

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

of 3 November 1998

**concerning the conclusion of the Agreement between the European Community and the Republic of Chile on precursors and chemical substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances**

(98/708/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 authorised the Commission to negotiate with the Member States of the Organisation of American States, on behalf of the Community, agreements on the control of drugs precursors and chemical substances; whereas, in accordance with this authorisation, the Commission completed negotiations with Chile on 3 December 1997;

Whereas the Agreement between the European Community and the Republic of Chile on precursors and chemical substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances should be approved;

Whereas it is appropriate that the Council should authorise 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 such authorisation must, however, be limited to the amendment of the Annexes to the Agree-

ment in so far as such amendment concerns substances already covered by Community legislation on drugs precursors and chemical substances,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement between the European Community and the Republic of Chile on precursors and chemical substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances is hereby 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 authorised to designate the person empowered to sign the Agreement.

*Article 3*

The President of the Council shall carry out, on behalf of the Community, the exchange of instruments provided for in Article 12 of the Agreement<sup>(1)</sup>.

*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.

<sup>(1)</sup> The date of the Agreement's entry into force will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

2. The Commission is authorised to approve, on behalf of the Community, amendments to the Annexes to the Agreement adopted by the Joint Follow-up Group under the procedure laid down in Article 10 of the Agreement.

The Commission shall be assisted in carrying out this task by a special committee appointed by the Council with instructions to establish a common position.

3. The authorisation 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, 3 November 1998.

*For the Council*

*The President*

B. PRAMMER

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## AGREEMENT

**between the European Community and the Republic of Chile on precursors and chemical substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances**

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community',

of the one part, and

THE REPUBLIC OF CHILE,

hereinafter referred to as 'Chile',

of the other part,

hereinafter referred to as 'the Contracting Parties',

WITHIN THE FRAMEWORK and development 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 manufacture;

ACKNOWLEDGING Article 12 of the 1988 Convention;

ACKNOWLEDGING the Final Report on chemical substances 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 the 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 a wide cooperation and, in particular, linking export and import controls;

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

RECOGNISING that these chemical substances are also mainly and more 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:

Judith GEBETSROITHNER,  
Minister Plenipotentiary,  
Deputy Permanent Representative of the Republic of Austria,  
Chairman of the Permanent Representatives Committee — Part 1

Michel VANDEN ABEELE,  
Director-General of the Directorate-General XXI — Taxation and customs union — of the Commission of the European Communities

THE REPUBLIC OF CHILE:

Mariano FERNÁNDEZ,  
Deputy Minister for Foreign Affairs

WHO, having exchanged 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 controlled substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, without prejudice to the recognition of the legitimate interests of trade and industry.

2. For this purpose, the Contracting Parties shall, in accordance with their legal, and where appropriate, constitutional provisions and their legal framework, assist each other in the manner and under the conditions set out in this Agreement, in particular by:

- monitoring the trade between them in controlled substances, with the aim of preventing their diversion to use for illicit purposes,
- providing mutual administrative assistance ensuring that the relevant legislation on the control of trade in controlled substances is 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 substances listed in Tables I and II of the Annex to the 1988 Convention as last amended referred to in this Agreement 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 authorisation is issued and 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 a general individual authorisation covering various export operations.

3. With regard to the controlled substances listed in Annex B to this Agreement, the export shall be authorised only when the importing Contracting Party has granted its consent.

4. The Contracting Parties undertake to provide, reciprocally and in good time, any feedback on information provided or measures requested under this Article.

5. When implementing the abovementioned 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 of receiving the communication from the exporting Contracting Party. The absence of a reply within this period shall be deemed as equivalent to the granting of an import authorisation. The refusal to grant an import authorisation shall be notified in writing to the exporting Contracting Party within this period and must be substantiated.

### *Article 3*

#### **Suspension of shipment**

1. Without prejudice to the application of pertinent operational measures, shipments shall be suspended if, in the opinion of either Contracting Party, there are sufficient prior indications leading to the presumption that specified 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, subject in all cases to prior compliance with the rules and procedures laid down in the legal framework of the Contracting Party that is to adopt the measure of 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 or 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 complied with 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 enquiries carried out in the territory of the latter.
5. The Contracting Parties shall assist each other to facilitate the exchange 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 said 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 or provisions applicable to the subject matter in the Contracting Party which received it.
2. Data relating to natural persons may be exchanged only where the receiving Contracting Party undertakes to afford such data at least the same level of protection as that 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 rules of law of the Member States of the Community.
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 obtain the prior written consent of the competent authority which supplied 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 court or administrative proceedings instituted as a consequence of failure to comply with 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 provided for under this Agreement, where to do so would:
  - (a) be likely to prejudice the sovereignty of Chile or of a Member State of the Community,
  - (b) be likely to prejudice public policy and security or other essential interests, in particular the cases referred to in Article 5(2), or
  - (c) be likely to breach an industrial, commercial or professional secret.
2. If one Contracting Party requests assistance which it could not supply itself entirely or partially on 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, investigation and control 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 application of this Agreement.

#### *Article 8*

##### **Implementation measures**

1. The Contracting Parties shall endeavour to implement this Agreement taking into account the necessity of a consistent approach to legislation on controlled substances for the entire American continent.

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 application 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. This Group is considered as a sub-group under the Joint Committee set up by Article 35(1) of the framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part <sup>(1)</sup>.

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. In so far as possible, these meetings shall be organised simultaneously with those of other joint committees or joint groups on the control of precursors and chemical substances set up between the Community and other Member States of the Organisation 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*

#### **Powers of the Joint Follow-up Group**

1. The Joint Follow-up Group shall administer this Agreement and ensure its proper application. For this purpose:

- it shall study and develop the necessary detailed rules 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 assistance referred to in Article 7,

— it shall study and develop other possible forms of cooperation in matters relating to controlled 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 competences of the Community and its Member States, the provisions of this Agreement shall:

- not affect the obligations of the Contracting Parties arising under any other international agreement or convention,
- be deemed complementary with agreements covering controlled substances which have been or may be concluded between individual Member States and Chile, and
- not affect the provisions governing the communication between the competent services of the Commission and the customs authorities 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 agreements on controlled substances which have been or may be concluded between individual Member States and Chile, in so far as the provisions of the latter are incompatible with those of this Agreement.

<sup>(1)</sup> OJ L 209, 19. 8. 1996, p. 5.

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 in the field of substance control 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, in accordance with the legislation of each Contracting Party.

#### *Article 13*

##### **Duration and denunciation**

1. This Agreement shall be concluded for a period of five years and, unless otherwise stated, it will be automati-

cally 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 denounce 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 Bruselas, el veinticuatro de noviembre de mil novecientos noventa y ocho.

Udfærdiget i Bruxelles den fireogtyvende november nitten hundrede og otteoghalvfems.

Geschehen zu Brüssel am vierundzwanzigsten November neunzehnhundertachtundneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι τέσσερις Νοεμβρίου χίλια εννιακόσια ενενήντα οκτώ.

Done at Brussels on the twenty-fourth day of November in the year one thousand nine hundred and ninety-eight.

Fait à Bruxelles, le vingt-quatre novembre mil neuf cent quatre-vingt-dix-huit.

Fatto a Bruxelles, addì ventiquattro novembre millenovecentonovantotto.


Gedaan te Brussel, de vierentwintigste november negentienhonderd achtennegentig.

Feito em Bruxelas, em vinte e quatro de Novembro de mil novecentos e noventa e oito.

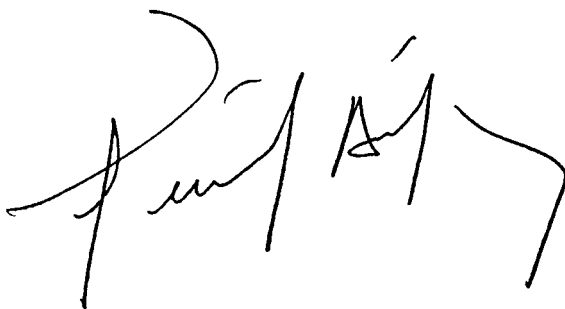
Tehty Brysselissä kahdentenäkymmenentenäneljäntenä päivänä marraskuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäkahdeksan.

Som skedde i Bryssel den tjugofjärde november nittonhundranittioåtta.

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

*Georgios Kour*  


Por la República de Chile  
For Republikken Chile  
Für die Republik Chile  
Για τη Δημοκρατία της Χιλής  
For the Republic of Chile  
Pour la République du Chili  
Per la Repubblica del Cile  
Voor de Republiek Chili  
Pela República do Chile  
Chilen tasavallan puolesta  
För Republiken Chile



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*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

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*ANNEX B***SUBSTANCES SUBJECT TO THE MEASURES REFERRED TO IN ARTICLE 2(3)**

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

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