

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 May 1997

concerning the conclusion of an Agreement between the European Community and the United States of America on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(97/389/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113, in conjunction with the first sentence of Article 228 (2), and Article 228 (4) thereof,

Having regard to the proposal from the Commission,

Whereas, on 25 September 1995, the Council authorized the Commission to negotiate, on behalf of the Community, agreements on the control of drugs precursors and chemical substances with the Member States of the OAS;

Whereas the Transatlantic Agenda identified as a priority item in EC-US relations, the conclusion of a drugs precursors agreement which would include a specific pre-shipment consultation mechanism;

Whereas the Commission, on the basis of this authorization and the provisions of the Transatlantic Agenda, completed negotiations with the United States of America on 11 April 1997;

Whereas it is appropriate that the Council authorizes the Commission, in consultation with a special committee appointed by the Council, to approve amendments on behalf of the Community where the Agreement provides for them to be adopted by the Joint Follow-up Group; whereas, however, such authorization will be limited to the amendment of the Annexes of the Agreement in so far as it concerns substances already covered by the Community legislation on drugs precursors and chemical substances;

Whereas the Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United States of America on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

1. The Community shall be represented in the Joint Follow-up Group provided for in Article 11 of the Agreement by the Commission, assisted by the representatives of the Member States.

2. The Commission is authorized to approve, on behalf of the Community, amendments of the Annexes to the Agreement adopted by the Joint Follow-up Group under the procedure laid down in Article 12 of the said Agreement.

The Commission shall be assisted in this task by a special committee designated by the Council.

3. The authorization referred to in paragraph 2 shall be limited to those substances which are already covered by the relevant Community legislation on drugs precursors and chemical substances.

Article 3

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement in order to bind the Community⁽¹⁾.

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 21 May 1997.

For the Council

The President

M. PATIJN

⁽¹⁾ See page 35 of this Official Journal.

AGREEMENT

between the European Community and the United States of America 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',

of the one part, and

THE UNITED STATES OF AMERICA, hereinafter referred to as 'the United States',

of the other part,

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

ACKNOWLEDGING Article 12 of the United Nations Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

AGREEING with the final Report of the Chemical Action Task Force (CATF), approved by the London G 7 Economic Summit on 15 July 1991, which recommended the strengthening of international cooperation by the conclusion of bilateral agreements, in particular between regions and countries involved in export, import and transit of these chemical substances;

CONVINCED that international trade constitutes a specific risk factor and that only cooperative arrangements between the regions concerned can prevent this danger, in particular by linking export and import controls;

AFFIRMING their common commitment to setting up assistance and cooperation mechanisms between the United States and the Community in order to combat the diversion of controlled substances to illicit purposes, in harmony with the orientations and actions decided at the international level;

UNDERLINING their common will to improve the current information exchange between relevant agencies, and without disturbing the existing working relations between them;

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;

HAVING DECIDED to conclude an Agreement for the control of precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the Agreement

1. This Agreement sets out measures to strengthen administrative cooperation and to improve working relations 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.

Nothing in this Agreement:

— may be interpreted in a manner which is inconsistent with the UN international drug-control treaties, or

— shall disturb existing working law enforcement relations in drug-related matters between the United States and the Member States of the Community.

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

— monitoring the trade between them in scheduled substances, with the aim of preventing their diversion to illicit purposes,

— granting each other the means of mutual consultation on the legitimacy of proposed transactions in scheduled substances destined for third countries, and

— providing mutual administrative assistance to ensure that the provisions of the relevant substance trade control legislation are correctly applied.

3. Without prejudice to possible amendments which might be adopted within the competence of the Joint Follow-up Group, this Agreement applies to the chemical substances listed in the Annex to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as amended, hereinafter referred to as 'controlled chemical substances'.

TITLE I

TRADE IN CONTROLLED CHEMICAL SUBSTANCES BETWEEN THE CONTRACTING PARTIES

Article 2

Trade surveillance

1. The Contracting Parties shall consult and inform each other on their own initiative of any suspicion that controlled chemical substances may be diverted from legitimate trade between them 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 chemical substances listed in Annex A to this Agreement, the competent authority of the exporting Contracting Party shall, at the same time as the export authorization is issued or a notification of export is received, and as soon as possible, forward a copy of this information 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 authorization covering multiple export operations.
3. With regard to the controlled chemical substances listed in Annex B to this Agreement, the export shall be authorized only when the importing Contracting Party has given its consent.
4. The Contracting Parties undertake to provide, reciprocally and in good time, due feedback on any information provided or measure requested pursuant to this Article.
5. When implementing the abovementioned 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 reception of the message from the exporting Contracting Party. The absence of a reply within this time period shall be deemed as granting an import authorization. The refusal to grant an import authorization shall be notified in writing, including electronic means, to the exporting

Contracting Party within this time period and the reasons for it must be documented.

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 chemical substances may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances.
2. The Contracting Parties shall cooperate in supplying each other with information relating to suspected diversion operations.

TITLE II

TRADE IN CONTROLLED CHEMICAL SUBSTANCES WITH OTHER COUNTRIES

Article 4

Pre-shipment consultation

1. Without prejudice to Articles 6, 7 and 8, whenever a competent authority, in processing a request for an export authorization to a third country, suspects that the controlled chemical substances involved may be diverted to the illicit manufacture of drugs, appropriate information should normally be relayed to the other Contracting Party to this Agreement, with the request to the competent authority of that Contracting Party for relevant information in its possession which may confirm or refute the possible diversion.
2. To Comply with the request mentioned in paragraph 1, provided that the necessary information has been made available, the requested Contracting Party shall search its databases or other available sources for information relating to the case and communicate its findings to the requesting Contracting Party. Whenever possible, the reply should be given within five working days after receipt of the request.
3. The requesting authority, on its own responsibility and with due assessment of all the elements of the case, shall determine whether to authorize, deny or take other action concerning the export in question. It shall then notify the requested authority of the decision taken.
4. The Contracting Parties shall immediately notify each other of any decision to stop a shipment of controlled chemical substances to third countries, which they believe may be of interest to the other Contracting Party, and shall provide such information regarding the shipment as appropriate.

*Article 5***Other information**

Without prejudice to Articles 6, 7 and 8, the Contracting Parties shall periodically exchange other data and information concerning trends and circumstances as seem desirable to achieve the purposes of this Agreement.

TITLE III

GENERAL PROVISIONS

*Article 6***Mutual administrative assistance**

1. The Contracting Parties shall supply to each other, either on their own initiative or on request, information to prevent the diversion of controlled chemical substances to the illicit manufacture of narcotic drugs or psychotropic substances and shall investigate cases of suspected diversion. When necessary, they shall adopt appropriate precautionary measures to prevent diversion.
2. Any request for information or precautionary measures shall be responded to as promptly as possible.
3. Requests for administrative assistance shall be executed in accordance with the laws, regulations and other legal instruments of the requested Contracting Party.
4. Officials of a Contracting Party may, with the agreement of the other Contracting Party, be present at the inquiries carried out in the territory of the latter.
5. The Contracting Parties shall assist each other to facilitate the provision of evidence.
6. Administrative assistance provided pursuant to this Article shall not prejudice the rules governing mutual legal assistance in criminal matters, nor shall it apply to information obtained under powers exercised at the request of a judicial authority, unless the authority so agrees.
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 7***Information exchange and confidentiality**

1. Data relating to natural persons may be exchanged only where the receiving Contracting Party undertakes to afford such data with at least substantially the same level of protection as the one applicable to that particular instance in the Contracting Party liable to supply them. To this end, the Contracting Parties shall provide each other with information setting forth the applicable standards of the Contracting Parties, including where appropriate the legal standards of the Member States of the Community.
2. 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, and shall be used solely for the purposes of this Agreement. Such information shall be afforded in the receiving Contracting Party the same protection in respect of confidentiality and official secrecy as applies in that Contracting Party to similar information under the relevant laws of the Contracting Party which received it.
3. Assistance may be postponed, or provided with conditions, on the ground that it would otherwise interfere with an ongoing investigation, prosecution or proceeding, or jeopardize the security of sensitive sources and methods of gathering information. In such a case, the authority which could provide assistance shall consult with the competent authority of the other Contracting Party to determine if assistance can be given subject to such terms or conditions as the providing authority may require.
4. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Moreover, such use shall be subject to any restrictions laid down by that authority.
5. Paragraph 4 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with substance control legislation. The competent authority which supplied that information shall be notified of such use.

*Article 8***Exceptions to the obligation to provide assistance**

1. The Contracting Parties shall make every reasonable effort to routinely provide requested information and assistance.

2. In cases where the requested Contracting Party is of the opinion that compliance with the request would:

- infringe upon the sovereignty of the United States or of a Member State of the Community, or
- present a serious issue of public policy, security or other essential interests, in particular the cases referred to in Article 7(1) concerning natural persons, and in Article 7(3) concerning ongoing investigations, prosecutions or proceedings and the security of sensitive sources and methods of gathering information, or
- be contrary to the legal system of the requested Contracting Party, including, where appropriate, the legal system of the Member States of the Community liable to provide the assistance,

assistance can be refused or compliance may be made subject to the satisfaction of certain conditions or requirements.

3. If one Contracting Party requests assistance which it could not itself supply entirely or partially pursuant to a similar request, it shall so state in its request. The other Contracting Party shall then decide in what form it can comply with the request.

4. If assistance is refused under this Article, the decision and its explanatory reasons shall be communicated without delay to the other Contracting Party.

Article 9

Technical and scientific cooperation

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

Article 10

Implementation measures

1. Each Contracting Party shall identify a competent authority or competent authorities to coordinate the application of this Agreement. These authorities shall communicate directly with one another for the purposes of this Agreement.

2. The Contracting Parties shall keep each other informed of the provisions which they adopt for the implementation of this Agreement.

Article 11

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 normally meet once a year, date, place and programme being fixed by mutual agreement. Extraordinary meetings of the Joint Follow-up Group may be convened by agreement of the Contracting Parties.

3. The Joint Follow-up Group shall adopt its own rules of procedure.

Article 12

Role of the Joint Follow-up Group

1. The Joint Follow-up Group shall monitor the administration of this Agreement and ensure its proper implementation. For this purpose:

- it shall study and develop the necessary means to ensure the correct functioning of the present 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 4, it shall make recommendations,
- it shall study and develop the cooperation measures referred to in Article 9, and
- it shall study and develop other possible forms of cooperation 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 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 adopt, by mutual consent, the procedures to be followed in pre-shipment consultations laid down in Article 4.

4. The Joint Follow-up Group shall recommend to be Contracting Parties:

- amendments to this Agreement, and
- any other measures required for the implementation of this Agreement.

Article 13

Other agreements

1. As regards controlled chemical substances, and subject to Article 7(3), nothing in this Agreement or in other agreements concluded between the Community and the United States shall prejudice Community provisions governing the communication between the competent administrative authorities within the Community of any information obtained in matters covered by this Agreement which could be of Community interest.

2. Nothing in this Agreement shall prejudice the provisions of any Mutual Legal Assistance Treaty between the United States and any Member State of the Community.

3. The Contracting Parties shall also exchange information with each other on measures in substance control matters taken with other countries.

Article 14

Entry into force

This Agreement shall enter into force on the first day of the second month following the date of signature.

Article 15

Duration and denunciation

1. This Agreement shall be concluded for five years and, unless otherwise terminated, it shall be automatically renewed for successive five-year periods.

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

3. This Agreement may be terminated at any time by either Contracting Party on 90 days' written notice.

Article 16

Authentic texts

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne aftale.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter dieses Abkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

In witness whereof, the undersigned Plenipotentiaries have signed this Agreement.

En foi de quoi les plénipotentiaires soussignés ont signé le présent accord.

In fede di che, i sottoscritti plenipotenziari hanno apposto le loro firme in calce al presente accordo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo-assinados apuseram as suas assinaturas no presente Acordo.

Tämän vakuudeksi allekirjoittaneet täysivaltaiset edustajat ovat allekirjoittaneet tämän sopimuksen.

Till bevis härpå har undertecknade befullmäktigade undertecknat detta avtal.

Hecho en la Haya, el veintiocho de mayo de mil novecientos noventa y siete.

Udfærdiget i Haag den otteogtyvende maj nitten hundrede og syv og halvfems.

Geschehen zu Den Haag am achtundzwanzigsten Mai neunzehnhundertsiebenundneunzig.

Έγινε στη Χάγη, στις είκοσι οκτώ Μαΐου χίλια εννιακόσια ενενήντα επτά.

Done at the Hague on the twenty-eighth day of May in the year one thousand nine hundred and ninety-seven.

Fait à La Haye, le vingt-huit mai mil neuf cent quatre-vingt-dix-sept.

Fatto a l'Aia, addì ventotto maggio millenovecentonovantasette.

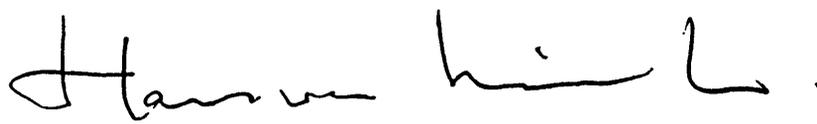
Gedaan te Den Haag, de achtentwintigste mei negentienhonderd zevenennegentig.

Feito em Haia, em vinte e oito de Maio de mil novecentos e noventa e sete.

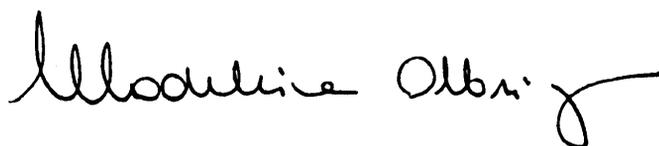
Tehty Haagissa kahdentenkymmenentenäkahdeksantena päivänä toukokuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Haag den tjuogoåttonde maj nittonhundranittiosju.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar




Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
For the United States of America
Pour les États-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar



*ANNEX A***Substances subject to the measures referred to in Article 2 (2)**

Ephedrine
Ergometrine
Lysergic acid
1-phenyl-2-propanone (phenylacetone)
Pseudoephedrine
Acetylanthranilic acid (2-Acetamidobenzoic acid)
3,4 Methyleneedioxy-phenylpropan-2-one
Isosafrole
Piperonal
Safrole
Phenylacetic acid
Piperidine

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

JOINT STATEMENT BY THE CONTRACTING PARTIES CONCERNING ARTICLE 7 (1)

The Contracting Parties agree to convene a meeting of the Joint-Follow-up Group as soon as possible after the entry into force of this Agreement in order to reach a common interpretation of the necessary criteria to be complied with concerning the relevant levels of protection to be applied pursuant to Article 7 (1).

They stress that such a common interpretation is indispensable to respect the legal system referred to in Article 8 (2).

The Contracting Parties further stress their common basis for trust and cooperation and the desirability for ensuring a common and mutually complementary application of the provisions of this Agreement.

SIDE INSTRUMENT CONCERNING ARTICLE 13

Letter from the Community

The Hague, 28 May 1997

With respect to the Chemical Control Agreement between the European Community and the United States of America, the Contracting Parties agree that, to the best of their collective knowledge, they cannot identify any bilateral executive agreements, memoranda of understanding, or other similar instruments between the United States and individual Member States of the Community that specifically address the issue of controlled chemical substances. Thus, the present Agreement is the only agreement that specifically addresses the issue of controlled chemical substances in the field of administrative cooperation.

The European Community states that, under the provisions of the EC Treaty, and in particular Article 228 (7) thereof, in so far as provisions of bilateal executive agreements, memoranda of understanding, or other similar instruments that may have been previously concluded between any of the Member States of the Community and the United States are incompatible with those of this Agreement, the latter shall govern in so far as the incompatibility concerns the exclusive competence of the Community as exercised through Community legislation referring to controlled chemical substances.

However, the provisions of these other agreements between Member States of the Community and the United States are not affected in so far as they address issues which fall within the scope of Title VI of the Treaty on European Union. When there are uncertainties as to the applicability of this Agreement or the provisions of any such complementary agreements, the Contracting Parties will consult promptly and take appropriate steps to resolve the matter.



Hans van MIERLO

Reply from the United States of America

The Hague, 28 May 1997

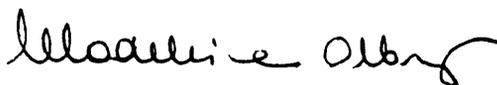
I have the honour to acknowledge receipt of your letter, dated today, concerning the applicability of the USA-EC Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, which reads as follows:

'With respect to the Chemical Control Agreement between the European Community and the United States of America, the Contracting Parties agree that, to the best of their collective knowledge, they cannot identify any bilateral executive agreements, memoranda of understanding, or other similar instruments between the United States and individual Member States of the Community that specifically address the issue of controlled chemical substances. Thus, the present Agreement is the only agreement that specifically addresses the issue of controlled chemical substances in the field of administrative cooperation.

The European Community states that, under the provisions of the EC Treaty, and in particular Article 228 (7) thereof, in so far as provisions of bilateral executive agreements, memoranda of understanding, or other similar instruments that may have been previously concluded between any of the Member States of the Community and the United States are incompatible with those of this Agreement, the latter shall govern in so far as the incompatibility concerns the exclusive competence of the Community as exercised through Community legislation referring to controlled chemical substances.

However, the provisions of these other agreements between Member States of the Community and the United States are not affected in so far as they address issues which fall within the scope of Title VI of the Treaty on European Union. When there are uncertainties as to the applicability of this Agreement or the provisions of any such complementary agreements, the Contracting Parties will consult promptly and take appropriate steps to resolve the matter.'

The United States shares the common understandings recorded in that letter and takes note of the EC statement contained therein. The United States confirms that, in the event of a question regarding the possible compatibility of provisions of this Agreement and of other bilateral executive agreements, memoranda of understanding, or other similar instruments, it stands ready to consult promptly with the Community with a view to a satisfactory resolution of the question.



Madeleine K. ALBRIGHT