COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.01.1998
COM(1998) 22 final

98/0016 (ACC)
98/0017 (COD)

Proposal for a

COUNCIL REGULATION (EC)

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

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

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

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(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The growing development of synthetic drugs has become an acute problem in the European Community and the rest of the world. Scientists and the media have reported on the dangers involving the consumption of these drugs. Against this background, the social perception of the so-called "designer drugs" has not been commensurate to their risks.

2. At international and Community level, there has already been an important effort of information awareness as a first step before launching major initiatives to tackle the problem. Under the aegis of the United Nations, there have been the conferences of Vienna and Shanghai in 1996, along with that held in Vienna in July 1997 on Amphetamine-type stimulants and their precursors in preparation for the UN Special Assembly on drugs (UNGASS). At Community level, the Dublin European Council identified the issue of synthetic drugs as needing priority attention, and the *Communication from the Commission to the Council and the European Parliament on the control on new synthetic drugs, COM (97) 249 final*, of 23.5.1997, committed the Commission to present proposals on chemical precursors of synthetic drugs by early Autumm. These proposals imply an amendment to the current Community legal instruments dealing with the control of precursors.

3. At present, the diversion of precursors into the illicit manufacture of narcotics or psychotropic substances is tackled by Council Directive 92/109/EEC as to the placing of precursors on the EC market, while Council Regulation 3677/90 deals with the trade between the Community and third countries. In line with the UN Vienna Convention of 1988, the placing on the Community market or the external trade in 22 substances are submitted to a stringent system of control; on a general basis, such a system requests operators to register, and consignments to be licensed; more specifically, individual export authorizations are compulsory for a given number of substances (Category 1), and whenever other precursors (Category 2 and 3) are exported to "sensitive countries", where it is suspected that diversion of precursors into the illicit manufacture of narcotic drugs or psychotropic substances takes place. The above system has proved to be effective for as to the 22 scheduled precursors since any restrictive system can only work if it is targeted and duly takes into account the needs of licit trade.

4. No agreement exists at Community or international level about the specific precursors to be targeted to prevent their diversion into the illicit manufacture of synthetic drugs; it is, however, a general assumption that there is a large number of precursors for synthetic drugs on the market. Furthermore, these may be easily substituted, mixed or swapped for others while yielding similar effects; this makes it unrealistic to establish a control mechanism similar to that imposed on the 22 scheduled substances since additional constraints on more substances could only result in weakening the global efficiency of the system while hampering the very productive co-operation between operators and the authorities in the Community. In order to reconcile the needs of fair trade and the imperatives of a coherent action at Community level to properly address the problem, the amendments to both the Directive and the Regulation aim at the establishment of a surveillance mechanism whereby close co-operation is sought between authorities and operators; this co-operation entails a voluntary system of reporting from the industry to the authorities of suspected consignments of non-scheduled substances (new Article 3a in the Regulation and 5a in the Directive).

5. A second paragraph is added to Article 6. Under the new wording, the powers of the competent authorities concerning the possibility of intervening on suspicious shipments, as provided for scheduled substances under the existing wording of Directive 92/109/EEC and Regulation 3677/90, shall also apply to non-scheduled substances, provided there are reasonable grounds for suspecting their diversion.

6. A new sub-paragraph is added in Article 10, paragraph 1. This new sub-paragraph aims at ensuring a coherent approach across the Community to benefit from the experiences of national voluntary monitoring systems on precursors for synthetic drugs. Accordingly, the Precursor's Committee under Directive 92/109/EEC and Regulation 3677/90 shall be responsible for drawing up a list of those non-scheduled substances which are known to be used frequently in illicit manufacture; out of this broad list, the Committee shall establish a "core list" of substances which should be submitted to monitoring and, eventually, notification under Article 3 a in all Member states. As the Committee is an expert body, it shall be the appropriate forum to discuss on current developments on precursors for new synthetic drugs, and up-date the relevant lists or knowledge of diversion mechanisms relating to drugs precursors.

COUNCIL REGULATION (EC) No ..../98
of 1998

98|0016(ACC)

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 UNION,

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

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

Whereas Regulation (EEC) No 3677/90[2] of 13 December 1990 imposes stringent controls on the export, import and transit of 22 substances which may be diverted into the illicit manufacture of narcotic drugs or 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 designer drugs;

Whereas the extension of the existing control mechanisms under the Regulation to the non-scheduled substances would considerably entail additional obstacles to the licit trade, thus putting at risk the efficiency of the monitoring system in place;

Whereas it is therefore necessary to establish at Community level a voluntary system of monitoring those non-scheduled substances which would be based on the co-operation between the authorities and the industry, so that operators notify authorities in the Member States of suspected transactions in the non-scheduled substances.

Whereas it is necessary to give the possibility to the competent authorities of taking appropriate action when it appears that non-scheduled substances could be diverted for the illicit manufacture of drugs;

Whereas in order to ensure a coherent monitoring system on chemical precursors within the whole territory of the Community it is necessary to share experience and information in the Committee established by Article 10 of Regulation (EEC) No 3677/90;

Whereas, in particular, this Committee will have to establish and update the list of non-scheduled substances to be monitored under this Regulation in all the Member States of the Community

HAS ADOPTED THIS REGULATION:

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2 OJ No L 357, 20.12.1990, p.1. Regulation as last amended by Regulation (EEC) No 900/92 (OJ No L96, 10.4.1992, p.1).

Article 1

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

1. The title of Article 3 is amended to read as follows:

Cooperation regarding scheduled substances

2. After Article 3, new Article 3a is inserted as follows:

Article 3 a

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 intended for import, export or transit may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

3. In Article 6, the following is inserted as second sub-paragraph in paragraph 2:

With a view of pursuing the objectives of this regulation as described in Article 1(1), the provisions of the first sub-paragraph apply mutatis mutandis as regards any other chemical substances if there are reasonable grounds for suspecting that these substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

4. Article 10 is modified by the insertion of the following new third sub-paragraph in paragraph 1:

In particular, with a view to facilitating cooperation under Article 3 a 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 3 a 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.

Article 2

This Regulation enters into force on the 20th day following its publication in the Official Journal of the European Communities.

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

Done at Brussels,

For the Council

The President

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

98/0017 (COD)

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 referred to in Article 189B of the Treaty,

Whereas Council Directive 92/109/EEC of 14 December 1992 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 ([3]),

Whereas Annex I of the Directive contains a list of 22 substances commonly used in the illicit manufacture of 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 designer drugs,

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,

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[3] OJ No L 370, 19.12.1992, p.76.

HAVE ADOPTED THIS DIRECTIVE

Article 1

Council Directive 92/109/EEC of 14 December 1992 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 modified as follows:

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

Cooperation regarding scheduled substances

2. After Article 5, 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 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 sub-paragraph is added:

In particular, with a view to facilitating cooperation under Article 5a and to ensuring a coherent approach throughout the Community, the Committe 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.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1999. They shall forthwith inform the Commission thereof. They shall apply these provisions as from 1 July 1999.

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,

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