COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.04.1999
COM(1999)202 final

98/0017(COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Parliament has given its first reading to the proposal for the amendment of Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

The rapporteur, Mr Pirker, supported the Commission initiative and proposed five amendments (cf. PE 273.796/1). The amendments were adopted by absolute majority vote, with the exception of amendment 2, only part of which was approved.

2. OBJECTIVES OF THE COMMISSION PROPOSAL

Article 12 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), to which the Community is a contracting party, provides for trade in 22 substances which, while also having numerous licit uses, are frequently diverted for use in the illicit manufacture of narcotic drugs and psychotropic substances to be controlled. In accordance with the Convention, the manufacture and placing on the Community market of such substances are subject to strict surveillance, in particular pursuant to Directive 92/109/EEC, hereinafter referred to as the "Directive on Drug Precursors".

The Commission proposed that the Directive on Drug Precursors should be amended to take account of the changeable nature of the illicit manufacture of narcotic drugs.

The aim of the amendment proposed by the Commission is to oblige the Member States to set up a flexible cooperation arrangement by means of which economic operators would, on a voluntary basis, inform the competent authorities of suspect transactions involving substances, not currently covered by the Directive, but which are nevertheless frequently used in the manufacture of synthetic drugs. This cooperative approach has already been tried and tested in a number of Member States (D, A, UK, NL). The "Precursors" Committee set up by Article 10 of this Directive will be responsible for drawing up and constantly updating the lists of products which are to be subject to such surveillance.

3. FIRST READING BY PARLIAMENT

On 20 November 1998 Parliament gave its first reading to the proposal for the amendment of Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

Presenting his report, Mr Pirker supported the Commission's initiative and called for increased cooperation with the countries applying for accession to the EU, in particular through the Phare programme.

He also proposed five amendments. The amendments were adopted by absolute majority vote, with the exception of amendment 2, only part of which was approved. These changes do not substantially alter the substance of the Directive.

4. CONCLUSION

The first two amendments, of a semantic or linguistic nature, can be accepted by the Commission. The third amendment, intended to achieve greater security, can also be accepted.

The fourth amendment, which would oblige the Commission to submit an annual report to Parliament on the results of monitoring measures for scheduled and non-scheduled substances, cannot be accepted, as such a report would duplicate the annual report which the Commission already draws up under the existing Directive for submission to the International Narcotics Control Board. Moreover, the information currently provided by the Member States is very patchy and does not permit an evaluation of the effectiveness of the system set up by the Directive. *A fortiori*, an evaluation of an arrangement which is not yet operational would be all the more uncertain.

The Commission has also rejected part of the fifth amendment. The Commission has not accepted the proposal to specify that the lists of products to be subject to surveillance drawn up by the Committee on Drug Precursors are not accessible to the public, as it goes without saying that the work of the Committee is confidential. However, the second part of the amendment has been accepted, as this point is perfectly acceptable.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 100A thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the Economic and Social Committee[2],

Acting in accordance with the procedure laid down in Article 189B of the Treaty,

Whereas Council Directive 92/109/EEC[3] imposes stringent controls on the manufacture and the placing on the market of 22 substances which may be diverted into the illicit manufacture of narcotic drugs or psychotropic substances;

Original proposal	Amended Proposal
Whereas Annex I of the Directive contains a list of 22 substances commonly used in the illicit manufacture of drugs,	Whereas Annex I of the Directive contains a list of 22 substances commonly used in the illicit manufacture of narcotic drugs and psychotropic substances;
Whereas a significant number of other substances, many of them traded legally in large quantities, have been identified as precursors to the illicit manufacture of synthetic drugs;	Whereas a significant number of other substances, many of them traded legally in large quantities, have been identified as precursors to the illicit manufacture of synthetic drugs;

1 JO
2 JO
3 OJ L 370, 19.12.1992, p. 76.

Whereas to subject these substances to the same strict controls as those listed in Annex I would present an unnecessary obstacle to trade involving licences to operate and documentation of transactions; whereas it is therefore necessary to establish a more flexible mechanism at Community level whereby the competent authorities in the Member States can be notified of suspicious transactions in these substances and take appropriate action,

HAVE ADOPTED THIS DIRECTIVE

Article 1

Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances is hereby amended as follows:

1. The title of Article 5 is amended to read as follows:

"Cooperation regarding scheduled substances"

2. After Article 5, a new Article 5a is inserted as follows:

"Article 5a

Cooperation regarding non-scheduled substances

Member States shall take appropriate measures to establish close cooperation between the competent authorities and operators, so that operators, on a voluntary basis, notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving any non-scheduled substances, which suggest that such substances may be diverted

Whereas to subject these substances to the same strict controls as those listed in Annex I would present an unnecessary obstacle to trade involving licences to operate and documentation of transactions; whereas it is therefore necessary to establish a more flexible mechanism at Community level whereby the competent authorities in the Member States can be notified of suspicious transactions in these substances and take appropriate action,

Article 1

Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances is hereby amended as follows:

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"Cooperation regarding scheduled substances"

2. After Article 5, a new Article 5a is inserted as follows:

"Article 5a

Cooperation regarding non-scheduled substances

Member States shall take appropriate measures to establish close cooperation between the competent authorities and operators, so that operators, on a voluntary basis, inform the competent authorities immediately of any circumstances, such as unusual orders and transactions involving any non-scheduled substances, which suggest that such substances may be

for the illicit manufacture of narcotic drugs or psychotropic substances."

3. In Article 6, the following paragraph is added:

"2. With a view to pursuing the objectives of this Directive as described in Article 1(1), the competent authorities of each Member State may prohibit transactions of non-scheduled substances if there are reasonable grounds for suspecting that these substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances."

4. In Article 10, paragraph 1, the following subparagraph is added:

"In particular, with a view to facilitating cooperation under Article 5a and to ensuring a coherent approach throughout the Community, the committee shall establish and regularly update a list of non-scheduled substances which, according to the experience of competent authorities in the Member States or available at international level, are known to be used frequently in illicit manufacture. It shall also establish for which non-scheduled substances in this list Article 5a shall apply in all Member States. More generally, information shall be exchanged within the committee on the current situation as regards the use of new substances or new diversion methods, in order to facilitate any adaptation of the relevant Community provisions that may appear necessary."

diverted for the illicit manufacture of narcotic drugs or psychotropic substances."

3. In Article 6, the following paragraph is added:

"2. With a view to pursuing the objectives of this Directive as described in Article 1(1), the competent authorities of each Member State may prohibit transactions of non-scheduled substances if there is reason to assume that these substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances."

4. In Article 10, paragraph 1, the following subparagraph is added:

"In particular, with a view to facilitating cooperation under Article 5a and to ensuring a coherent approach throughout the Community, the committee shall establish and regularly update a list of non-scheduled substances which, according to the experience of competent authorities in the Member States or available at international level, are known to be used frequently in illicit manufacture. It shall also establish for which non-scheduled substances in this list Article 5a shall apply in all Member States. More generally, information shall be exchanged within the committee on the current situation as regards the use of new substances or new diversion methods, in order to facilitate any adaptation of the relevant Community and national provisions that may appear necessary."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 2000. They shall forthwith inform the Commission thereof. They shall apply these provisions from 1 July 2000.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be determined by the Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 92/109/EEC on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

2. BUDGET HEADING INVOLVED

N/A.

3. LEGAL BASIS

Article 100 A of the EU Treaty.

4. DESCRIPTION OF OPERATION

4.1 General objective

The objective of the amendment proposed by the Commission is to oblige the Member States to set up a flexible cooperation arrangement by means of which economic operators would, on a voluntary basis, inform the competent authorities of suspect transactions involving substances not currently covered by Directive 92/109/EEC but which are nevertheless frequently used in the manufacture of synthetic drugs.

4.2 Period covered and arrangements for renewal or extension

Indefinite.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Compulsory/Non-compulsory expenditure

Nil.

5.2 Differentiated/Non-differentiated appropriations

Nil.

5.3 Type of revenue involved

Nil.

6. TYPE OF EXPENDITURE OR REVENUE

– Directive with no financial implications.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (definition of unit costs)

7.2 Itemised breakdown of cost

Commitment appropriations in million Euro (current prices)

Breakdown	Budget year n	n+1	n+2	n+3	n+4	n+5 and subs. years	Total
Total							

7.3 Operating expenditure on studies, experts, etc. included in part B of the budget

Commitment appropriations in million Euro (current prices)

	Budget year n	n+1	n+2	n+3	n+4	n+5 and subs. years	Total
– Studies – Expert meetings – Conference and symposia – Information and publications							
Total							

7.4 Indicative schedule of commitment appropriations/payment appropriations

Commitment appropriations in million Euro

	Budget year n	n+1	n+2	n+3	n+4	n+5 and subs. years	Total
Commitment approps							
Payment approps							
Year n n+1 n+2 n+3 n+4 n+5 and subs. years							
Total							

8. FRAUD PREVENTION MEASURES

– Nil.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives, target population

– Specific objectives: nil.

– Target population: any natural or legal person involved in the manufacture, processing, trade or distribution of classified substances in the Community or carrying out other related activities, such as the brokerage and storage of classified substances.

9.2 Grounds for the operation

– Choice of ways and means

* voluntary cooperation between operators and authorities in the Member States

9.3 Monitoring and evaluation of the operation

– Performance indicators selected

* "Precursors" Committee set up by Article 10 of this Directive.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE GENERAL BUDGET)

This section of the financial statement must be sent to DGs IX and XIX; DG IX will then forward it to DG XIX with its opinion.

The actual mobilisation of the necessary administrative resources will result from the annual decision by the Commission on the allocation of resources, having regard to among other things the additional staff and funds granted by the budgetary authority.

10.1 Impact on the number of posts

No effect on the number of posts.

Types of posts		Staff to be assigned to the management of the operation		of which		duration
		permanent posts	temporary posts	by using existing resources within the DG or service in question	by using additional resources	
Officials or temporary staff	A					
	B					
	C					
Other resources						
Total						

Indicate the rate at which additional resources would have to be made available.

10.2 Global financial impact of additional human resources

No impact.

(Euro)

	Amounts	Method of calculation
Officials Temporary staff Other resources (indicate budget heading)		
Total		

The amounts represent the total cost of additional posts for the total duration of the operation if this is fixed, and for 12 months if the duration is not specified.

10.3 Increase in other operating expenditure resulting from the operation

No effect.

(Euro)

Budget heading (No°and title)	Amounts	Method of calculation
Total		

The amounts correspond to the total expenditure on the operation if it is of fixed duration or the expenditure for 12 months if the duration is not specified.

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DOCUMENTS

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