COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.7.2008
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2008/0134 (ACC)

Proposal for a

COUNCIL DECISION

on the signature and conclusion of the Agreement between the European Community and the Government of the People's Republic of China on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

By its decision of 27 June 2006, the Council authorised the Commission to negotiate with the Government of the People's Republic of China an Agreement on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and adopted the necessary negotiating directives.

There have been several exchanges of proposals with the Government of the People's Republic of China. Following the negotiations, the text of the Agreement was accepted on 13 March 2008. The Agreement is now being presented to the Council to be signed and concluded.

The Commission considers that the text is in accordance with the negotiating directives adopted by the Council on 27 June 2006.

In order to enable the Agreement on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances to be signed, the Commission proposes that the Council approve the attached proposal for a decision on the signing and conclusion of the Agreement

1.2. General context

The Community continues to be reported as a world's major source of synthetic drugs, e. g. amphetamine and MDMA (commonly referred to as ecstasy). The synthetic drug precursors required to produce those drugs are not easily available in the Community and must be sourced outside. China is the world's major supplier for these synthetic drugs precurors. The proposed measure will help to prevent the diversion of these substances from the legal trade and their misuse in the illicit drug manufacture in the Community.

1.3. Existing provisions in the area of the proposal

This proposal builds upon existing Community provisions aimed at monitoring the legal trade in drug precursors preventing their diversion from the legal trade for the misuse in the illicit drug manufacture.

The rules for the monitoring of trade in drug precursors are laid down in Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries and and Commission Regulation (EC) No 1277/2005 laying down rules implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Commuity and third countries on drug precursors.

1.4. Consistency with the other policies and objectives of the Union

The proposal is consistent with the EU Action Plan on Drugs (2005 - 2008) and the overall EU Drugs strategy.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Not relevant

2.2. Collection and use of expertise

There was no need for external expertise.

2.3. Impact assessment

The main aim of the proposed measure is to increase the ability to prevent diversion of drug precursors from the legal trade and to subsequently prevent their misuse in the illicit drug manufacture.

The proposed increased monitoring of the legal trade through existing mecanisms and tools are expected to reduce the illicit manufacture of synthetic drugs in the Community.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The bilateral agreement with China will allow to set up co-ordinated controls between the competent authorities of the Member States and the competent authorities of China on the basis of the control instruments set up by Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors.

In the context of the implementation of the United Nation's Convention against illicit traffic of narcotic drugs and psychotropic substances of 1988 the Community has set up measures to monitor the trade between the Community and third countries in drug precursors. Among the seizures of drug precursors, in particular ATS precursors, the majority is found to originate in China.

Control of international trade in drug precursors directly affects the availability of chemicals for the unlawful manufacture of drugs. Improving international co-operation makes it harder to supply unlawful drugs and so services public health objectives by reducing the quantity of illegal drugs on the market.

3.2. Legal basis

Article 133 and first sentence of Article 300 (2) EC Treaty

3.3. Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reason:

This proposal builds upon existing Community provisions aimed at the monitoring of trade in drug precursors to prevent their diversion from the legal trade for the misuse in the illicit drug manufacture.

Improving the capacity to detect high risk precursor consignments and preventing their misuse in the illicit drug production can be achieved through minimal increase of level of surveillance of trade movements by making use of existing mecanisms (including IT tools in place).

3.5. Choice of instruments

Proposed instruments: Council decision

Other means would not be adequate for the following reason:

Memoranda of Understanding could be considered to address strengthened co-operation with China in this area on a voluntary basis. However, such option would not suffice, e.g. it would not provide a legal basis for denying the suspicious export or import consignments.

4. BUDGETARY IMPLICATIONS

There are marginal budgetary implications (e. g. with regard to the posts currently allocated and use of existing resources).

5. ADDITIONAL INFORMATION

5.1. Review/revision/sunset clause

The proposal includes a sunset clause.

5.2. Detailed explanation of the proposal

The proposal suggests trade monitoring, the possibility to suspend shipments, mutual administrative assistance, information exchange and technical and scientific co-operation. It also provides the possibility for meetings of a joint follow-up group, where necessary.

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on the signature and conclusion of the Agreement between the European Community and the Government of the People's Republic of China on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof, together with the first sentence of Article 300(2),

Having regard to the proposal from the Commission,

Whereas:

(1) On 27 June 2006, the Council authorised the Commission to negotiate with the Government of the People's Republic of China an Agreement on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.

(2) The Community must strengthen controls on shipments of precursors from the People's Republic of China, given the risk of their diversion for the purposes of illicit manufacture of synthetic drugs in the Community

(3) It is necessary to approve the Agreement between the European Community and the Government of the People's Republic of China on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of the People's Republic of China on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this decision.

Article 2

1. The Commission, assisted by representatives of the Member States, shall represent the European Community on the Joint Follow-up Group set up under Article 9 of the Agreement.

2. The Commission is authorised to approve, on behalf of the Community, amendments to the Annexes to the Agreement adopted by the Joint Follow-up Group under the procedure laid down in Article 10 of the Agreement.

The Commission shall be assisted in carrying out this task by a special committee appointed by the Council with instructions to establish a common position.

3. The authorisation referred to in paragraph 2 shall be limited to those substances which are already covered by the relevant Community legislation on drug precursors.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement.

Article 4

The President of the Council shall effect the notification provided for in Article 12 of the Agreement on behalf of the European Community[1].

Article 5

This decision shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council
The President

[1] The date of entry into force of the Agreement will be published in the Official Journal of the European Communities by the General Secretariat of the Council.

ANNEX

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON DRUG PRECURSORS AND SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

AGREEMENT

between the European Community and the Government of the People's Republic of China
on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

THE EUROPEAN COMMUNITY,

hereinafter referred to as “the Community”, on the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

hereinafter referred to as “The Chinese government”, on the other part,

hereinafter referred to as the “The Parties”

WITHIN THE FRAMEWORK of the United Nations Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed on 20 December 1988 in Vienna, hereinafter referred to as the "Convention of 1988” and in accordance with legal provision in force in the People's Republic of China and in the Member States of the Community;

DETERMINED to prevent and to combat the illicit manufacture of narcotic drugs and psychotropic substances by preventing the diversion of drug precursors and substances frequently used for such purposes (hereinafter referred to as "drug precursors");

ACKNOWLEDGING Article 12 of the Convention of 1988;

CONVINCED that international trade may be used for the diversion of drug precursors, and that it is necessary to conclude and implement agreements between the regions concerned, establishing wide co-operation and, in particular linking export and import controls;

RECOGNIZING that drug precursors are also mainly and widely used for legitimate purposes and that international trade must not be hindered by excessive monitoring procedures;

HAVE DECIDED to conclude an Agreement on the prevention of diversion of drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances;

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the Agreement

1. This Agreement sets out measures to strengthen administrative co-operation between the Parties to prevent the diversion of drug precursors and substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, without prejudice to the normal activities of trade and the due recognition of the legitimate interests of industry.

2. For this purpose, the Parties shall assist each other, as set out in this Agreement, in particular by:

- monitoring the trade between them in the drug precursors referred to in paragraph 3, with the aim of preventing their diversion to illicit purposes,

- providing mutual administrative assistance ensuring that their respective drug precursors trade control legislation is correctly applied.

3. Without prejudice to possible amendments which might be made pursuant to Article 10, this Agreement applies to the substances listed in the Annexes of this Agreement.

Article 2

Trade monitoring

1. The Parties shall consult and inform each other on their own initiative whenever they have reasonable grounds to believe that drug precursors may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, in particular when an import or export shipment occurs in unusual quantities or under unusual circumstances.

2. With regard to the drug precursors listed in Annex A to this Agreement, the competent authority of the exporting Party shall forward a pre-export notification to the competent authority of the importing Party. The reply in writing by the importing Party shall be provided within 15 working days after the receipt of the message from the exporting Party. The absence of a reply within this period shall be considered equivalent to a non-objection to sending the shipment. An objection shall be notified in writing to the exporting Party within this period, giving the reasons for refusal.

3. With regard to the drug precursors listed in Annex B to this Agreement, the competent authority of the exporting Party shall forward in time a pre-export notification to the competent authority of the importing Party under its domestic law. Specific information shall be provided where the operator benefits, in the exporting country, from a simplified export authorisation covering multiple export operations.

4. The Parties undertake to reply in writing as soon as possible, in respect of any information provided or measure requested under this Article.

Article 3

Suspension of shipment

1. Without prejudice to any possible implementation of technical enforcement measures, shipments shall be suspended if, in the opinion of either Party, there are reasonable

grounds to believe that drug precursors may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, or where, in the cases described in Article 2(2), the importing Party requests in writing the suspension, and where appropriate, provides documents of evidence and ensuring measures to be taken within 5 working days.

2. The Parties shall co-operate in supplying each other with any information relating to suspected diversion operations if based upon a request for mutual administrative assistance.

Article 4

Mutual administrative assistance

1. The Parties shall provide each other upon request for mutual administrative assistance with any information to prevent the diversion of drug precursors the illicit manufacture of narcotic drugs or psychotropic substances and shall investigate cases of suspected diversion. Where necessary they shall adopt appropriate precautionary measures to prevent diversion.

2. Any request for information or precautionary measures shall be complied with in time.

3. Requests for administrative assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

4. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present at the inquiries carried out in the territory of the other Party.

5. The Parties shall assist each other to facilitate the provision of evidence if based upon a request for mutual administrative assistance.

6. Administrative assistance provided under this Article shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it apply to information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

7. One Party may, on a case by case basis and through consultation, provide, on request by the other Party, information in respect of substances which are frequently used in the illicit manufacture of narcotic drugs or psychotropic substances but which are not included in the scope of this Agreement.

Article 5

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties and shall be covered by the obligation of official secrecy.

2. Personal data may be exchanged only where the Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply it. To this end, Parties communicate each other information on their applicable rules, including legal provisions in force in the Member States of the Community.

3. Information obtained under this Agreement shall be used solely for the purposes of this Agreement. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

4. The use in proceedings instituted for failure to comply with legislation on drug precursors referred to in Article 3, of information obtained under this Agreement, is considered to be solely for the purposes of this Agreement. Therefore, the Parties may in proceedings use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The use of evidence is subject to the prior permission of the competent authority which supplied that information or gave access to those documents.

Article 6

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Agreement would:

(a) be likely to prejudice the sovereignty of the People's Republic of China or that of a Member State of the Community which has been requested to provide assistance under this Agreement; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 5 (2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in this Article, the decision of the requested authority and the reasons therefore must be communicated to the applicant authority as promptly as possible.

Article 7

Technical and scientific co-operation

The Parties shall co-operate in the identification of new diversion methods as well as appropriate countermeasures, including technical co-operation and in particular, training and exchange programmes for the officials concerned, to strengthen administrative and enforcement structures in this field and to promote co-operation with trade and industry.

Article 8

Implementation measures

1. The Chinese side, the European Commission and each Member State of the Community shall appoint respectively a competent authority to co-ordinate the implementation of this Agreement. These authorities shall communicate directly with one another for the purposes of this Agreement.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Agreement.

Article 9

Joint Follow-Up Group

1. A Joint Follow-Up Group is hereby established, hereinafter referred to as 'the Joint Follow-Up Group', in which the Parties shall be represented.

2. The Joint Follow-Up Group shall act by mutual agreement.

3. If necessary, the Joint Follow-Up Group shall meet, with the date, place and programme being fixed by mutual agreement.

Extraordinary meetings of the Joint Follow-Up Group may be convened by mutual agreement of the Parties.

Article 10

Role of the Joint Follow-Up Group

1. The Joint Follow-Up Group shall administer this Agreement and ensure its proper implementation. For this purpose:

- It shall be informed by the Parties of their experience in applying this agreement,

- In cases provided for in Paragraph 2, it shall take decisions,

- It shall study and develop technical co-operation measures,

- It shall study and develop other possible forms of co-operation.

2. The Joint Follow-Up Group may adopt by mutual consent decisions to amend Annexes A and B. Such decisions shall be implemented by the Parties in accordance with their own legislation.

3. The Joint Follow-Up Group may recommend to the Parties:

(a) Other amendments to this Agreement;

(b) Measures required for the application of this Agreement.

Article 11

Other obligations imposed under other agreements

1. Taking into account the respective competencies of the Community and its Member States, the provisions of this Agreement shall:

   – Not affect the obligations of the Parties under any other international agreement or convention;

   – Not affect the communication between the competent services of the European Commission and the relevant services of the Member States of the Community of any information obtained under this Agreement which could be of interest to the Community.

2. Notwithstanding the provisions of Paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on drug precursors and other substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances which have been or may be concluded between individual Member States and the People's Republic of China insofar as the provisions of the latter are incompatible with those of this Agreement.

3. In respect of questions relating to the applicability of this Agreement, the Parties shall consult each other to resolve the matter in the framework of the Joint Follow-up Group.

4. The Parties shall also notify each other of any measures on controlled substances taken with other countries.

Article 12

Entry into force

Each party shall give written notification that it has completed its internal legal procedures for the entry into force of this Agreement to the other Party. This Agreement shall enter into force on the first day of the second month following the date on which the last written notification is received.

Article 13

Duration and denunciation

1. This Agreement shall be concluded for five years and, unless a Party notifies in writing the other Party of its intention to terminate the Agreement at least six months before the expiration of that period, it will be tacitly renewable for successive periods of five years.

2. This Agreement may be amended by mutual consent of the Parties.

Article 14

Authentic texts

Done in duplicate in the Chinese, Bulgarian, Czech, Danish, Dutch, Estonian, English, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish languages, all these texts being equally authentic. In case there is any divergence of interpretation of this Agreement; the English and the Chinese texts shall be determinative.

Done at…

For the European Community

For the Government of the People's Republic of China

ANNEX A

Substances subject to the measures referred to in Article 2(2)

N-Acetylanthranilic Acid

Acetic Anhydride

Anthranilic Acid

Ephedrine

Ephedra

Ergometrine

Ergotamine

Isosafrole

Lysergic Acid

3,4-Methylenedioxyphenyl-2-propanone

Norephedrine

Phenylacetic Acid

1-Phenyl-2-propanone

Piperonal

Potassium Permanganate

Pseudoephedrine

Safrole

Safrole rich oils

Note: The list of substances must always include a reference to their salts, where appropriate.

ANNEX B

Substances subject to the measures referred to in Article 2(3)

Acetone

Ethyl Ether

Hydrochloric Acid

Methyl Ethyl Ketone

Piperidine

Sulphuric Acid

Toluene