

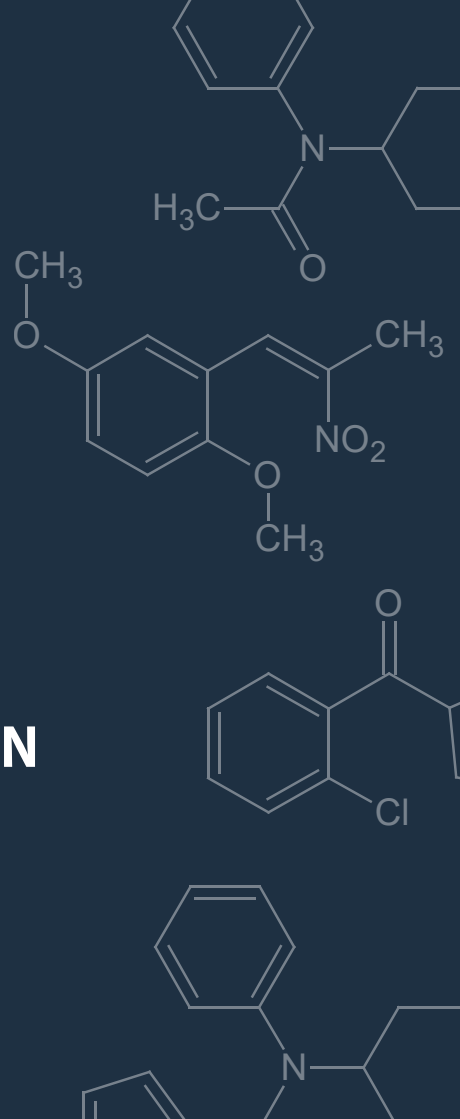


INTERNATIONAL NARCOTICS CONTROL BOARD

Proliferation of non-scheduled chemicals and designer precursors:

OPTIONS FOR GLOBAL ACTION

INCB guidance document



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INTRODUCTION

“The collated list of options and concrete actions to address the proliferation of non-scheduled chemicals and designer precursors ... have been implemented in one or more countries and/or are considered feasible and desirable options for wider implementation.”



This guidance document provides a **collated list of options and concrete actions to address the proliferation of non-scheduled chemicals and designer precursors**, including through international cooperation.¹

The document is based on information and good practices gathered as part of a series of events convened or supported by the International Narcotics Control Board (INCB), including a technical consultation organized in June 2021 and a Member States consultation organized in October 2021, as well as the [📄 Conference Room Paper](#) prepared by INCB for the Commission on Narcotic Drugs (CND) in March 2020.

The collected actions have been implemented in one or more countries and/or are considered feasible and desirable options for wider implementation.

The Board hopes that Governments find this collated list useful to devise a set of concrete actions that could be implemented, individually or collectively, and could provide a framework within which national authorities could cooperate, based on their national legislation and regulations, to address the issue.

¹ Non-scheduled chemicals cover all chemicals not included in Table I and Table II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (hereafter referred to as 1988 Convention). A designer precursor is a close chemical relative of a controlled precursor that is purpose-made to circumvent controls, usually does not have any recognized legitimate use and is not widely traded.

INTERNATIONAL LEGAL FRAMEWORK

“Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.”

- Article 13 of the 1988 Convention



1. According to article 13 of the 1988 Convention, the “parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.” The reference to “materials” allows the application of article 13 to non-scheduled chemicals and designer precursors.² Similarly, article 3 of the 1988 Convention provides a framework for national efforts to counter trafficking in narcotic drugs and psychotropic substances as well as for materials, apart from substances listed in Tables I and II. **Applying article 13 together with article 3 to non-scheduled chemicals, thereby establishing as criminal offences the use of these precursors for illicit drug manufacture, would be an effective tool for countries to implement.**

2. Article 12, paragraph 13 of the 1988 Convention, states that the Commission shall periodically review the **adequacy and propriety of Table I and Table II**. The Commission on Narcotic Drugs could initiate and conduct a review and, within certain bounds, a revision of the tables with a view to reinstating their “adequacy and propriety” in the face of newly emerged challenges that cannot be satisfactorily addressed with the mechanisms already in place.

² See paragraphs 13.1 and 13.4 of the Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

INTERNATIONAL SCHEDULING

“Parties to the Convention should give utmost priority to effective and timely implementation of the scheduling decisions of the Commission on Narcotic Drugs.”



3. **Introduce measures to increase the speed of the international scheduling process** (assessment, decision/voting (by written procedure), publication) **for substances which have no known legitimate use.** Parties to the Convention should subsequently give utmost priority to effective and timely implementation of the scheduling decisions of the Commission on Narcotic Drugs. Pursuant to article 12, paragraph 6 of the 1988 Convention, such decisions become fully effective with respect of each party, 180 days after the date of communication, and this deadline should be met for all substances, including those which have no legitimate use and for which the process can be even faster.
4. **Encourage countries when proposing the scheduling of a chemical under the 1988 Convention to consider the scope of control so that closely related substances** can also be considered. This will allow for a more comprehensive review of closely related substances.

NATIONAL LEGISLATION, MEASURES AND APPROACHES

“Establish as criminal offences under domestic law the manufacture, transport, distribution or possession of a non-scheduled chemical, when the person knows or intends that the substance involved is to be used in or for the illicit manufacture of a narcotic drug or psychotropic substance pursuant to article 13 together with article 3 of the 1988 Convention.”

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5. Encourage States to develop and strengthen measures to address emerging non-scheduled chemicals and designer precursors used in the illicit manufacture of drugs. This could include **incorporating a “know your customer” requirement** coupled with a **duty of inquiry about the intended end-use** of a substance, so as to determine the legitimacy of a proposed transaction involving non-scheduled chemicals.

6. **Establish as criminal offences** under domestic law **the manufacture, transport, distribution or possession of a non-scheduled chemical**, when the person **knows** or **intends** that the substance involved is to be used in or for the illicit manufacture of a narcotic drug or psychotropic substance pursuant to article 13 together with article 3 of the 1988 Convention.³

7. **Consider extending the application of article 13 together with article 3 to the import and export of a non-scheduled chemical** as well as its **international brokering** when the person **knows** or **intends** that the non-scheduled chemical involved would be used for an illicit purpose.

8. **Establish at national (regional) level discrete Harmonized System (HS) codes for non-scheduled substances** that have been encountered in the illicit drug market to facilitate their identification at points of exit and entry and incorporate all available information on high-risk non-scheduled chemicals into customs IT and risk management systems.⁴

³ Specifically, article 3, paragraph 1, subparagraph (a), clause (iv), relates to manufacture, transport or distribution of materials when they are to be used for illicit purposes; subparagraph (c), clause (ii), relates to possession. The provisions relate not only to materials used for illicit laboratories within a party's territory, but also to materials that are smuggled out of or exported from the party's territory to other countries and used in illicit laboratories in those countries (see also paragraph 13.3 of the Commentary).

⁴ A list of applicable HS codes for selected non-scheduled chemicals is available on the Board's secure web page for competent national authorities at: www.incb.org/incb/en/precursors/harmonized-system.html



TECHNICAL ASSISTANCE, CAPACITY-BUILDING AND AWARENESS-RAISING

“Encourage joint technical assistance interventions with relevant international partner organizations aimed at sensitizing and training criminal justice practitioners, including prosecutors and judges, on the specific considerations in the prosecution and adjudication of drug-related crime involving synthetic drugs and precursors, with an emphasis on the important role of non-scheduled chemicals and designer precursors.”



9. Recognize the importance of technical assistance as well as training, education and awareness-raising to relevant professionals as tools to address the proliferation of non-scheduled chemicals and designer precursors. In particular, **encourage joint technical assistance interventions with relevant international partner organizations** aimed at sensitizing and training criminal justice practitioners, including prosecutors and judges, on the specific considerations in the prosecution and adjudication of drug-related crime involving synthetic drugs and precursors, with an emphasis on the important role of non-scheduled chemicals and designer precursors.

10. **Enhance the capacity and effectiveness of national laboratories for research and identification of non-scheduled chemicals and designer precursors**, including the use of drug profiling programmes to identify actual precursors used in illicit drug manufacture.


11. **Promote more widely the use of the INCB International Special Surveillance List (ISSL)**, for the information of law enforcement and customs entities. ISSL now includes chemicals that have no known legitimate uses,⁵ and the list of substances not under international control but which are under national control in some countries.⁶

12. **Improve the knowledge on screening and inspecting suspicious containers** in conjunction with the World Customs Organization and through the development of guidance notes or other relevant technical materials.

13. **Promote sharing of good practices** in addressing non-scheduled chemicals and designer precursors **through appropriate formal and informal channels**. The precursor module in the United Nations Toolkit on Synthetic Drugs could be used to post effective approaches and measures, which other countries have taken, to address the problem of non-scheduled chemicals and designer precursors.

5 Available on the Board's secure web page for competent national authorities at: www.incb.org/incb/secured/precursors/info_package/PART_B/Part_B_ISSL_E.pdf

6 Available on the Board's secure web page for competent national authorities at: www.incb.org/incb/secured/precursors/info_package/PART_A/TABLE4/Part_A_Table_4_E_rev.xlsx



INTERNATIONAL COOPERATION, EXCHANGE OF INFORMATION AND INTELLIGENCE

“Encourage the use of the INCB Precursors Incident Communication System (PICS), including for information exchange, on global suspicious orders as well as on new chemicals encountered.”

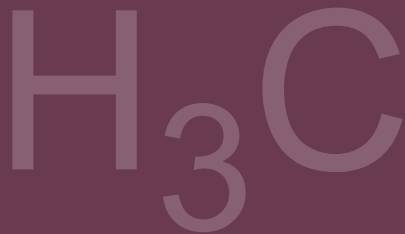


14. **Encourage the use of the INCB Precursors Incident Communication System (PICS)**, including for information exchange, on global suspicious orders as well as on new chemicals encountered.
15. **Encourage the sharing of circumstances and nature of the incident through PICS**, such as packaging, photos, denomination of goods used for mislabelling, documents such as bills of lading, air waybills, road transport documents (CMR), names of buyers and suppliers, and other relevant information.
16. Consider exchanging information about **details of postings** of non-scheduled chemicals and designer precursors on the Internet (surface web).
17. **Encourage and promote voluntary cross-border cooperation** on non-scheduled chemicals, including sharing of information on specific shipments of substances not under national control, with the origin or destination country, for appropriate action as the substance may be controlled in those countries.⁷
18. **Consider exchanging information on planned exports of chemicals not under international control on a voluntary basis.** This could be done using a system similar to the PEN Online system.
19. **Promote better communication among national authorities** (police, customs, licensing authorities, forensic laboratories and others) on non-scheduled chemicals and designer precursors.

⁷ Table 4 of the INCB Information Package on the Control of Precursors (see footnote 6 above).

COOPERATION WITH INDUSTRY

“Consider applying the principle of ‘non-violation of the importing country’s law’ as an element of cooperation with industry.”



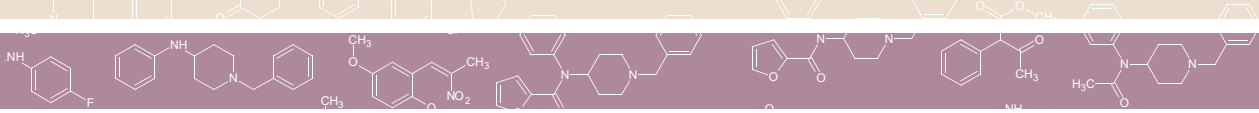
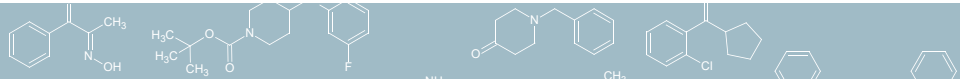
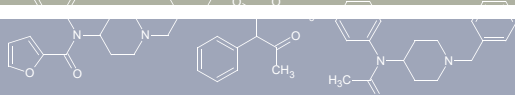
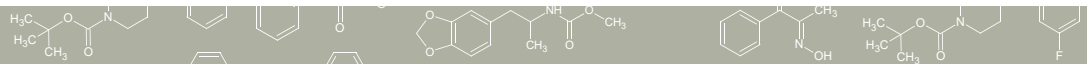
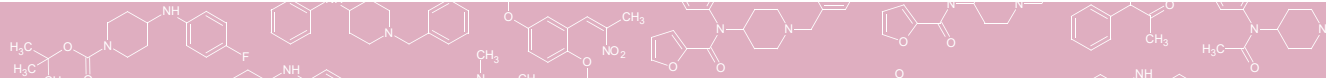


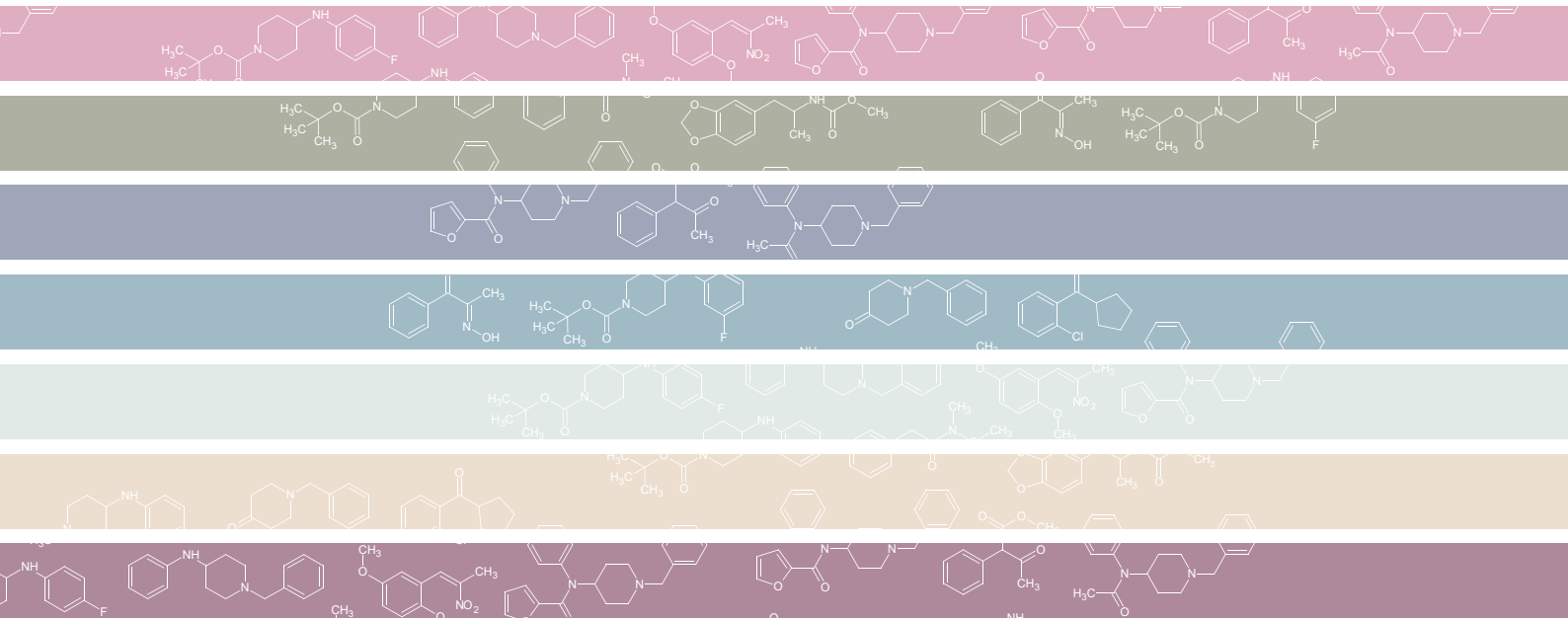
20. **Encourage interaction with industry**⁸ to raise awareness about non-scheduled chemicals and designer precursors. By making law-abiding private sectors aware of the current trends, authorities would be able to seek their assistance as well as leveraging their commitment to responsible care, the global chemical industry's environmental, health and safety initiative. Encourage Governments to establish a single focal point for this purpose. Also encourage Governments to secure cooperation of the private sector to prevent the proliferation of marketing and sales of non-scheduled chemicals and designer precursors via web, blogs and social media on a voluntary basis, subject to domestic legislation.

21. **Consider applying the principle of “non-violation of the importing country’s law”** as an element of cooperation with industry. The Information Package on the Control of Precursors, which is available to Governments on the INCB secure portal and includes information on controls applied by certain countries over internationally non-scheduled precursors, could be a useful tool in this regard.⁹

⁸ Industry does not only include the chemicals (and pharmaceutical) industry but also traders, distributors, shippers/carriers, forwarders, customs brokers, importers, exporters, etc. In short, all private sector stakeholders that play a role in the manufacture and the supply chain of non-scheduled chemicals and designer precursors should be involved.

⁹ Table 4 of the INCB Information Package on the Control of Precursors (see footnote 6 above).







International Narcotics Control Board

Vienna International Centre
P.O. Box 500
1400 Vienna
Austria

Telephone: (+43-1) 26060-4151
Email: incb.precursors@un.org

www.incub.org