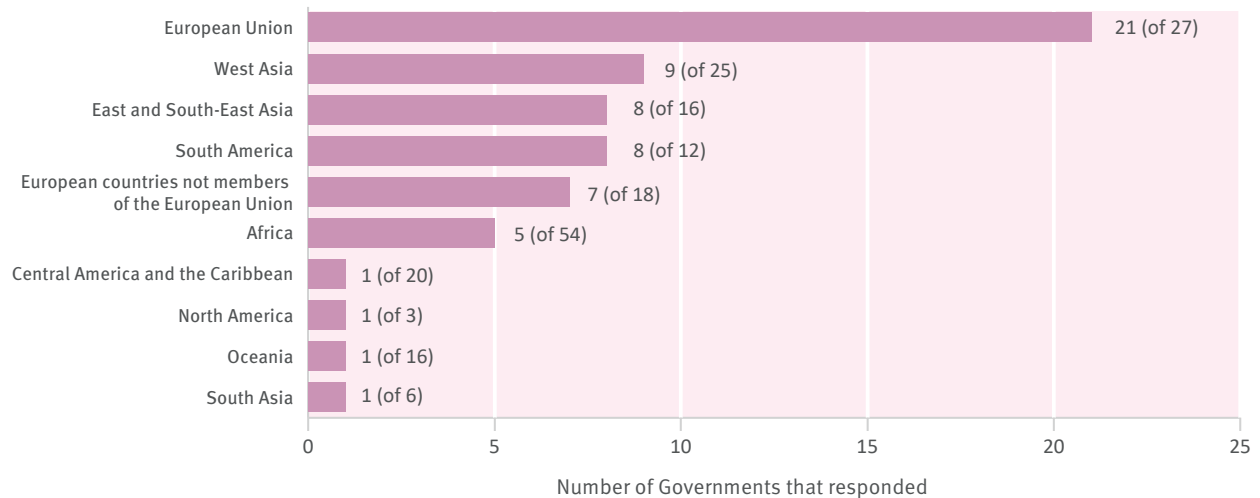


IV. Domestic controls: the extent of utilization of the provisions of article 12, paragraph 8, of the 1988 Convention

203. The past 15 years of international precursor control has shown that, as a result of more effective control and monitoring, the diversion of precursors for illicit activities has evolved from being perpetrated through international trade to now being essentially domestic in nature. The

Figure XVII. Governments that responded to the survey on national drug precursor legislation and domestic controls, by region



Board has most recently drawn attention to this issue in its report on precursors for 2020.²⁶

204. To take stock of the status of implementation of the existing international precursor control system, the scope and extent of domestic controls pursuant to article 12, paragraph 8, of the 1988 Convention, and the extent to which Governments have implemented the scheduling decisions of the Commission on Narcotic Drugs, the Board surveyed all Governments in June 2021. As at 1 November 2021, 62 Governments²⁷ and the European Commission had responded to the survey (see figure XVII).²⁸ Of those, 53 submitted detailed responses regarding specific control measures.

205. More specifically, in addition to the monitoring of international trade in precursors, the Board has previously identified four areas that it considers important for

preventing the diversion of precursors from licit to illicit channels at the domestic level. These areas include the monitoring of and controls over (a) manufacture and (b) distribution (both measures are referred to in article 12, paragraph 8, of the 1988 Convention), and the monitoring of (c) the end uses of, and (d) Internet-facilitated trade involving, precursor chemicals. The Board surveyed Governments with regard to these areas, in relation to substances in Table I and Table II of the 1988 Convention, as well as additional chemicals that are not included in Table I or Table II but that are under national control. To put the responses into context, the survey also inquired about the status of national controls over the 30 substances currently under international control.

Controls over domestic manufacture, trade and distribution

206. Almost 60 per cent of the respondents – 31 of the 53 – reported not having controls over domestic manufacture of one or more substances listed in Table I or Table II of the 1988 Convention. With specific regard to substances in Table I, 12 respondents, or about 25 per cent, reported having no such controls. One Government reported that it had no controls over the domestic manufacture of any of the 30 substances listed in Tables I and II, and another Government reported having no controls over 23 of the 30 substances.

207. The pattern of controls over domestic manufacture is mirrored by a similar pattern of controls over domestic trade and distribution. One quarter of the respondents reported not having controls over domestic trade and distribution of one or more substances included in Table I of the 1988 Convention. Three Governments reported not

²⁶INCB report on precursors for 2020 (E/INCB/2020/4), paras. 210–211.

²⁷Albania, Andorra, Argentina, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Chile, China, Croatia, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Guatemala, Hungary, India, Ireland, Italy, Latvia, Lebanon, Lithuania, Madagascar, Malaysia, Malta, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Syrian Arab Republic, Tajikistan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom and Uzbekistan.

²⁸Given that, in the European Union, the legislation and measures decided by the European Commission are directly applicable in the 27 European Union member States through European Union regulations (for example, on, inter alia, monitoring, scheduling and “catch-all” clauses), the response by the European Commission reflects, to a large extent, the situation in the 27 European Union member States, even though only 21 of them responded directly.

having controls over domestic trade and distribution of any of the 22 substances listed in Table I and two Governments reported having no such controls over two thirds of the substances in Table I.

208. The survey also enquired about the existence of controls over end use. In this respect, 17 Governments reported that they had no controls over the end use of one or more substances listed in Table I. In that connection, it was reported that the European Union regulations on precursors require that the “users”²⁹ of listed chemicals obtain a licence from the competent authority in the respective country.

209. Governments were also asked to report on the existence in their regulations of specific measures such as the registration of trading companies and end users, the reporting of domestic trade, the submission of end-use declarations and the reporting of suspicious orders. While some such measures were provided for in legislation, others were purely voluntary in nature. However, as shown in table 4, a significant proportion of the responding Governments reported not making use of such additional specific measures.

Table 4. Specific control measures applicable to domestic trade, distribution and use

<i>Measures required in respect of one or more substances in Table I of the 1988 Convention</i>	<i>Percentage of Governments reporting the absence of required measures</i>
Registration of trading companies	21
Registration of end users	68
Reporting of domestic trade	23
End-use declaration	32

210. As regards the reporting of suspicious orders, 57 per cent of the Governments indicated that the reporting of suspicious orders involving substances in Table I was mandatory and 21 per cent indicated that such reporting was voluntary.

211. With regard to the requirement to report suspicious orders, almost 80 per cent of the respondents mentioned having such a requirement in place in relation to the monitoring of international trade, as envisaged in article 12, paragraph 9 (a), of the 1988 Convention. A total of 31 Governments confirmed that the reporting of suspicious orders was mandatory for companies with regard to at least one precursor, while 11 Governments confirmed that such reporting was voluntary for companies with regard to at least one precursor.

²⁹The term “user” is defined in the European Union regulations as a natural or legal person other than an operator who possesses a scheduled substance and is engaged in the processing, formulation, consumption, storage, keeping, treatment, filling into containers, transfer from one container to another, mixing, transformation or any other utilization of scheduled substances. By contrast, an “operator” is defined as a natural or legal person engaged in the placing on the market of scheduled substances.

Control over Internet-facilitated trade

212. The use of the Internet, specifically, the surface web, by traffickers to source or sell precursor chemicals for use in illicit drug manufacture has been reported by the Board for nearly a decade.³⁰ Accordingly, the survey enquired whether Governments implemented any controls over Internet-facilitated trade.³¹ A large proportion of the responding Governments, 70 per cent, confirmed that Internet-facilitated trade was controlled at the national level with regard to at least one precursor. However, there appear to be differences in the way in which some Governments interpreted the question. Specifically, it is not clear whether the term “Internet-facilitated trade” was interpreted as referring only to the simple facilitation of supply, trade, import or export of drug precursors by duly registered precursor operators, or whether the term also applied to listings of precursors on business-to-business Internet trading platforms, regardless of whether or not such listings were specifically associated with the supply of or trade in chemicals.

Controls applied to substances not under international control

213. Considering that many Governments have in place national controls over several internationally non-scheduled chemicals, the survey extended the same questions about domestic controls to other chemicals found to have been used in the illicit manufacture of drugs.

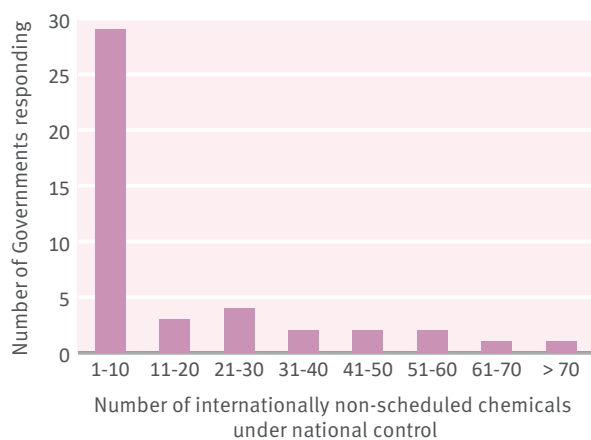
214. Almost 80 per cent of the responding Governments reported that they had placed internationally non-scheduled chemicals under national control, with a range of between 1 and more than 70 chemicals listed in their individual national legislation. The Board is also aware that some countries generically extend the definitions of chemicals under control, for example, by including derivatives of listed chemicals and other substances closely related to them in the definitions.

215. With regard to the domestic control measures applied, about 85 per cent of responding Governments that have controls in place over additional chemicals not under international control monitor the domestic manufacture of, trade in and distribution of those additional chemicals, in line with the recommendation in article 12, paragraph 8, of the 1988 Convention regarding substances in Table I and Table II of the Convention. It appears, therefore, that when

³⁰The most comprehensive account is included in the INCB report on precursors for 2017 (E/INCB/2017/4), paras. 224–239.

³¹For the purposes of the survey, the term “Internet-facilitated trade” was defined as encompassing any activity involving the offering for sale or distribution, or mediating in the sale or purchase through a website, social media or in any other manner, of precursors.

Figure XVIII. Number of internationally non-scheduled chemicals under national control, as reported by responding Governments



Governments have controls in place over additional substances beyond those listed in the tables of the 1988 Convention, the recommendations contained in article 12, paragraph 8, regarding control over domestic manufacture and distribution are more likely to be followed with regard to those additional substances than they are with regard to substances under international control. However, the same level of control is not seen with respect to the end use of and Internet-facilitated trade in internationally non-scheduled chemicals. The Board has observed that, in a number of countries that have national controls in place over additional chemicals, the controls only apply to the import and/or export of those chemicals.

Status of national controls over substances listed in Table I and Table II of the 1988 Convention

216. Considering that, in the last seven years, seven chemicals were placed under international control, the Board also surveyed Governments on the status of controls over the 30 substances currently listed in Table I and Table II of the 1988 Convention. A total of 40 Governments indicated that all internationally controlled drug precursors were also controlled under their national legislation. However, 22 Governments reported that not all 30 substances were under national control. In the majority of those cases, the countries had enacted legislation to control only the 23 precursor chemicals that were under international control at the time of the coming into force of the 1988 Convention, in 1990.

217. About 25 per cent of the Governments that submitted detailed responses regarding specific control measures reported that one or more of the 22 substances included in Table I of the 1988 Convention still had not been placed

under national control. Of those Governments, eight reported not having five or more substances listed in Table I under control. Acetic anhydride and potassium permanganate were the only two substances in Table I that all of the respondents reported as being under national control.

218. MAPA was the substance in Table I most frequently reported (by 13 Governments) as not yet being under national control. The recent international scheduling of MAPA, in November 2020, may explain the lack of national controls. Likewise, the substances added to Table I in 2019, namely, 3,4-MDP-2-P methyl glycidate, 3,4-MDP-2-P methyl glycidic acid and APAA, were reported by 12, 11 and 10 Governments, respectively, as not being under national control. However, even with regard to substances that were placed under international control earlier, such as the two fentanyl precursors, NPP and ANPP, which were placed under international control in 2017, nine Governments responding to the survey reported a lack of controls. Likewise, eight Governments reported not having controls in place over APAAN, even though the substance was placed under international control in 2014. These responses indicate substantial time gaps in the implementation of the scheduling decisions of the Commission on Narcotic Drugs.³²

Conclusion

219. The survey has substantiated the Board's earlier assessment that there is a need to further enhance domestic controls over chemicals in Table I and Table II of the 1988 Convention in relation to a number of areas. The survey indicates that almost 60 per cent of the responding Governments do not control all of the substances in Table I and Table II. Similarly, 62 per cent of the responding Governments do not control domestic trade and distribution of those substances, and their end use is even more often not controlled (68 per cent of responding Governments). Thus, as a substance moves through the supply chain, from manufacture to distribution to end use, the degree of control over it progressively declines, as reflected by the increasing number of countries that report a lack of controls. On the other hand, domestic controls appear to be implemented more consistently for chemicals that are under national control but that are not listed in the tables of the 1988 Convention.

220. The survey has also revealed that about a third of all responding Governments still do not control all of the

³²In accordance with article 12, paragraph 6, of the 1988 Convention, any decision of the Commission on Narcotic Drugs with regard to the inclusion of substances in Table I or II of the Convention is to become fully effective with respect to each party 180 days after the date of communication of the decision.

substances in Table I and Table II of the 1988 Convention. This is particularly concerning when considering that these substances have been scheduled for a long time.

221. Valuable responses were also received with regard to details of the systems of control applied to the import and export of substances in the tables of the 1988 Convention, the status of the monitoring of international trade in additional chemicals that are not included in those tables but that are under national control in different countries, and the sanctions for non-compliance with national control measures. Reported administrative sanctions ranged from simple notification to administrative pecuniary penalties and revocation and/or permanent cancellation of the registration of the offending operator. Criminal sanctions ranged from confiscation, fines up to several times the value of the seized consignment and imprisonment of a few months to several years. The punishment itself typically depended on the manner of commission and intent.

222. Finally, respondents elaborated on and provided practical examples of the specific information and level of detail that they would need to allow them to act on information, intelligence or evidence from counterparts or to launch investigations, especially with regard to chemicals not under control in their country.

223. The information provided will assist the Board in updating its information package on the control of precursors, enhancing its dialogue with individual Governments and contributing to policy discussions on the international precursor control framework. **INCB commends all of the Governments that have provided these valuable insights into the scope and extent of their national legislation, including domestic controls over both substances in Table I and Table II of the 1988 Convention and additional chemicals that are not included in Table I or Table II but that are under national control.**