

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 November 2008

concerning the conclusion of the Agreement between the European Community and the Government of the People's Republic of China on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(2009/166/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof, in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community should strengthen controls on shipments of precursors from the People's Republic of China, given the risk of their diversion for the purposes of the illicit manufacture of synthetic drugs in the Community.
- (2) On 27 June 2006, the Council authorised the Commission to negotiate with the Government of the People's Republic of China an Agreement on drug precursors and substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances ('the Agreement'). Following negotiations, the text of the Agreement was accepted on 13 March 2008.
- (3) 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. Such authorisation must, however, be limited to the amendment of the Annexes to the Agreement in so far as such amendment concerns substances already covered by Community legislation on drug precursors and substances.

- (4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of the People's Republic of China on drug precursors and 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 Commission, assisted by representatives of the Member States, shall represent the Community on the Joint Follow-Up Group set up under Article 9 of the Agreement.

2. The Commission is authorised to approve, on behalf of the Community, amendments to Annexes A and B 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 drug precursors.

Article 3

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

Article 4

The President of the Council shall carry out the notification provided for in Article 12 of the Agreement on behalf of the Community ⁽¹⁾.

Article 5

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

Done at Brussels, 27 November 2008.

For the Council
The President
L. CHATEL

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Community and the Government of the People's Republic of China on drug precursors and 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 GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,

hereinafter referred to as 'the Chinese Government',

on the other part,

hereinafter referred to as the 'the Parties',

WITHIN THE FRAMEWORK of the United Nations Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed on 20 December 1988 in Vienna, hereinafter referred to as the '1988 Convention' and in accordance with legal provision in force in the People's Republic of China and in the Member States of the Community;

DETERMINED to prevent and to combat the illicit manufacture of narcotic drugs and psychotropic substances by preventing the diversion of drug precursors and substances frequently used for such purposes (hereinafter referred to as drug precursors);

ACKNOWLEDGING Article 12 of the 1988 Convention;

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

RECOGNISING that drug precursors are also mainly and widely used for legitimate purposes and that international trade must not be hindered by excessive monitoring procedures;

HAVE DECIDED to conclude an Agreement on the prevention of diversion of drug precursors and 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 between the Parties to prevent the diversion of drug precursors and substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, without prejudice to the normal activities of trade and the due recognition of the legitimate interests of industry.

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

— monitoring the trade between them in the drug precursors referred to in paragraph 3, with the aim of preventing their diversion to illicit purposes,

— providing mutual administrative assistance ensuring that their respective drug precursors trade control legislation is correctly applied.

3. Without prejudice to possible amendments which might be made pursuant to Article 10, this Agreement applies to the substances listed in the Annexes to this Agreement.

*Article 2***Trade monitoring**

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

2. With regard to the drug precursors listed in Annex A to this Agreement, the competent authority of the exporting Party shall forward a pre-export notification to the competent authority of the importing Party. The reply in writing by the importing Party shall be provided within 15 working days after the receipt of the message from the exporting Party. The absence of a reply within this period shall be considered equivalent to a non-objection to sending the shipment. An objection shall be notified in writing to the exporting Party within this period, giving the reasons for refusal.

3. With regard to the drug precursors listed in Annex B to this Agreement, the competent authority of the exporting Party shall determine whether to conduct international checks according to its domestic legislation.

4. The Parties undertake to reply in writing as soon as possible, in respect of any information provided or measure requested under this Article.

*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 Party, there are reasonable grounds to believe that drug precursors may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, or where, in the cases described in Article 2(2), the importing Party requests in writing the suspension, and where appropriate, provides documents of evidence and ensuring measures to be taken within five working days.

2. The Parties shall cooperate in supplying each other with any information relating to suspected diversion operations if based upon a request for mutual administrative assistance.

*Article 4***Mutual administrative assistance**

1. The Parties shall provide each other upon request for mutual administrative assistance with any information to prevent the diversion of drug precursors 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 in time.

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

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

5. The Parties shall assist each other to facilitate the provision of evidence if based upon a request for mutual administrative assistance.

6. Administrative assistance provided under this Article shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it apply to information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

7. One Party may, on a case-by-case basis and through consultation, provide, on request by the other Party, information in respect of 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 Parties and shall be covered by the obligation of official secrecy.

2. Personal data may be exchanged only where the Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply it. To this end, Parties communicate each other information on their applicable rules, including legal provisions in force in the Member States of the Community.

3. Information obtained under this Agreement shall be used solely for the purposes of this Agreement. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

4. The use in proceedings instituted for failure to comply with legislation on drug precursors referred to in Article 3, of information obtained under this Agreement, is considered to be solely for the purposes of this Agreement. Therefore, the Parties may in proceedings use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The use of evidence is subject to the prior permission of the competent authority which supplied that information or gave access to those documents.

Article 6

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Agreement would:

(a) be likely to prejudice the sovereignty of the People's Republic of China or that of a Member State of the Community which has been requested to provide assistance under this Agreement; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 5(2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in this Article, the decision of the requested authority and the reasons therefore must be communicated to the applicant authority as promptly as possible.

Article 7

Technical and scientific cooperation

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

Article 8

Implementation measures

1. The Chinese side, the European Commission and each Member State of the Community shall appoint respectively a competent authority to coordinate the implementation of this Agreement. These authorities shall communicate directly with one another for the purposes of this Agreement.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Agreement.

Article 9

Joint Follow-Up Group

1. A Joint Follow-Up Group is hereby established, hereinafter referred to as 'the Joint Follow-Up Group', in which the Parties shall be represented.

2. The Joint Follow-Up Group shall act by mutual agreement.

3. If necessary, the Joint Follow-Up Group shall meet, with the date, place and programme being fixed by mutual agreement.

Extraordinary meetings of the Joint Follow-Up Group may be convened by mutual agreement of the Parties.

Article 10

Role of the Joint Follow-Up Group

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

— it shall be informed by the Parties of their experience in applying this Agreement,

— in cases provided for in paragraph 2, it shall take decisions,

- it shall study and develop technical cooperation measures,
- it shall study and develop other possible forms of cooperation.

2. The Joint Follow-Up Group may adopt by mutual consent decisions to amend Annexes A and B. Such decisions shall be implemented by the Parties in accordance with their own legislation.

3. The Joint Follow-Up Group may recommend to the Parties:

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

Article 11

Other obligations imposed under other agreements

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

- not affect the obligations of the Parties under any other international agreement or convention,
- not affect the communication between the competent services of the European Commission and the relevant services of the Member States of the Community of any information obtained under this Agreement which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on drug precursors and other substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances which have been or

may be concluded between individual Member States and the People's Republic of China insofar as the provisions of the latter are incompatible with those of this Agreement.

3. In respect of questions relating to the applicability of this Agreement, the Parties shall consult each other to resolve the matter in the framework of the Joint Follow-Up Group.

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

Article 12

Entry into force

Each Party shall give written notification that it has completed its internal legal procedures for the entry into force of this Agreement to the other Party. This Agreement shall enter into force 60 days from the date on which the last written notification is received.

Article 13

Duration and denunciation

1. This Agreement shall be concluded for five years and, unless a Party notifies in writing the other Party of its intention to terminate the Agreement at least six months before the expiration of that period, it will be tacitly renewable for successive periods of five years.

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

Done in duplicate in the Bulgarian, Czech, Danish, Dutch, Estonian, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Chinese languages, all these texts being equally authentic. In case there is any divergence of interpretation of this Agreement, the English and the Chinese texts shall be determinative.

Съставено в Брюксел на тридесети януари две хиляди и девета година.

Hecho en Bruselas, el treinta de enero de dos mil nueve.

V Bruselu dne třicátého ledna dva tisíce devět.

Udfærdiget i Bruxelles den tredivte januar to tusind og ni.

Geschehen zu Brüssel am dreißigsten Januar zweitausendneun

Kahe tuhande üheksanda aasta jaanuarikuu kolmekümnendal päeval Brüsselis.

Εγινε στις Βρυξέλλες, στις τριάντα Ιανουαρίου δύο χιλιάδες εννιά.

Done at Brussels on the thirtieth day of January in the year two thousand and nine.

Fait à Bruxelles, le trente janvier deux mille neuf.

Fatto a Bruxelles, addì trenta gennaio duemilanove.

Briselē, divtūkstoš devītā gada trīsdesmitajā janvārī.

Priimta du tūkstančiai devintų metų sausio trisdešimtą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-kilencedik év január harmincadik napján.

Magħmul fi Brussell, fit-tletin jum ta' Jannar tas-sena elfejn u disgha.

Gedaan te Brussel, de dertigste januari tweeduizend negen.

Sporządzono w Brukseli, dnia trzydziestego stycznia roku dwa tysiące dziewiątego.

Feito em Bruxelas, em trinta de Janeiro de dois mil e nove.

Încheiat la Bruxelles, la treizeci ianuarie două mii nouă.

V Bruseli tridsiateho januára dvetisícdeväť.

V Bruslju, dne tridesetega januarja leta dva tisoč devet.

Tehty Brysselissä kolmantenakymmenentenä päivänä tammikuuta vuonna kaksituhattayhdeksän.

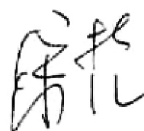
Som skedde i Bryssel den trettionde januari tjugohundraio.

本协议于二00九年一月三十日在布鲁塞尔签订。

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduse nimel
 Για την Ευρωπαϊκή Κοινότητα
 For the European Community
 Pour la Communauté européenne
 Per la Comunità europea
 Eiropas Kopienas vārdā
 Europos bendrijos vardu
 Az Európai Közösség részéről
 Ghall-Komunitá Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 För Europeiska gemenskapen
 欧洲共同体代表




От името на правителството на Китайската народна република
 Por el Gobierno de la República Popular China
 Za vládu Čínské lidové republiky
 For Folkerepublikken Kinas regering
 Im Namen der Regierung der Volksrepublik China
 Hiina Rahvavabariigi valitsuse nimel
 Για την κυβέρνηση της Λαϊκής Δημοκρατίας της Κίνας
 For the Government of the People's Republic of China
 Pour le gouvernement de la République populaire de Chine
 Per il governo della Repubblica popolare cinese
 Ķīnas Tautas Republikas vārdā
 Kinijos Liaudies Respublikos Vyriausybės vardu
 A Kínai Népköztársaság kormánya részéről
 Ghall-Gvern tar-Repubblika Popolari tač-Ċina
 Voor de Regering van de Volksrepubliek China
 W imieniu rządu Chińskiej Republiki Ludowej
 Pelo Governo da República Popular da China
 Pentru Guvernul Republicii Populare Chineze
 Za vládu Čínskej ľudovej republiky
 Za Vlado Ljudske republike Kitajske
 Kiinan kansantasavallan hallituksen puolesta
 På Folkrepubliken Kinas regering vägnar
 中华人民共和国政府代表



ANNEX A

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

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

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

ANNEX B

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

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