COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 215 final
Brussels, 20 June 1990

Proposal for a

COUNCIL REGULATION (EEC)

laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances

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(presented by the Commission)

EXPLANATORY MEMORANDUM

A. General observations

1. On 8 June 1989, the Community signed the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, on the basis of its competences in matters covered by Article 12. All Member States of the Community have in the meantime also signed the Convention.

2. Article 12 of the Convention requires Parties to take appropriate measures to prevent the diversion of precursors. Precursors are chemical products, in particular solvents or acids (ether, acetone, ephedrine) which in the main are the subject of legitimate trade (manufacture of paint, glue, varnish....), but which can equally serve the illegal manufacture of drugs. In effect, the manufacture of certain drugs or psychotropic substances is impossible without the use of certain chemical substances which make it possible, for example, to use natural sources (poppies, coca leaves...) to manufacture drugs such as heroin or cocaine, or yet, can be used in the manufacture of synthetic drugs (LSD, amphetamines..)
These chemical substances are called precursor products and consist mainly of solvents or acids originating in the chemical industry.

3. The extent of the traffic

According to the DEA (Drug Enforcement Administration) of the United States, cocaine traffickers need between 6,000 tonnes and 12,000 tonnes per year of chemical products to process the coca leaves, whereas American production of these products is about 60,000 tonnes. According to them, in 1988 most of these products came from the USA; Europe was then a secondary supplier along with Brazil, Argentina and the Peoples Republic of China. That means that 10 to 20% of the American production was either illegal or was being diverted, mostly without the knowledge of the manufacturers. There is no precise data concerning the Community, but according to American sources, a very large increase (+438% for certain products) in supplies originating either directly or indirectly in Europe has taken place in 1989. This coincides with the entry into force of new American legislation which, by indirect consequence, provides an incentive for the traffickers to search for supplies in places where the risks are less, specifically in Europe. The principal countries concerned are the Federal Republic of Germany, France, Italy, the Netherlands and the United Kingdom. The majority of the consignments are routed via the Federal Republic of Germany. As to the companies concerned, it affects not only the producers and manufacturers, but

also the merchants, brokers, forwarding agents and other intermediaries. Concerning only the producers, the DEA estimates that there are 950 in the world, 490 in the USA. In this way the DEA controls for their part, 2500 transactions per year, an average of 15 per day.

4. Precursor monitoring in the meantime is considered worldwide a necessary and appropriate means of discouraging manufacture and thus reducing supply of illicit drugs. It therefore obtained primary attention in the Global Plan of Action adopted by the U.N. General Assembly on 23 February 1990 and most recently in the Political Declaration adopted by the World Ministerial Drugs Summit on 11 April 1990. Moreover, the introduction of such systems by industrialized countries corresponds to the urgent request by Latin American drug producing countries as expressed, in particular, during the negotiations of the 1988 Convention and again in the Cartagena Declaration of 15 February 1990. Politically, the proposed regulation has thus to be seen as an important contribution by industrialized countries in the North-South dialogue. For these reasons, the adoption of a Community precursor instrument has been recognized by CELAD as one of the three priority items in Community anti-drug action.

5. At the same time, it is noted that - unlike drugs strictu sensu - only a very minor share of the substances concerned is subject to illicit diversion whereas most of the trade and manufacture is entirely legitimate. Therefore, an efficient monitoring system must not unilaterally be based on enforcement considerations but duly take into account the interests of legitimate trade.

6. The proposed Regulation intends to institute, on a Community basis, a monitoring system over international precursor trade as required by Article 12 of the Convention. In conformity with the Council Decision of 1 June 1989 and the requirements of the Single Market of 1993, the proposal envisages a non-bureaucratic and cooperation-based solution which at the same time avoids the creation new obstacles to intra-Community trade. In due consideration of areas covered by Member States' competence, the proposal in a number of instances limits itself to the identification of certain objectives to be met by national legislation.

7. The proposal has intentionally avoided to introduce any sort of licensing arrangement which would not only contradict the non-bureaucratic character of the system agreed at the Council but also prove to be counterproductive on the practical level. Past experience in Member States in the monitoring of precursors and other sensitive goods has shown that the most fruitful cooperation and the best results are obtained whenever economic operators are guided by competent authorities in the collection and exploitation

of information rather than if their cooperative spirit is exhausted by the completion of formal administrative procedures.

Licensing systems, in particular with regard to export, do not provide for any additional guarantee against diversion to illicit purposes: experience again shows that licensing requirements may easily be circumvented by misdescription of goods or falsified documents, and due to extremely sporadic export controls, such manipulations are not likely to be detected. Furthermore, the present proposal allows competent authorities to react in cases of possible diversion as firmly as under any licensing system, ie shipments to non-Community countries may be suspended or even forbidden if diversion to illicit purposes appears certain.

8. This approach differs in certain aspects from that of the USA, because of the differences between the European drugs market and that of the USA (type of products consumed, percentage of drug addicts in the population, geographical situation, population involved...). In this way, the American legislation is more extensive as regards the list of products covered (20 products as against 12), whereas the Community text is limited, in accordance with the unanimous advice of experts, to the list foreseen by the Vienna Convention. Again the American legislation covers certain materials and equipment (tableting machines, encapsulating machines) which concern above all certain synthetic drugs (amphetamines) within the context of domestic production. It consists, moreover, of numerous details of a bureaucratic nature which have no place in Community legislation, and which are linked to the administrative organisation of each Member State. It includes, finally, a very large number of points on the matter of penalties, which are difficult to imagine in the drafts of a Community text which is limited to establishing a corresponding obligation for Member States as has been done in the matter of insider dealing.

B. Contents of the Regulation

1. In conformity with the UN Convention, the proposed regulation distinguishes between two types of precursors (cf Table I and Table II in the Annex), ie those with limited use for licit purposes (Table I substances) and others with essential importance for legitimate commercial use (Table II substances). Both categories of precursors are subject to the general monitoring scheme laid down in this Regulation whereas the more stringent measures of Article 4 apply to Table I substances only.

2. On the basis of this principal distinction, the Regulation contains the following features (1):

a. Article 1 determines the scope of the Regulation, ie monitoring of external Community trade, and defines a number of terms essential for its application.

b. Considering that preventive measures as well as the tracing of diverted substances will be primarily be carried out on the basis of documentary evidence, Article 2 requires that economic operators keep appropriate records and documentation, and label goods clearly and ensures that competent authorities obtain access to documents and records for verification purposes (9d,e UNC).

c. Article 3, containing the centerpiece of the standard monitoring scheme, reflects the cooperation-based approach by stimulating economic operators as well as other persons professionally involved to inform authorities of any circumstance indicating the possibility of diversion (9a UNC). Paragraph 3 ensures that such disclosure done in good faith does not lead to legal disadvantages for the informant.

d. Article 4 (10a UNC) establishes the specific export surveillance scheme with regard to Table I substances whose introduction by industrialized countries represented one of the main items in North-South discussions during the Vienna negotiations. Paragraph 1 contains the principle of obligatory pre-export notification by operators vis-à-vis national monitoring authorities, paragraph 2 providing for the exact content of such notifications (10a i)-iv) UNC). Although no export licensing system is foreseen, paragraph 3 empowers monitoring authorities to suspend or even interdict shipment according to the degree of doubt regarding legitimate destination of the substances involved. Paragraph 4 provides for routine communication of these notifications to the country of intended import whenever the latter has requested such communication from the Community.

e. Article 5 intends to facilitate the application of the Regulation by supplying monitoring authorities with sufficient powers such as inspection, search and seizure (9b UNC). Specific powers are given to border authorities by

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1 numbers in brackets refer to corresponding paragraphs in the UN Convention (UNC)

paragraph 2, in order to allow suspect consignments to be stopped before they leave or enter the Community territory.

f. Article 6 covering intra-Community cooperation between monitoring authorities refers mutatis mutandis to Regulation (EEC) 1468/81 on mutual assistance in customs and agricultural matters, thus providing not only for a well-established mechanism in administrative assistance but also for due protection of confidentiality with regard to all information obtained and circulated under this Regulation.

g. Article 7 (9c UNC) complements Article 6 on the international level by ensuring that information on suspect consignments be passed on to other parties to the UN Convention concerned.

h. Final Clauses:

Article 8, although avoiding interference with Member States' competence in criminal matters, ensures that infringements of this Regulation be subject, Community-wide to appropriate penalties.

Article 9 (12 UNC) serves to fulfill the annual reporting obligations towards the UN, with the Commission acting as Community co-ordinating body.

Article 10 provides for a Community forum to examine technical questions relating to the application of the Regulation.

Taking into account the directive-type parts of the Regulation, Article 11 requires Member States to report the implementing measures taken, whereas Article 12 for the same reason provides for a split-up between entry into force and entry into application.

Proposal for a

Council Regulation (EEC)

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 Article 113 thereof,

Having regard to the proposal from the Commission (1),

Whereas on 19 December 1988, the United Nations Conference adopted a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; whereas this Convention is part of the world-wide efforts to combat drugs; whereas the Community participated in the negotiation of this Convention, showing its political will to act within the limits of its competences;

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1 OJ No C , p.

Whereas the aforementioned Convention contains an Article 12 concerning trade in precursors, ie substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances; whereas the implementation of this Article represents a contribution by industrialized countries to the effort requested from drug-producing countries which are generally much poorer than the former; whereas the provisions on the trade in such precursors affect the Community rules in customs matters; whereas, on this basis, the Convention was signed on behalf of the Community on 8 June 1989; whereas it is thus appropriate, in order to concretize this political will, to lay down Community rules on the trade between the Community and third countries, without prejudice to other provisions to be elaborated as regards intra-Community trade;

Whereas the provisions of Article 12 of the Convention are based on a system monitoring trade in the substances in question; whereas most of the trade in these substances is fully legitimate; whereas documentation and possible labelling as regards consignments of these substances have to be sufficiently clear; whereas it is furthermore important, whilst providing competent authorities with the necessary means of action, to develop, in compliance with the spirit of the Convention, mechanisms which are based on close cooperation with the economic operators concerned as well as on the development of the gathering, exchange and exploitation of intelligence;

Whereas, in this framework, measures have to be taken to encourage the detection, by the various operators, of suspect operations and their cooperation with the competent authorities; whereas a system of pre-notification on consignments of certain substances, providing for the possibility of suspending or forbidding the operations in question under certain conditions, appears most appropriate to the situation; whereas several countries have already obtained very positive results favouring this approach;

Whereas the competent authorities of Member States should dispose of comparable means of action; whereas it is thus indispensable to establish, at Community level, common objectives in the matter; whereas this aspect is essential in the perspective of the completed internal market and in order to ensure the homogeneous application of the rules established; whereas it is also important, in this context, that each Member State provides for sufficiently dissuasive penalties;

Whereas it is important to provide, within the Community as well as with third countries which are also Parties to the Convention, mechanisms of administrative cooperation; whereas it is suitable in this respect, as far as the competent authorities in the Community are concerned, to seek inspiration from Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the

latter and the Commission to ensure the correct application of the law on customs and agricultural matters (2), as amended by Regulation (EEC) 945/87 (3); whereas particular attention has to be paid to the confidentiality of the information received and exchanged;

Whereas in order to examine possible problems concerning the application of this Regulation and to enhance its implementation and the development of administrative cooperation in the matter, it is appropriate to provide that the Commission organizes specific meetings;

HAS ADOPTED THIS REGULATION:

2 OJ No L 144, 02.06.1981, p. 1.
3 OJ No L 90, 02.04.1987, p.3.

TITLE I

General

Article 1

1. This Regulation lays down measures to be taken in order to monitor trade in precursors between the Community and third countries with a view to preventing the diversion of such substances for the illicit manufacture of narcotic drugs and psychotropic substances.

2. For the purposes of this Regulation:

(a) "scheduled substances" means any substance contained in the Annex, including mixtures containing such substances. This excludes pharmaceutical preparations, or other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means;

(b) "import" means any physical introduction of scheduled substances into the customs territory of the Community;

(c) "export" means any physical departure of scheduled substances from the customs territory of the Community which requires a customs export declaration;

(d) "transit" means any transport of scheduled substances between third countries through the customs territory of the Community and any transhipment in this territory;

(e) "operator" means any natural or legal person engaged in the manufacture, production, trade or distribution of scheduled substances in the Community or involved in other related activities such as import, export, transit, broking and processing of scheduled substances. This definition includes, in particular, customs agents;

(f) "UN Convention" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988;

(g) "International Narcotics Control Board" means the Board established by the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol.

TITLE II

Monitoring of trade

Article 2

Documentation, records and labelling

The import, export and transit of scheduled substances are subject to the following requirements:

1. all import, export and transit operations shall be properly documented. In particular, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall contain sufficient information to positively identify the following:

- the name of the scheduled substance as stated in the Annex
- the quantity, weight, composition and content of the scheduled substance
- the name and address of the exporter and importer and, as far as is known to the manufacturer or distributor concerned, that of the consignee;

2. whenever operators apply labels to scheduled substances in import, export or transit operations such labels shall mention the names of these substances as stated in the Annex;

3. operators involved in import, export and transit of scheduled substances shall keep detailed commercial records with regard to these activities;

4. the documents and records referred to in points 1 and 3 shall be kept for a period not less than two years from the end of the calendar year in which the operation referred to in point 1 took place, and shall be made available to the competent authorities upon request.

Article 3

Notification

1. Each Member State shall take, consistently with its own legal system, appropriate measures to encourage operators to immediately notify the competent authorities of any circumstances, such as unusual orders and transactions of scheduled substances, which indicate that such substances destined for import or export may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

2. In addition to the measures to be taken under paragraph 1, each Member State shall take, consistently with its own legal system, appropriate measures to encourage persons who suspect, as a result of information obtained by virtue of their professional activities, that scheduled substances which have been or are to be imported or exported may be destined for use in the illicit manufacture of a narcotic drug or psychotropic substance, to inform the competent authorities accordingly.

3. The disclosure in good faith to the competent authority pursuant to paragraphs 1 and 2 above shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and shall not involve any civil or penal liability of any kind for the persons concerned. This provision does not apply, in particular, to cases where disclosure is made to avoid prosecution or where malice is intended.

Article 4

Pre-export notification - Substances listed in Table 1 of the Annex

1. In addition to the provisions of Article 3, persons who take the initiative in any intended export of scheduled substances listed in Table I of the Annex shall ensure that the competent authorities of the Member State where the customs export formalities are to be completed are duly notified of

such intention not later than 15 days before any customs export declaration is lodged.

2. The notification referred to in paragraph 1 shall contain the following information:

- the name and address of the exporter, of the importer in the third country and any other operator involved in the export operation or shipment, and also those of the consignee as far as known to the operator concerned,

- the name of the scheduled substance as stated in Table I of the Annex,
- the quantity, weight, composition and content of the substance to be exported,
- details as to the shipment such as expected date of dispatch, transport arrangements and, where known, itinerary, expected point of exit from the Community customs territory and point of eventual entry in the importing country.

3. Member States shall ensure that the competent authorities referred to in paragraph 1 may by written order, confirmation of receipt of which must be duly provided by the person concerned:

(a) delay the shipment of scheduled substances listed in Table I of the Annex until they are satisfied that the substances are destined for lawful purposes;

(b) forbid the shipment of scheduled substances listed in Table I of th Annex, if there are reasonable grounds to suspect that the scheduled substances are destined for the illicit manufacture of narcotic drugs or psychotropic substances.

Unless an order referred to in sub-paragraphs (a) and (b) is made by the competent authority, the export is deemed approved upon expiration of the period of 15 days.

4. With regard to requests for pre-export notification addressed to the Community by a third country pursuant to Article 12 (10) of the UN 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 this country. A copy of this reply shall be communicated to the Commission with a view to its circulation to the other Member States;

(c) the authority furnishing such information shall require that the authority in the third country receiving this information ensures the confidentiality of any trade, business, commercial or professional secret or trade process involved.

TITLE III

Measures of control

Article 5

Legal powers of competent authorities

1. In order to ensure the correct application of Articles 2 and 4, each Member State shall adopt, consistently with its own legal system, the measures necessary to allow the competent authorities:

(a) to obtain information on any orders or transactions of scheduled substances;

(b) to enter and search professional premises of operators and to obtain evidence of irregularities;

(c) to seize any scheduled substance if there is sufficient evidence that such substance, which has been or is to be imported, exported or in transit, is intended to be used in the illicit manufacture of a narcotic drug or psychotropic substance.

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

TITLE IV

Administrative cooperation

Article 6

For the purposes of applying this Regulation and without prejudice to Article 10, the provisions of Regulation (EEC) No 1468/81 shall be applicable *mutatis mutandis*, in particular the provisions on confidentiality. Each Member State shall communicate to the other Member States and to the Commission the competent authority appointed to act as correspondent within the meaning of Article 2(2) of Regulation (EEC) No 1468/81.

Article 7

The competent authorities referred to in Article 6 shall notify their counterparts in third countries concerned by the operation in question and parties to the UN Convention if there are reasonable grounds to suspect that the import, export or transit of a scheduled substance is destined for the illicit manufacture of narcotic drugs or psychotropic substances. Notifications shall include all essential information which has led to that belief. The provisions on confidentiality laid down in Article 4 (4) (c) apply to such notifications mutatis mutandis. A copy of this notification shall be communicated to the Commission with a view to its circulation to the other Member States.

TITLE V

Final provisions

Article 8

Each Member State shall determine the penalties to be applied for the infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

Article 9

1. The competent authorities of each Member State shall annually communicate to the Commission:

- the amounts of scheduled substances seized and, when known, their origin;
- any substance not included in the Annex which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed to be sufficiently significant to be brought to the attention of the International Narcotics Control Board;
- methods of diversion and illicit manufacture.

2. The Commission, on the basis of the communications made pursuant to paragraph 1, shall, pursuant to Article 12(12) of the UN Convention and in consultation with Member States, draw up an annual report to be submitted to the International Narcotics Control Board.

Article 10

The Commission shall organize meetings with the representatives of Member States in order to examine any question concerning the application of this Regulation which is raised by the Chairman, either on his own initiative or or at the request of a Member State.

Article 11

Each Member State shall inform the Commission of the measures it takes pursuant to this Regulation.

The Commission shall communicate this information to the other Member States.

Article 12

This Regulation shall enter into force on 1 January 1991. It shall apply from 1 July 1991.

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

Done at Brussels, For the Council

Annex

Table I

Ephedrine

Ergometrine

Ergotamine

Lysergic acid

1-phenyl-2-propanone

Pseudoephedrine

The salts of the substances listed in this table whenever the existence of such salts is possible.

Table II

Acetic anhydride

Acetone

Anthranilic acid

Ethyl ether

Phenylacetic acid

Piperidine

The salts of the substances listed in this table whenever the existence of such salts is possible.

FINANCIAL RECORD

Draft proposal for a Council Regulation laying down measures to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

1. Budgetary heading code: A 2511

2. Legal basis: Article 113

3. Description of project

3.1. General objectives

To comply with international obligations resulting from Article 12 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed by the Community on 8 June 1989.

3.2. Specific objectives

- To prevent, on a Community-wide basis, the diversion of precursor substances to the illicit manufacture of narcotic drugs and psychotropic substances, by establishing a monitoring system on the import, export and transit of precursors and provide for an exchange of information between the competent authorities of Member States and between the latter and the competent authorities of non-Community countries.

- To fulfill periodic reporting requirements towards the competent bodies of the United Nations

3.3. Financial implications of the project

The management of the monitoring system will have the financial consequences set out under item 5 below.

4. Justification of the project

To date, only informal precursor monitoring schemes exist in certain Member States which do not fulfill the standard required by the UN Convention. In order to fulfill the Community obligations from the Convention and at the same time to avoid Member States taking individual legislative action incompatible with the objectives of the Single Market, the Community has to enact legislation on external precursor trade.

5. Financial implications in respect of intervention appropriations

5.1. Basis for estimation

The envisaged Community system will result in expenses for

- the periodic organization of meetings with Member States experts in order to continually monitor the correct working of the system. The estimation shown below is based on an initial hypothesis of 2 meetings per year with Member States to be held in Brussels.

- the set-up, at Commission level, of a management structure ensuring, in particular, liaison with Member States, third countries and competent international organizations, in particular, the UN. The structure would initially comprise two officials (1 A, 1 B).

These resources are to be found either by means of internal redeployment or in the framework of the budgetary procedure for the year 1991.

5.2. Estimated appropriations to be provided for

Task	Budgetary post A 2511
Travel expenses for Member States experts to Brussels:	
2x 24 experts: 2x 10,000 ECU	20,000 ECU
Total	20,000 ECU

(from the budgetary year 1991 on)

6. Implications for own resources

None

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