

III. Other matters related to illicit drug manufacture

HIGHLIGHTS

- ▶ INCB conducted a survey on the implementation of article 13 (materials and equipment) of the 1988 Convention and convened an expert group meeting on equipment in September 2024 (para. 168).
- ▶ In the reporting period, the Board conducted several national mapping exercises in cooperation with a number of pilot countries. Findings from the mapping exercises and experiences with various existing national cooperation models were discussed at an INCB international conference at the end of 2024 (paras. 172 and 173).
- ▶ INCB initiated the Automated Monitoring of Virtual Chemical and Equipment Markets tool, which leverages advanced technologies to assist in monitoring the Internet (the surface web) and identifying suspicious postings of precursor chemicals and equipment used in illicit drug manufacture (paras. 174–176).
- ▶ During the reporting period, the Board collaborated with the third Study Commission of the International Association of Judges on issues related to emerging challenges to the successful adjudication of precursor-related offences (paras. 177–186).

A. Equipment used in illicit drug manufacture

166. The illicit manufacture of drugs requires not only precursor chemicals, but also materials and equipment. Article 13 of the 1988 Convention requires parties to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and to cooperate with each other.

167. Although article 13 of the 1988 Conventions does not contain any specific provisions that define how it should be implemented, some countries have established measures aimed at monitoring trade in and/or the distribution of certain types of materials and equipment, such as tableting and encapsulating machines.²⁶ The specific measures reflect the national circumstances and challenges faced by the Governments. Over the past five years, INCB has conducted several activities to raise awareness and guide international policy efforts and actions with the aim of preventing the diversion of equipment essential for illicit drug manufacture, enhancing the operational use of article 13 and encouraging cooperation in that regard. More recently, INCB has expanded its focus to include excipients, that is, the substances needed for the compression of the mixed powders containing drugs into tablets, such as binders, lubricants and colorants.

168. During the reporting period, the Board carried out the following activities to assist Governments in enhancing their use of article 13 of the 1988 Convention and preventing the diversion of specialized equipment to illicit laboratories:

(a) A survey was conducted among Governments worldwide with a view to further understanding national action and international cooperation. The survey was aimed at gathering information on regulatory and operational aspects of illicit drug manufacturing equipment and excipients, including information about relevant national authorities with competence over different aspects of article 13 and specialized equipment. The information gathered through the survey, in particular a list of global focal points, is expected to be disseminated to all Governments in 2025 to support international cooperation;

(b) Work continued with WCO to establish unique Harmonized System codes for selected equipment on the international monitoring list of equipment used in the illicit manufacture of drugs. Once the unique codes are available, they will allow more effective monitoring of international trade and, consequently, contribute to preventing the diversion of these items for illicit manufacture;

(c) An expert group meeting on illicit drug manufacturing equipment and article 13 of the 1988 Convention was convened. Participants in the meeting, which was the fourth of its kind, discussed the latest equipment-related trends and developments in order to inform strategic action at the international level and identify best practices for dissemination to Governments worldwide.

169. During the reporting period, 130 equipment-related incidents were communicated through PICS. The majority involved tableting machines (115), followed by punches and dies, reaction vessels, distillation apparatus, industrial mixers and glassware. Most of the incidents (109) were communicated by the United States and involved tableting machines, with all the seizures being made at borders and, where such information was available, the source being identified as China. Some Governments informed the Board of incidents that involved the import of tableting machines in separate parts that were then assembled locally, an observation that resulted in the analysis of legislative amendments to address such loopholes.

170. The incidents communicated through PICS involved new or second-hand, custom-made or modified equipment. On the basis of the information available to INCB, second-hand equipment is typically purchased in local markets and on the Internet and then modified locally. The effective monitoring and control of such equipment are therefore important. The information shared by countries in PICS enhances knowledge of trends in equipment used for illicit purposes. The Board continues to promote the use of article 13 of the 1988 Convention

²⁶ A global repository of national approaches to the equipment used in illicit drug manufacture is available on the INCB website. The repository contains national regulations or approaches implemented by Governments in relation to article 13 of the 1988 Convention. The list is not exhaustive and is updated as additional information is made available.

as a valuable complementary tool for addressing illicit drug manufacture. **The Board encourages Governments that have not yet implemented measures to prevent trade in and the diversion of materials and equipment for the illicit production or manufacture of narcotic drugs and psychotropic substances and that do not yet cooperate to this end to examine ways to do so. Governments are also encouraged to make full use of the tools and resources related to illicit manufacturing equipment available on the INCB website. The Board underlines the need to continue identifying innovative approaches to improve the implementation of article 13.**

B. Cooperation with industry

171. The continuous evolution of illicit drug markets and the capacity of actors to rapidly adjust manufacturing processes and products to circumvent the control measures enacted call for innovative and proactive approaches, including to strengthen cooperation and knowledge-sharing. In this context, the Board has repeatedly emphasized the crucial role of voluntary cooperation with industry as an effective and sustainable strategy to prevent the diversion of and trafficking in chemicals used for illicit drug manufacture.

172. The Board has also reiterated that one of the most important elements of a successful partnership is knowledge and understanding of the range of industries that deal with the chemicals used for illicit drug manufacture and thus might – often unwittingly – be exploited by traffickers. In the past few years, the Board has encouraged Governments to map their national industry landscapes with the aim of raising awareness among those industries that are likely to be susceptible to diversion. The mapping of the industries that manufacture, consume or in any way deal with chemicals that could be used as precursors has been part of the Board’s initiative to promote industry cooperation as a key element of the strategy to prevent illicit drug manufacture. In this regard, the Board has developed a resource that establishes the overall framework for conducting the INCB mapping initiative and, in particular, for identifying the existence of these or other related industries in countries, and has conducted several national mapping exercises in cooperation with several pilot countries. **The Board continues to encourage Governments to map their national industry landscape with the aim of aiding understanding of which categories are available in their territories and raising awareness among all industries concerned. The Board also encourages Governments that have conducted the mapping exercise to follow up on the findings included in the respective national mapping reports. Furthermore, the Board recommends that Governments make greater use of the INCB resources and materials that have been developed for this purpose and that are available on the INCB website.**

173. Findings from the mapping exercises and experiences with existing cooperation models in different national contexts were also discussed at an international conference on the topic “Engaging the private sector to address illicit drug manufacture – Know your industries”. The event was also focused on examining good practices in addressing diversion from domestic distribution channels and innovative approaches to disrupting supply chains for alternative precursors, which are often not under control.

C. Virtual markets

174. Addressing the misuse of the Internet (the surface web) to traffic precursors has been a priority area of work for the Board for several years.²⁷ The Board has highlighted the issue in many of its previous annual reports on precursors. It has also undertaken several other initiatives, including an international operation, Operation Acronym, to target precursor trafficking through the Internet and train officials to investigate suspicious Internet postings related to precursors. From time to time, the Board has also supported Governments in the investigation of suspicious Internet postings related to precursors.

175. Online platforms act as virtual marketplaces, enabling buyers to obtain chemicals needed for illicit drug manufacture and vendors to advertise and market their products, including scheduled and non-scheduled precursors and equipment that can be used for such manufacture. The lack of regulatory controls over such platforms

²⁷INCB report on precursors for 2022 (E/INCB/2022/4), chap. IV.

in most countries facilitates their operations. Since the footprint of precursors and equipment on the Internet in general, and online trading platforms in particular, has grown in recent years and is likely to expand further, the Board felt the need to establish more systematic monitoring of the Internet in order to provide Governments with information about emerging trends as a basis for operational work to prevent trafficking in and the diversion of precursors and essential equipment.

176. During the reporting period, the Board initiated the development of the Automated Monitoring of Virtual Chemical and Equipment Markets software tool, as a solution that leverages advanced technologies to assist in monitoring the Internet (the surface web) and identifying suspicious postings of precursor chemicals and illicit drug manufacturing equipment. The data collected and analysed will be used to develop actionable information and intelligence packages to be shared with Governments. The analysis also supports the identification of patterns, trends and potential connections between online activities and illicit drug manufacture. Where necessary, operational support is provided to Governments for the investigation of suspicious postings.

D. Addressing de jure challenges related to the evolution of illicit drug manufacture and the diversification of precursor chemicals: raising awareness among judges and prosecutors

177. The Board has observed in the past that law enforcement authorities may face difficulties in investigating cases involving precursors. For example, in its report on precursors for 2019 (para. 208 ff.), the Board noted that the legal requirement stipulated in the 1988 Convention for proving an alleged offender's intent or knowledge, or more specifically, for producing evidence showing that the suspect knew that the substance in question was to be used in illicit drug manufacture, has sometimes been perceived as a possible impediment to the successful investigation, prosecution and adjudication of precursor-related crime. The provision of information on the specificities of drug-related crime involving synthetic drugs and their precursors to criminal justice practitioners, including prosecutors and judges, has been identified as an area requiring attention.

178. During the reporting period, the Board collaborated with the third Study Commission of the International Association of Judges. A jointly developed questionnaire explored the overall knowledge of the national associations of judges that comprise the International Association of Judges of the specific judicial instruments applicable to illicit drug manufacture and the challenges to the successful prosecution of precursors-related crimes. As at 1 November 2024, a total of 30 national associations in all regions of the world had responded to the questionnaire.

179. A preliminary analysis of the replies received showed that all respondents indicated having adopted legislation and regulations relevant to precursor control. In some cases, there had been no amendments to precursor and drug control legislation that was more than 20 years old, while about half of the respondents reported having adopted amendments in the past 10 years, three as recently as in 2023 and 2024.

180. The survey enquired as to whether approval by a judge was a precondition for launching an investigation into the diversion of and trafficking in precursors, and to whether a court order or approval by a judge was required for effecting controlled or monitored deliveries. All respondents indicated that the public prosecutor's office led the investigation and that approval by a judge was not a precondition for launching an investigation. Nevertheless, on the basis of the code of procedure in some jurisdictions, approval by a judge might be required for specific acts, such as if an investigator applied for a search or surveillance warrant as part of an investigation.

181. Respondents also elaborated and provided specific information on the role of the judiciary when a precursor-related crime was being investigated and when information was requested from or provided to a foreign State. The survey requested information on the existence of legislation, including court rulings, related to the monitoring of precursor manufacture and trafficking. All respondents specified that in order to launch a criminal investigation, including close surveillance of the further use and internal distribution of precursors, there must be evidence that the precursors were intended to be used for the illicit manufacture of narcotic drugs or were related to drug trafficking.

182. The survey also enquired about essential equipment and criminal provisions establishing the manufacture, transport and distribution of such equipment as a criminal offence when it was intended to be used for illicit drug manufacture. About half of the respondents indicated having legislation specific to essential equipment, while the other half indicated that a criminal offence could be established solely on the basis of proven intent or evidence of known misuse of such equipment for the illicit manufacture of drugs. A few respondents indicated that such actions with essential equipment could be prosecuted as other criminal offences, such as preparation to commit a drug offence. In such cases, the equipment would be subject to forfeiture if the suspected crime was brought to trial.

183. Valuable replies were provided in respect of the question about whether the misdeclaration of non-scheduled chemicals and equipment in customs declarations would suffice to impute knowledge on the part of the supplier of their intended use for illicit drug manufacture. Almost all respondents indicated that it was essential to prove that the supplier knew, or at least should have known, that those items would indeed be used in the illicit manufacture of drugs. Nevertheless, if such intent was not established, the offender – as in the case of essential equipment described in the previous paragraph – could be prosecuted on other criminal charges, such as false declaration in public documents or failure to declare imported goods at value.

184. With regard to non-scheduled precursors, only three respondents indicated that in their jurisdictions it would be possible to convict people caught importing chemical substances not listed in the list of controlled substances. In the first case, the legislation in effect made it an offence to handle scheduled and non-scheduled chemicals without a licence issued by the Minister of Justice; a misdeclaration of the nature and use of the imported chemical would give rise to the presumption that the supplier had no licence and would be sufficient to impute knowledge on the part of the supplier of their intended use for illicit drug manufacture. In the second case, misdeclaration to the customs authorities would be an indication that the importer knew that the substances or equipment would be used in illicit drug manufacture, which might be also sufficient to initiate a criminal investigation.

185. With regard to the question of whether domestic legislation included measures or civil, criminal and administrative sanctions to address non-scheduled chemicals and emerging precursors used as starting materials or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention, the majority of respondents indicated that no legal sanctions existed in their jurisdictions if the specific substance was not mentioned in the lists of substances annexed to the criminal code of procedure. In such cases, the police could only intervene in the context of averting imminent danger. Furthermore, there were no specific administrative sanctions applicable to non-scheduled chemicals. A few respondents indicated that non-compliance with administrative requirements and rules gave rise to the possibility of administrative sanctions, such as a formal warning, the seizure of the chemical, the suspension or cancellation of an operating licence, the revocation of a special authorization or a fine.

186. The rapid evolution of illicit drug manufacture and the challenges this poses to successful prosecutions were also discussed at the sixty-sixth annual meeting of the International Association of Judges, which was held in Cape Town, South Africa, in October 2024. The Board is pleased to see this topic being brought to the attention of judges worldwide and hopes to see similar outreach to specialized associations of prosecutors and other relevant criminal justice practitioners to ensure adequate awareness-raising aimed at generating specialized knowledge of the *de jure* challenges in securing convictions resulting from the continued evolution of illicit drug manufacture, in particular synthetic drug manufacture, and the related diversification of precursor chemicals. This outreach should include reviewing efficient normative investigative and penal approaches, promoting dialogue between judges, prosecutors and law enforcement authorities and enhancing understanding of the role of INCB information and intelligence tools and platforms with these audiences.