

COUNCIL DECISION

of 18 December 1995

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

(95/570/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation 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 precursors and chemical substances with the Member States of the Organization of American States, and as a priority with the Member Countries of the Cartagena Agreement; whereas the Commission, on the basis of this authorization, completed negotiations with the Republic of Peru on 13 November 1995;

Whereas it is appropriate that the Agreement between the European Community and the Republic of Peru on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances should be approved;

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

HAS DECIDED AS FOLLOWS:

Article 1

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

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement.

Article 3

The President of the Council shall, on behalf of the Community, deposit the instrument provided for in Article 12 of the Agreement ⁽¹⁾.

Article 4

1. The Community shall be represented in the Joint Follow-Up Group provided for in Article 9 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, modifications to the Annexes to the Agreement adopted by the Joint Follow-Up Group by the procedure laid down in Article 10 of the Agreement.

The Commission shall be assisted in this task by a special committee designated by the Council and charged with establishing a common position.

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 5

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

Done at Brussels, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

⁽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

between the European Community and the Republic of Peru 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 REPUBLIC OF PERU,

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

hereinafter referred to as the 'Contracting Parties',

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 cooperation 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 Peru and the Community in order to combat 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 for the control 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 REPUBLIC OF PERU:

WHO, having exchanged credentials of their full 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, notably in:

- monitoring the trade between them in controlled substances, with the aim of preventing their diversion to illicit purposes,
- providing mutual administrative assistance ensuring 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 substances'.

Article 2

Trade monitoring

1. The Contracting Parties shall consult and inform each other on their own initiative of any suspicion 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 authorization is issued and prior to the departure of the consignment, forward a copy of the export authorization 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 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 under 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 delay shall be deemed as granting an import authorization. The refusal to grant an import authorization shall be notified in writing to the exporting Contracting Party within this delay and must be substantiated.

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 presumed diversion operations.

Article 4

Mutual administrative assistance

1. The Contracting Parties shall supply to each other, either on their own initiative or on request, 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 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 under 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 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 laws of the Contracting Party which received it and the corresponding provisions applying to the Community authorities.

2. Data relating to persons may be exchanged only where the receiving Contracting Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Contracting Party liable to supply them.

3. 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.

4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply substance control legislation. The competent authority which supplied that information shall be notified of such use.

Article 6

Exceptions to the obligation to provide assistance

1. The Contracting Parties may refuse to give assistance as provided for in this Agreement, where to do so would:

- (a) be likely to prejudice the sovereignty of Peru or of a Member State of the Community;
- (b) be likely to prejudice public policy, security or other essential interests, in particular the cases referred to in Article 5 (2); or
- (c) violate an industrial, commercial or professional secret.

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

3. If assistance is refused, the decision and its explanatory reasons shall be notified without delay to the other Contracting Party.

Article 7

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 promote cooperation with trade and industry. Such technical cooperation may concern, in particular, training and exchange programmes for the officials concerned as well as the equipment necessary for the implementation of this Agreement.

Article 8

Implementation measures

1. The Contracting Parties shall endeavour to implement this Agreement in taking into account the necessity of a consistent approach of substance control legislation for the entire inter-American region.

2. Each Contracting Party shall appoint 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.

3. The Contracting Parties shall keep each other informed of the provisions which they adopt for the implementation 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 normally meet once a year, with the date, place and programme being fixed by mutual agreement. To the extent possible, these meetings shall be organized simultaneously with those of other joint committees or joint groups established between the

Community and other Member States of the Organization of American States.

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 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 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 3, it shall make recommendations,
- it shall study and develop the technical assistance measures referred to in Article 7,
- 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 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

Other agreements

1. Without prejudice to the provisions of the Treaty establishing the European Community, the provisions of

this Agreement shall replace the provisions of bilateral agreements which have been concluded between individual or several Member States of the Community and Peru if they are incompatible with the former. These bilateral agreements shall not 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. The Contracting Parties will also notify each other of any measures in substance control matters taken with other countries.

Article 12

Entry into force

1. This Agreement shall enter into force on the first day of the second month following the date of the deposit of the last instrument of ratification, acceptance or approval, according to the rules applicable for each Contracting Party.

2. The instruments referred to in paragraph 1 shall be deposited with the General Secretariat of the Council of the European Union, which shall act as depositary.

3. The Depositary shall notify to the Contracting Parties the date of deposit of the instruments referred to in paragraph 1 for each Contracting Party and the date of the entry into force of this Agreement.

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.

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 and Swedish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union, which shall deliver a certified copy thereof to each Contracting Party.

Hecho en Madrid, el dieciocho de diciembre de mil novecientos noventa y cinco.

Udfærdiget i Madrid den attende december nitten hundrede og femoghalvfems.

Geschehen zu Madrid am achtzehnten Dezember neunzehnhundertfünfundneunzig.

Έγινε στη Μαδρίτη, στις δεκαοκτώ Δεκεμβρίου χίλια εννιακόσια ενενήντα πέντε.

Done at Madrid on the eighteenth day of December in the year one thousand nine hundred and ninety-five.

Fait à Madrid, le dix-huit décembre mil neuf cent quatre-vingt-quinze.

Fatto a Madrid, addì diciotto dicembre millenovecentonovantacinque.

Gedaan te Madrid, de achttiende december negentienhonderd vijffennegentig.

Feito em Madrid, em dezoito de Dezembro de mil novecentos e noventa e cinco.

Tehdy Madridissa kahdeksantenatoista päivänä joulukuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi.

Som skedde i Madrid den artonde december nittonhundranittiofem.

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

För Europeiska gemenskapen

J. A. B. Bloch

Henri Bloch

Por la República del Perú

For Republikken Peru

Für die Republik Peru

Για τη Δημοκρατία του Περού

For the Republic of Peru

Pour la république du Pérou

Per la Repubblica del Perù

Voor de Republiek Peru

Pela República do Peru

Perun tasavallan puolesta

För Republiken Peru

Wingard

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

Methyl ethyl ketone
Toluene
Potassium permanganate
Sulphuric acid
Acetone
Ethyl ether
Hydrochloric acid
Acetic anhydride
Anthranilic acid
Phenylacetic acid
Piperidine

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