including those substances under category 1 in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005 would consequently not entail any extra administrative burden for economic operators and competent authorities in the Union.

(8) In the light of the threat that PMK methyl glycidate, PMK glycidic acid, APAA and MAPA pose to the social and public health in the Union, and considering that their scheduling will have no impact on their licit trade, production and use in the Union, 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.

(9) Methyl 2-methyl-3-phenyloxirane-2-carboxylate (BMK methyl glycidate) and 2# methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid) are also substances that are immediate precursors of amphetamines and that are frequently used for the illicit manufacture of amphetamines. Those substances should therefore be included in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005.

(10) There is no significant licit production, trade or use of BMK methyl glycidate and BMK glycidic acid in the Union. Including those substances under category 1 in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005 would consequently not entail any significant extra administrative burden for economic operators and competent authorities in the Union.

(11) In the light of the threat that BMK methyl glycidate and BMK glycidic acid pose to the social and public health in the Union and considering that their scheduling will only have marginal impact on their licit trade, production and use in the Union, they 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.

(12) Red phosphorus is frequently diverted from trade in the internal market and used in the Union for the illicit manufacture of methamphetamine. It is used as a catalyst to drive the chemical conversion to methamphetamine of ephedrine or pseudoephedrine, which are already listed under category 1 in Annex I to Regulation (EC) No 273/2004 and in

the Annex to Regulation (EC) No 111/2005). Consequently, red phosphorus should be included in Annex I to Regulation (EC) No 273/2004.

(13) Methamphetamine is a very addictive drug which is causing serious social and public health problems in some regions of the Union.

(14) Red phosphorus has however important and diversified legal uses, such as the manufacture of flame-retardants for plastics, pyrotechnics and striker plates for safety matches and flares.

(15) In order to achieve a proportionate balance between the threat that red phosphorus poses to the social and public health in the Union and the burden on licit trade in that substance on the internal market, red phosphorus should be included under category 2A in Annex I to Regulation (EC) No 273/2004.

(16) Although it is currently not known whether red phosphorus is also being diverted from the trade between the Union and third countries it is very likely that once the trade in that substance on the internal market is placed under control in the context of Regulation (EC) No 273/2004, illicit drug manufactures will try to source it through the diversion from such extra-Union trade. Consequently, red phosphorus poses a high risk of diversion with regard to trade between the Union and third countries and it should therefore also be included under category 2 in the Annex to Regulation (EC) No 111/2005. This also ensures that the parallelism between the substances included in Regulations (EC) No 273/2004 and (EC) No 111/2005 remains and simplifies the implementation of those Regulations by operators and competent authorities.

(17) Annex II to Regulation (EC) No 273/2004 sets quantitative thresholds on transactions involving certain substances carried out over a period of one year. The purpose of that Annex is to avoid unduly hampering legitimate trade in those substances in cases where it is possible to reduce or eliminate the risk of diversion into illicit channels by limiting the restrictions on trade to quantities over a certain threshold. Based on available evidence and consultations with the competent authorities of the Member States, that threshold for red phosphorus should be set at 0,1 kg.

(18) It is also appropriate in this context to update the combined nomenclature codes (CN codes) in Regulations (EC) No 273/2004 and EC (No) 111/2005 on the basis of the latest version of the Combined Nomenclature adopted by Commission Implementing Regulation (EU) 2019/1776[(4)] and applicable as of 1 January 2020, to ensure the correct classification of the scheduled substances.

(19) As the substance alpha-phenylacetoacetonitrile is commonly referred to as APAAN by competent authorities in the Member States, that abbreviation should be added in Annex I to Regulation (EC) No 273/2004 and in the Annex to Regulation (EC) No 111/2005.

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

(21) Given that there is important lawful production, trade and use of red phosphorus in the Union, economic operators and competent authorities should be given sufficient time to adapt to the new restrictions concerning that substance introduced by this Regulation.

(22) Regulations (EC) No 273/2004 and (EC) No 111/2005 jointly implement certain provisions of the 1988 UN Convention. In view of the close material link between those two Regulations, it is justified to adopt the amendments by way of one single delegated act,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 273/2004

Annexes I and II to Regulation (EC) No 273/2004 are amended in accordance with Annex I to this Regulation.

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 and application

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

Point (1)(b) and point (2) of Annex I and point (2)(b) of Annex II shall apply from 13 January 2021.

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

Done at Brussels, 14 July 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

Annexes I and II to Regulation (EC) No 273/2004 are amended as follows:

(1) Annex I is amended as follows:

(a) the table 'CATEGORY 1' is amended as follows:

(i) the entry for Alpha-phenylacetoacetonitrile is replaced by the following:

Substance	CN designation (if different)	CN Code	CAS No
'*Alpha*-phenylacetoacetonitrile (APAAN)		2926 40 00	4468-48-8'

(ii) in the entry for (1R,2S)-(-)-chloroephedrine, the CN code '2939 99 00' is replaced by '2939 79 90';

(iii) in the entry for (1S,2R)-(+)-chloroephedrine, the CN code '2939 99 00' is replaced by '2939 79 90';

(iv) in the entry for (1S,2S)-(+)-chloropseudoephedrine, the CN code '2939 99 00' is replaced by '2939 79 90';

(v) in the entry for (1R,2R)-(-)-chloropseudoephedrine, the CN code '2939 99 00' is replaced by '2939 79 90';

(vi) the following entries are inserted in the appropriate place sequentially according to the CN Code:

Substance	CN designation (if different)	CN Code	CAS No
'Methyl 3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (PMK methyl glycidate)		2932 99 00	13605-48-6
3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylic acid (PMK glycidic acid)		2932 99 00	2167189-50-4