COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 455 final

Brussels, 22 November 1991

Proposal for a

COUNCIL REGULATION (EEC)

AMENDING
REGULATION (EEC) NO 3677/90 OF 13 DECEMBER 1990 LAYING DOWN MEASURES TO BE TAKEN TO DISCOURAGE THE DIVERSION OF CERTAIN SUBSTANCES TO THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. General observations

1. On 13 December 1990, the Council adopted Regulation (EEC) No 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances. The chemical substances concerned are commonly referred to as "drugs precursors", because - without being drugs themselves - they are indispensable for the manufacture of illicit drugs. Characteristically, precursors in their large majority are subject to a fully legitimate trade and it is only a very small percentage which is diverted to illicit manufacture.

2. In parallel to the elaboration of the current Community legislation, the 1990 Houston Economic Summit (G-7) recognized the growing importance of effective international action in precursor matters and mandated a Chemical Action Task Force (CATF) to identify improvements in the existing procedures. While expressly recognizing Article 12 of the 1988 UN Convention against Illicit Drug Traffic as the "foundation for international cooperation in this area", the CATF has tried to complement the provisions and refine the procedures of the Convention.

3. Between October 1990 and April 1991 during its meetings held in Washington D.C., the CATF addressed the various questions involved in its three working groups on Chemical Issues, Diversion Issues as well as Legal and Regulatory Issues. Based on the findings of the working groups, the Task Force compiled a Final Report which contains, in particular, a number of recommendations for improving international procedures. The report was approved by all participating parties at the political level and was subsequently endorsed on 15 July last by the 1991 London Economic Summit.

In March 1992, the CATF will hold a plenary meeting to review the implementation status of its recommendations and to prepare a Status Report for the 1992 Economic Summit.

4. The Commission and seven Member States actively participated in the work of the Chemical Action Task Force. All through the CATF negotiations, including their final stage, full Community coordination was ensured in Washington between the participating delegations, and also in Brussels between the latter and those Member States not represented in the CATF. At the same time, there were consultations with the representatives of Community trade and industry, who also participated in most sessions of the CATF.

5. The CATF recommendations contain a number of new orientations designed to better adapt the existing forms of control still better to the specific nature of the substances, trade patterns and diversion risks involved. They reflect, in particular, the intention of complying with the needs of the non-industrialized countries in Latin

America and Asia concerned by the illicit manufacture of drugs such as cocaine and heroin.

The essential features are the following:

- additional substances proposed for international control, i.e. mainly substances used for the manufacture of cocaine or heroin,
- new scheme for the classification of substances based on 3 categories (instead of the two tables in the 1988 UN Convention) in order to allow an even better adjustment of controls to the nature of the substances and the trade patterns involved;
- new requirements with regard to the export of the scheduled substances the extent of which depends on the category involved each time;
- strengthening of international cooperation by the countries and regions involved, notably by the conclusion of agreements between exporting countries/regions and those countries/regions in which by the illicit manufacture of drugs takes place.

6. It is the intention of the present proposal to adapt the Community legislation according to the CATF recommendations in conformity with its political commitment and thus to contribute to the increased effectiveness of international efforts to combat the diversion of precursors to illicit drug manufacture.

B. Contents of the proposed Regulation

1. In conformity with the CATF recommendations, the proposed regulation distinguishes between three types of substances, i.e. substances used in the manufacture of synthetic drugs and with limited use for licit purposes (Category 1), those with wider legitimate and commercial use (Category 2) and finally those essential for the manufacture of heroin and cocaine for which a geographically targetted approach appears the most appropriate (Category 3).

All three categories are subject to the same general monitoring scheme whereas requirements vary mainly as regards the export formalities laid down in Articles 4, 5 and 5 a.

2. The proposed amendments concern the following (1):

a. The new indent (f) in Article 1(1) clarifies that the "ultimate consignee" whom the exporter has to identify without exception (cf. Article 4, 5 and 5a) is not necessarily identical with the end-user/consumer, a person whom the exporter normally will not be in a position to know (R 6-11).

b. Article 2 paragraph 1, third indent, reflects, with regard to general documentation, the obligatory character of

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1 Numbers in brackets ("R..") refer to recommendations in the Final Report of the Chemical Action Task Force.

naming the ultimate consignee in the cases of Articles 4, 5 and 5a (R 6-11).

c. The new period for keeping records etc. laid down in Article 2 (4) corresponds to the recommendation that such records be kept "considerably longer than two years" (R 6-11)

d. The new Article 2a introduces requirements for the exercise of professional activities, ie the principle of licensing for operators concerned with Category 1 substances, whereas for those engaged in Categories 2 and 3 a mere notification of the competent authorities is sufficient (R 6, 7, 22).

e. Article 4 in its revised version adapts the Community monitoring system to the principle of requiring an individual authorization for each export operation involving Category 1 substances (R 6). Subject to agreement with destination countries, the issuance of an export permit may even be made dependent on the existence of an import authorization in the country of destination (paragraph 6).

f. Article 5 in its new form provides for a general authorization requirement for Category 2 substances as well, but in certain cases the export may be globally authorized under general permits valid for a number of operations or a certain time period (R 8).

g. Article 5a introduces the geographical targetting approach appropriate for Category 3 substances which are used for the manufacture of cocaine and heroin whose raw materials (poppy and coca) are grown in certain regions in the world only. The identification of target zones takes place in conjunction with the countries and regions concerned (R 9,10).

h. The amendment of Article 6 paragraph 3 addresses specific diversion risks existing in free ports and free zones, as well as in other sensitive sectors such as bonded warehouses (R 13).

i. The new Article 7a reflects the importance attributed by the CATF, in various parts of its report, to international co-operation between chemical exporting countries and those countries on whose territory illegal drugs manufacture takes place. To this end, the CATF promotes, in particular, agreements which may be concluded on a regional basis wherever necessary (R 27, 28, 39-41).

j. The Annex was restructured to comply with the new category-based classification scheme and other measures recommended by the CATF such as the adding of 10 new substances as well as the insertion of Acetone and Ethyl ether (currently Table II) under Category 3 (R 5). Furthermore the Annex displays the CN Code for each of the substances. This code was unilaterally introduced by the Community in order to facilitate precursor monitoring, and will be valid from 1 January 1992 (R 16).

PROPOSAL

COUNCIL REGULATION (EEC) No

of

amending Regulation (EEC) No 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular its Article 113,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3677/90 (1) laid down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances,

Whereas diversion patterns are rapidly changing and it is considered on the international level that the procedures identified by Article 12 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances need to be reinforced to effectively counter chemical diversion,

Whereas the Commission and seven Member States participated in the works of the Chemical Action Task Force created by the Houston Economic Summit (G-7) on 10 July 1990 to develop effective procedures to prevent diversion of precursor and essential chemicals to illicit

1 OJ L 357 of 20.12.1990, p.1

drugs manufacture; whereas a full Community coordination was ensured throughout these works, as well as close consultation with representatives of trade and industry,

Whereas the Final Report of the Chemical Action Task Force was approved by the London Economic Summit (G-7) on 15 July 1991,

Whereas this Final Report, in recognizing the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as the basic instrument of international cooperation in chemical diversion matters, contains a number of recommendations for reinforcing national and international measures on the basis of the UN Convention,

Whereas some of the recommendations of Chemical Action Task Force concern measures not covered by Regulation (EEC) No 3677/90, and in particular certain requirements with regard to the exportation of chemical substances, the extension of the scope of chemical substances subject to international control, and a new category-based classification scheme providing for appropriate control measures according to the nature and trade patterns of the substances in each of the three categories established. Furthermore, the Report recommends the strengthening of international cooperation by the conclusion of bilateral agreements, in particular, between regions exporting and regions importing scheduled chemicals.

Whereas it appears important that the Community, in view of its committment to the works of the Chemical Action Task Force, implements the recommendations approved, and contributes as far as possible to the international cooperation in this field,

HAS ADOPTED THE FOLLOWING REGULATION:

Article 1

Regulation (EEC) No 3677/90 is hereby amended as follows:

1. Article 1 paragraph 2 subparagraph (f) shall be replaced by the following:

"(f) 'ultimate consignee' means any natural or legal person to which the scheduled substances are delivered in the country of destination. This person may be different from the end-user;"

the former subparagraph (f) becomes (g);

2. Article 2 paragraph 1, third indent, shall be replaced by the following:

"- the name and the address of the exporter, the importer, the distributor and in accordance with Articles 4, 5 and 5a the ultimate consignee."

3. Article 2 paragraph 4 shall be replaced by the following:

"4. The documents and records referred to in points 1. and 3. shall be kept for a period of three years from the end of the calendar year in which the operation referred to in point 1. took place, and must be readily available for inspection by the competent authorities upon request."

4. The following Article shall be inserted:

"Article 2a

Licensing and registration of operators

1. Manufacturers and traders, including brokers, engaged in the import, export or transit of scheduled substances listed in Category 1 of the Annex shall be required to obtain a license from the Member State in which they are established to exercise this activity. The issue of such a licence shall be based in particular on the operator's competence and integrity as appreciated by the competent authority.

The license shall be suspended or revoked whenever there are reasonable grounds to believe that the conditions for the issue of the license are no longer valid.

2. Manufacturers and traders, including brokers, engaged in the export of scheduled substances listed in Categories 2 or 3 of the Annex are required to inform the competent authorities of the activity they exercise in this specific trade."

5. Article 4 shall be replaced by the following:

"Article 4

Export authorization

Substances listed in Category 1 of the Annex

1. The exportation of scheduled substances in Category 1 of the Annex shall be subject to authorization in form of individual export permits issued by the competent authorities of the Member State in which the customs export formalities are to be completed.

2. Requests for authorizations referred to in Paragraph 1 shall contain the following information:

- the name and address of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also of the ultimate consignee,
- the name of the scheduled substances as given in Category 1 in the Annex
- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of any substance or substances listed in the Annex
- details of the shipment such as expected date of dispatch, name of the customs office where the customs export formalities will be carried out, transport arrangements and, where known at this stage, itinerary, expected point of exit from Community customs territory and, possibly, point of entry into the importing country.

In the case of paragraph 7, a copy of the import permit issued by the destination country must be attached to the request.

3. A decision on this request must be taken within a period of 15 working days after its receipt by the competent authority. This period may be prolonged if further information is requested or in the case of paragraph 7.

4. Without prejudice to any possible implementation of technical enforcement measures, the export authorization referred to in paragraph 1 shall be refused, if:

(a) the information supplied in compliance with the obligations under paragraph 2 and paragraph 3 second sentence is considered insufficient or incomplete, or there is suspicion that the information is incorrect;

(b) in the case of paragraph 7, the existence of an import permit in the country of destination is not sufficiently established;

(c) there are reasonable grounds for suspecting that the substances in question are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

If the particulars on the itinerary and means of transport were not contained in the request referred to in paragraph 2, the export permit shall state that the operator is obliged to ensure that these particulars are made available to the customs or other competent authority at the point of exit from the Community territory before the physical departure of the consignment.

In all cases, the export permit shall be produced for inspection by the customs authorities when the customs export declaration is lodged.

5. The issuance of an export permit does not preclude any possible civil or penal liability of the holder of such permit.

6. With regard to requests for pre-export notification addressed to the Community by a third country pursuant to Article 12 (10) of the United Nations Convention:

(a) the Commission shall immediately communicate to the competent authorities of the Member States any such request received;

(b) the competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the requesting country, supply the information specified in paragraph 2 to the competent authorities of that country. A copy of this reply shall be communicated to the Commission for circulation to the other Member States;

(c) the authority furnishing such information may require that the authority in the third country receiving the information ensures the confidentiality of any trade industrial commercial or professional secret or any trade process referred to therein.

7. Whenever there is agreement between the Community and a third country that exports shall not be authorized unless an import permit has been issued by the competent authorities of the latter country for the substances in question:

(a) the Commission shall communicate to the competent authorities in the Member States the name and address of the competent authority in the third country as well as any operational information obtained from this country;

(b) the competent authorities in the Member States shall satisfy themselves that any importation has been properly authorized, if necessary, by requesting confirmation from the authority referred to under (a)."

6. Article 5 shall be replaced by the following:

"Article 5

Specific export requirements

Substances listed in Category 2 of the Annex

1. The exportation of scheduled substances in Category 2 of the Annex shall be subject to authorization by the competent authorities of the Member State in which the customs export formalities are to be completed.

2. Exports referred to in paragraph 1 shall be subject mutatis mutandis to the rules laid down in Article 4,

wherever they appear to be intended, directly or indirectly, for any third country which has informed the Commission, that it wishes the said products to be subject to individual export authorization because they might be used for the illicit manufacture of narcotic drugs or psychotropic substances in its territory. In other cases, the same rules shall apply whenever a general permit cannot be issued under paragraph 3.

3. In all other cases, the exportation of scheduled substances in Category 2 of the Annex may be globally authorized under general permits the issue of which shall depend on circumstances such as the reliability of the operator and the trade pattern concerned. In issuing such permits, the competent authorities shall consider, in particular, the nature, volume, itinerary and destination of the shipments involved. The holder of such permits may be required to report periodically and in summary form, as determined by the competent authority, on the exports carried out during this period."

7. The following Article shall be inserted:

"Article 5a

Specific export requirements

Substances listed in Category 3 of the Annex

1. The exportation of scheduled substances in Category 3 of the Annex shall be subject to authorization by the competent authorities of the Member State in which the customs export formalities are to be completed, wherever they appear to be intended, directly or indirectly, for any third country which has been identified to be concerned by the illicit manufacture of those narcotic drugs or psychotropic substances which are manufactured

under use of scheduled substances in Category 3 of the Annex.

2. Exports referred to in paragraph 1 shall be subject mutatis mutandis to the rules laid down in Article 4, wherever, subject to specific arrangements taken with the countries referred to in paragraph 1, individual export authorization is required. The same rules shall apply whenever a general permit cannot be issued under paragraph 3.

3. In all other cases covered by paragraph 1, the exportation may be globally authorized under general permits as referred to in Article 5 paragraph 3.

4. The identification of countries and substances concerned in the sense of Paragraph 1 takes place notably on the basis of a list established and amended in cooperation between the Community and the countries in question. The said list and the amendments thereto as well as the type of export authorization each time required will be published in Part C of the Official Journal of the European Communities.

8. Article 6 shall be replaced by the following:

"Article 6

Legal powers of competent authorities

1. In order to ensure the correct application of Articles 2, 4, 5 and 5a, each Member State shall adopt within the framework of its domestic law the measures necessary to enable the competent authorities:

(a) to obtain information on any orders for or operations involving scheduled substances;

(b) to enter operators' business premises in order to obtain evidence of irregularities.

2. Without prejudice to the measures laid down in Article 4 (3), Article 5, Article 5a and paragraph 1 of this Article the customs authorities or other competent authorities of each Member State may prohibit the introduction of scheduled substances into Community territory or their departure from it, if there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

3. For the purpose of preventing specific risks of diversion in free zones and free ports as well as in other sensitive areas such as bonded warehouses, Member States shall ensure that controls applied to operations carried out in these areas are effective at every stage of these operations and not less stringent than those applied in other parts of the customs territory.".

9. The following Article shall be inserted:

"Article 7 a

1. The Commission is authorized to negotiate on behalf of the Community and in close cooperation with the Member States agreements of mutual administrative cooperation with third countries concerned in order to prevent the diversion of scheduled substances to the illicit manufacture of narcotic drugs and psychotropic substances.

2. Before entering into the negotiations referred to in paragraph 1, the Commission will consult the Member States through the Council, namely as regards the opportunity of the envisaged instrument, its scope and any other specification which may be relevant. The Commission takes into account the opinion expressed by the Council.

The agreements in question are concluded by the Council."

9. The Annex shall be replaced by the following:

"ANNEX

Substance	CN Code
CATEGORY 1	
-- Ephedrine	2939 40 10
-- Ergometrine	2939 60 10
-- Ergotamine	2939 60 30
-- Lysergic acid	2939 60 50
-- 1-phenyl-2-propanone	2914 30 10
-- Pseudoephedrine	2939 40 30
-- N-Acetylanthranilic acid	2924 29 50
-- 3,4 Methylenedioxyphenyl-2-propanone	2932 90 77
The salts of the substances listed in this Category whenever the existence of such salts is possible.	
CATEGORY 2	
-- Acetic anhydride	2915 24 00
-- Anthranilic acid	ex 2922 49 90
-- Phenylacetic acid	2916 33 00
-- Piperidine	2933 39 30
-- Isosafrole (cis+trans)	2932 90 73
-- Piperonal	2932 90 75
-- Safrole	2932 90 71
The salts of the substances listed in this Category whenever the existence of such salts is possible.	
CATEGORY 3	
-- Acetone	2914 11 00
-- Ethyl ether	2909 11 00
-- Methylethyl ketone (MEK)	2914 12 00
-- Toluene	2902 30 10/90
-- Potassium permanganate	2841 60 10
-- Sulphuric acid	2807 00 10
-- Hydrochloric acid	2806 10 00

Article 2

This Regulation shall enter into force on [1 January 1992].

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

Done at Brussels,

For the Council

The President

FINANCIAL RECORD

SECTION I: FINANCIAL IMPLICATIONS

1. Title of operation

Draft proposal for a Council Regulation amending Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

2. Budget heading involved:
- A-130 Mission expenses, travel expenses and incidental expenditure
- A-2511 Expenditure on meetings of committees whose consultation is not compulsory for drafting Community legislation

3. Legal basis: Article 113 EEC Treaty

4. Description of operation

Its general objective is to comply with the recommendations of the Chemical Action Task Force which were approved by the London Economic Summit (G-7) on 15 July 1991. The Commission and seven Member States took part in the works of the Task Force.

This proposal is made to fulfill the international political committments of the Commission and the Community.

4.1. Specific objectives of operation

- to extend the scope of chemical substances covered by the Regulation
- to introduce a still more reliable system of export controls destined to avoid the diversion of scheduled substances to illicit drugs manufacture
- strengthen the cooperation with third countries, notably by the conclusion and management of agreements with countries concerned by the illicit manufacture of cocaine and heroin.

4.2. Duration

no time limit

4.3. Target population

The proposed provisions are addressed mainly to economic operators dealing with the chemical substances in question, i.e. manufacturers, traders, brokers etc involved in the import, export or transit of such substances.

5. Classification of expenditure/revenue

5.1 Compulsory/Non-compulsory

Non-compulsory

5.2 Differentiated/Non-differentiated

Non-differentiated

5.3 Type of revenue involved

The action proposed exclusively relates to control measures, there are no revenues envisaged.

6. Type of expenditure/revenue

The envisaged amendments to the Community precursor monitoring system will result in expenses for staff, missions and meetings to be held with Member States.

7. Financial impact on appropriations for operations (Part B of the budget)

none

8. What anti-fraud measures are planned in the proposal for the operation?

not applicable

SECTION 2: ADMINISTRATIVE EXPENDITURE (Part A of the budget)

1. Will the proposed operation involve an increase in the number of Commission staff? If so, how many ?

The staff resources requested are to be found either by means of internal redeployment or in the framework of the budgetary procedure for 1992.

The staff requested serves the adaptation of the management structure at the Commission in order to cover, at central level, the supplementary tasks resulting from the extended monitoring system as described above. The adaptation would comprise two additional officials (1 A, 1 B).

2. Indicate the amount of staff and administrative expenditure involved in the proposed operation. Explain the method of calculation.

The envisaged amendments to the Community precursor monitoring system will result in expenses for:

- staff resources (cf. paragraph 1. above)
- the organization of additional meetings with Member States in order to cover the supplementary tasks, i.e., in particular, the system of reinforced export requirements and the preparation and management of third country agreements. It should also be borne in mind that the coverage of 10 additional substances will result in a corresponding increase of cooperation issues in all the areas already covered. The estimation shown below is based on an initial

hypothesis of 1 additional meeting per year to be held with Member States in Brussels.

- the organization of missions to third countries outside Europe to prepare and implement cooperation agreements between those countries and the Community. The estimation shown below is based on an initial hypothesis of 2 missions per year.

The following expenses would arise per annum:

Task	Budgetary post Expenditure
Staff: 2 posts A/B: 2 x 85,000 ECU	(A1 and A2) 170,000 ECU
Travel expenses for Member States experts to Brussels: 1 x 24 experts: 1 x 15,000 ECU	(A 2511) 15,000 ECU
Missions expenses for Commission officials to countries outside Europe: 2 x 1 official: 2 x 7,500 ECU	(A 130) 15,000 ECU
Total	200,000 ECU

The expenses will arise from the budgetary year 1992.

SECTION 3: ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

The objectives of the proposed operation concern the prevention of the illicit manufacture and traffic of narcotic drugs and psychotropic substances. The operation envisages to strengthen the existing Community rules to discourage the diversion of chemical substances from licit channels to illicit ones, namely by (1) extending the scope of substances covered from 12 to 22, (2) introducing an extensive scheme of obligatory export authorization, and (3) formalizing the cooperation with third countries notably in heroin and cocaine producing regions by the conclusion of bilateral or regional agreements. The operation relates to a prioritary action identified by the European Drugs Coordinators (CELAD) and 1991 Economic Summit (G-7).

1. Objectives and coherence with financial programming

The expenditures related to staff will be covered by appropriations under the different lines of headings A-1 and A-2. The expenditures concerning missions and meetings will be covered by appropriations attributed to DG XXI under headings A-130 and A-2511.

2. Grounds for the operation

The operation corresponds to engagements taken by the Community on the international level (1988 UN Convention, Recommendations by the G-7 Chemical Action Task Force approved by the 1991 London Economic Summit. The Commission services are particularly well placed to assume the role of a promotion and coordination instance in this area, notably in the context of formulating and managing Community policies towards other industrialized as well as developping countries concerned by the problem and the relevant international organizations. These tasks cannot be carried out without the necessary means being made available to the Commission services concerned.

3. Monitoring and evaluation of the operation

The operation directly implements engagements taken over by the Community on the political level. These initiative being conceived without any limit in time, the monitoring and evaluation will take place on a continuous basis. The performance of the operation will be the subject of regular reporting to the European Drugs Co-ordinators (CELAD). In addition, the Committee established under the Regulation will conduct a monitoring exercise via its annual report.

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DOCUMENTS

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