

Proposal for a Council Decision on the signature and conclusion of the Agreement between the European Community and Turkey on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(2002/C 331 E/44)

COM(2002) 500 final — 2002/0223(ACC)

(Submitted by the Commission on 12 September 2002)

EXPLANATORY MEMORANDUM

By its decision of 5 April 2001, the Council authorised the Commission to negotiate with Turkey an Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and adopted the necessary negotiating directives.

There have been several meetings with the Turkish authorities, in Ankara and in Brussels. Following the negotiations, the text of the Agreement was accepted on 20 May 2002.

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 5 April 2001.

In order to enable the Agreement on precursors and chemical 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.

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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 5 April 2001, the Council authorised the Commission to negotiate with Turkey an Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.
- (2) The Community must strengthen controls on shipments of precursors to Turkey, given that they are re-entering the Community in the form of heroin or other psychotropic or narcotic substances.
- (3) It is necessary to approve the Agreement between the European Community and Turkey on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances,

Article 1

The Agreement between the European Community and Turkey on precursors and chemical 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

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.

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*.

⁽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.

AGREEMENT**on precursors and chemical 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 TURKISH REPUBLIC

hereinafter referred to as 'Turkey', on the other part,

hereinafter referred to as the 'Contracting 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 1988 Convention'

DETERMINED to prevent and combat the illicit manufacture of narcotic drugs and psychotropic substances by preventing the diversion of precursors and chemical substances frequently used for such purposes;

ACKNOWLEDGING Article 12 of the 1988 Convention;

ACKNOWLEDGING the final Report of the Chemical Action Task Force (CATF), approved by the London G-7 Economic Summit on 15 July 1991, and agreeing with the recommendation to strengthen international cooperation by the conclusion of bilateral agreements between regions and countries involved in export, import and transit of these substances;

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

AFFIRMING their common commitment to setting up assistance and cooperation mechanisms between Turkey and the Community, particularly in view of the Helsinki decision recognising Turkey as a candidate country, in order to prevent the diversion of controlled substances to illicit purposes, in harmony with the orientations and actions decided at international level;

RECOGNIZING that these chemical substances 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 precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and, to this end, have designated as their plenipotentiaries:

THE EUROPEAN COMMUNITY:

.....

THE TURKISH REPUBLIC:

.....

WHO, having exchanged credentials of their powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

*Article 1***Scope of the Agreement**

1. This Agreement sets out measures to strengthen administrative cooperation between the Contracting Parties to prevent the diversion of substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, without prejudice to the due recognition of the legitimate interests of trade and industry.

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

- monitoring the trade between them in the substances referred to in paragraph 3, with the aim of preventing their diversion to illicit purposes,
- providing administrative assistance ensuring that their respective substance trade control legislation is correctly applied.

3. Without prejudice to possible amendments which might be adopted within the competence of the Joint Follow-up Group provided for in Article 9, this Agreement applies to the chemical substances listed in the Annex to the 1988 Convention as amended, hereinafter referred to as 'controlled substances'.

*Article 2***Trade monitoring**

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

2. With regard to the controlled substances listed in Annex A to this Agreement, the competent authority of the exporting Contracting Party shall, at the same time as the export authorisation is issued but prior to the departure of the consignment, forward a copy of the export authorisation to the competent authority of the importing Contracting Party. Specific information shall be provided where the operator benefits, in the exporting country, from an open individual authorisation covering multiple export operations.

3. With regard to the controlled substances listed in Annex B to this Agreement, the competent authority of the exporting Contracting Party shall forward a copy of the export authorisation to the competent authority of the importing Contracting Party and the export shall be authorised only when the importing Contracting Party has given its consent.

4. The Contracting Parties undertake to provide each other, as soon as possible, with due feedback on any information provided or measure requested under this Article.

5. When implementing the above-mentioned trade control measures, the legitimate interests of trade shall be duly respected. In particular, in cases covered by paragraph 3, the

reply by the importing Contracting Party shall be provided within 15 working days after the receipt of the message from the exporting Contracting Party. The absence of a reply within this period shall be considered equivalent to granting an import authorisation. The refusal to grant an import authorisation shall be notified in writing to the exporting Contracting Party within this period, giving the reasons for refusal.

*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 Contracting Party, there are reasonable grounds to believe that controlled substances may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, or where, in the cases described in Article 2(3), the importing Contracting Party requests the suspension.

2. The Contracting Parties shall cooperate in supplying each other with any information relating to suspected diversion operations.

*Article 4***Mutual administrative assistance**

1. The Contracting Parties shall provide each other, either on their own initiative or on request, with any information to prevent the diversion of controlled substances to 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 as promptly as possible.

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

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

5. The Contracting Parties shall assist each other to facilitate the provision of evidence.

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. Information may be requested in respect of chemical 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 Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant legal or regulatory provisions of the Contracting Party that received it and the corresponding provisions applying to the Community authorities.

2. Personal data, which means all information relating to an identified or identifiable individual, may be exchanged only where the Contracting 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 Contracting Party that may supply it. To this end, Contracting Parties communicate each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community.

3. The use, in judicial or administrative proceedings instituted for failure to comply with legislation on controlled substances referred to in Article 3, of information obtained under this Agreement, is considered to be for the purposes of this Agreement. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting 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.

*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 Contracting Party is of the opinion that assistance under this Agreement would:

- (a) be likely to prejudice the sovereignty of Turkey 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 paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

*Article 7***Technical and scientific co-operation**

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

*Article 8***Implementation measures**

1. Each Contracting Party shall appoint a competent authority or competent authorities to co-ordinate the implementation of this Agreement. These authorities shall communicate directly with one another for the purposes of this Agreement.

2. The Contracting 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 on the control of precursors and chemical substances is hereby established, hereinafter referred to as 'the Joint Follow-up Group', in which each Contracting Party to this Agreement shall be represented.

2. The Joint Follow-up Group shall act by mutual agreement. It shall adopt its own rules of procedure.

3. The Joint Follow-up Group shall normally meet once a year, 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 Contracting 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 study and develop the necessary means to ensure the correct functioning of this Agreement,
- it shall be regularly informed by the Contracting Parties of their experience in applying this Agreement,
- in the cases provided for in paragraph 2, it shall take decisions,
- in the cases provided for in paragraph 3, it shall make recommendations,
- it shall study and develop the technical co-operation measures referred to in Article 7,
- it shall study and develop other possible forms of co-operation in matters relating to precursors and chemical substances.

2. The Joint Follow-up Group shall adopt by mutual consent decisions to amend Annexes A and B.

Such decisions shall be implemented by the Contracting Parties in accordance with their own legislation.

If, in the Joint Follow-up Group, a representative of a Contracting Party has accepted a decision subject to the completion of the procedures necessary for that purpose, the decision shall enter into force, if no date is contained therein, on the first day of the second month after such a completion is notified.

3. The Joint Follow-up Group shall recommend to the Contracting Parties:

- (a) amendments to this Agreement;
- (b) any other measure required for the application of this Agreement.

*Article 11***Obligations imposed under other agreements**

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

- not affect the obligations of the Contracting Parties under any other international agreement or convention;
- be deemed complementary with agreements covering the issue of controlled substances which have been or may be concluded between individual Member States and Turkey;

— not affect the Community provisions governing the communication between the competent services of the Commission of the European Communities and the relevant services of the Member States 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 controlled substances which have been or may be concluded between individual Member States and Turkey 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 Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Follow-up Group set up under Article 9.

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

*Article 12***Entry into force**

This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have exchanged their respective instruments of ratification, acceptance or approval, according to the rules applicable for each Contracting Party.

*Article 13***Duration and denunciation**

1. This Agreement shall be concluded for five years and, unless otherwise disposed, it will be tacitly renewable for successive periods of the same duration. It shall cease to have effect upon the accession of Turkey to the European Union.

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

3. Either Contracting Party may withdraw from this Agreement provided it gives 12 months' prior notice in writing to the other Contracting Party.

*Article 14***Authentic texts**

This Agreement, which is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Turkish languages, all texts being equally authentic, shall be deposited in the Archives of the Secretariat General of the Council of the European Union, which shall provide the Contracting Parties with an authenticated copy.

ANNEX A

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

Acetone
Anthranilic Acid
Ethyl Ether
Hydrochloric Acid
Methyl Ethyl Ketone
Phenylacetic Acid
Piperidine
Sulphuric Acid
Toluene

ANNEX B

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

N-Acetylanthranilic Acid
Acetic Anhydride
Ephedrine
Ergometrine
Ergotamine
Isosafrole
Lysergic Acid
3,4-Methylenedioxyphenyl-2-propanone
Norephedrine
1-Phenyl-2-propanone
Piperonal
Potassium Permanganate
Pseudoephedrine
Safrole

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