COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.12.1996
COM(96) 622 final

96/ 0291 (ACC)

Proposal for a

COUNCIL DECISION

concerning the conclusion, on behalf of the Community, of an agreement between the European Community and the United Mexican States on cooperation regarding the control of precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(presented by the Commission)

EXPLANATORY MEMORANDUM

By Decision of 25 September 1995 (Doc. 9782/95), 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. A first series of agreements was concluded on 18 December 1995 with the member countries of the Cartagena agreement[1].

The above decision was taken to prevent the diversion of chemical substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances, which most commonly occurs in international trade between the chemical exporting countries and those countries concerned with illicit drugs manufacture on their own or a neighbouring territory.

The decision was preceded by close contacts with the relevant authorities of the OAS member countries during which the wish to conclude such agreements had been repeatedly expressed.

In compliance with the above-mentioned decision, the Commission has negotiated an agreement with the United Mexican States which was initialled on 25 October 1996. It is therefore necessary to proceed to the signature and the conclusion of the Agreement.

The Agreement provides for the possibility of modifying the lists of substances subject to the trade surveillance mechanisms referred to in Article 2 of the Agreement and which are contained in the Annexes to the Agreement. Such modification may include changes in the number of substances as well as the transfer of substances from one Annex to the other.

Where such modifications only concern substances already covered by the relevant Community legislation on drugs precursors and chemical substances, the Commission is authorized to approve such modifications on behalf of the Community. The Council will designate a Special Committee to assist the Commission in this task.

The Council is therefore requested to

- approve the Agreement between the European Community and the United Mexican States on Drugs Precursors and Chemical Substances on behalf of the Community;

- designate a person empowered to sign the Agreement;

- 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; however, such authorization will be limited to the modification of the Annexes of the Agreement insofar as it concerns substances already covered by the Community legislation on drugs precursors and chemical substances.

* * * * *

[1] cf. OJ L 324 of 30.12.95

PROPOSAL OF

Council Decision
concerning the conclusion, on behalf of the Community, of an agreement between the European Community and the United Mexican States on cooperation regarding the control of precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

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 of 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 Commission, on the basis of this authorization, completed negotiations with United Mexican States on 25 October 1996,

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 insofar as it concerns substances already covered by the Community legislation on drugs precursors and chemical substances.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Community and The United Mexican States on the control of drugs precursors and chemical 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, communicate the instrument provided for in Article 12 to the government of The United Mexican States.

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 of the Annexes to this 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.

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

For the Council
The President

AGREEMENT

between the European Community
and the United Mexican States

on co-operation regarding the control of 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 MEXICO,

hereinafter referred to as 'Mexico', 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;

REAFFIRMING the necessity of strengthening international co-operation by the conclusion of bilateral agreements, in particular between regions and countries involved in export, import and transit of controlled 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 of controlled substances;

AFFIRMING their common commitment to setting up assistance and cooperation mechanisms between Mexico 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;

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:

M.... /to be designated/
Minister for....
President-in-office of the Council of the European Union;

M.../to be designated/
Member of the European Commission

THE REPUBLIC OF MEXICO:

M..../to be designated/
Minister for.....

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:

   (a) monitoring the trade between them in controlled substances, with the aim of preventing their diversion to illicit purposes, and

   (b) 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 20 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. The Contracting Parties shall assist each other to facilitate the provision of evidence.

5. Co-operation provided under this Article shall not prejudice the rules governing mutual legal assistance in criminal matters, nor shall it apply to information obtained under the powers exercised at the request of a judicial authority, unless the authority so agrees.

6. 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 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 Mexico or of a Member State of the Community;

   - present a serious issue of public policy, security or other essential interests, in particular the cases referred to in Article 5 (2) concerning natural persons, 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 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.

4. 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

1. 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.

2. Where new methods or techniques are developed which permit a rapid identification of controlled substances, the Contracting Party that becomes aware of such developments shall provide the other Contracting Party with all the relevant information so as to ensure the best possible application 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. Decisions and recommendations by the Joint Follow-up Group shall be taken by mutual agreement. It shall normally meet once a year, with the 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 it 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, in matters covered by this Agreement, the provisions of bilateral agreements which have been concluded between individual or several Member States of the Community and Mexico 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

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, according to the rules applicable for each Contracting Party.

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 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.

ANNEX A

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

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

ANNEX B

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

1-Phenyl-2-propanone
3,4 Methylenedioxy-phenylpropan-2-one
Ephedrine
Ergometrine
Ergotamine
Isosafrole
Lysergic acid
Piperonal
Pseudoephedrine
Safrole

FINANCIAL STATEMENT

concerning the signature and conclusion of
Agreements on the
Control of Drugs Precursors and Chemical Substances
between the European Community and the member countries of the Organization of American States (OAS), including Mexico

Please note that this operation is fully covered by the financial statement on the operation "Negotiation of precursor control agreements with the member countries of the Organization of the American States (OAS)" as approved by the Council in its decision of 25 September 1995. There are no additional resource needs for the current operation.

Consequently, resources intended for use in favour of Mexico will be part of the annual overall amount of 150,000 ECUs referred to in the decision of 25 September 1995. The Mexican share of this overall amount will not exceed 30,000 ECUs.

1. TITLE OF OPERATION

Signature and conclusion of agreements on the Control of Drugs Precursors and Chemical Substances between the European Community and the member countries of the Organization of American States (OAS), including Mexico

2. BUDGET HEADING INVOLVED

A1,A2,A4,A5 : Staff expenditure

A-130 : Mission expenses, travel expenses and incidental expenditure incurred by Commission staff

A-250 : Meetings in general

B7-6210 : North-South co-operation schemes in the context of the campaign against drug abuse

3. LEGAL BASIS

- Article 113 of the EC Treaty
- Council Regulation (EEC) No 3677/90 of 13 December 1990 (OJ No L 357 of 20.12.90, p.1), as last amended by Council Regulation (EEC) No 900/92 of 31 March 1992 (OJ No L 96 of 10.4.92, p.1), and implemented by Commission Regulation (EEC) No 3769/92 of 21 December 1992 (OJ No L 383 of 29.12.92, p.17), as last amended by Commission Regulation (EEC) No 2959/93 (OJ No L 267 of 28.10.93, p.8)

4. DESCRIPTION OF OPERATION

4.1 General objective

To establish co-ordinated trade controls on drugs precursors for the benefit of both parties and thereby strengthen North-South as well as trans-Atlantic partnership in anti-drugs matters

4.2 Period covered and arrangements for renewal

5 years, with tacit annual renewal thereafter. 01.11.1995 - 31.10.2000

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

B7-6210:

5.1 NCE
5.2 D.A.
5.3 No revenues foreseen

6. TYPE OF EXPENDITURE OR REVENUE

100% subsidy (meeting reimbursement to Member States, purchase of technical equipment in favour of authorities managing the agreement)

7. FINANCIAL IMPACT

It should be noted the following statements reproduce the statements of the sheet approved by the Decision of 25 September 1995 authorizing negotiations with all the member countries of the Organisation of American States. As a consequence, the amounts intended for Mexico are part of the amount referred to in the Decision of 25 September 1995, and they will not be in addition to these amounts. The share in favour of Mexico will not exceed 30,000 ECUs per year.

7.1 Method of calculating total cost of operation (relation between individual and total costs)

Technical assistance: 3 PC terminals including printer (3x 4,500 ECUs) plus 1 laboratory equipment (6,500 ECUs) being given to each of 30 partner countries, the action being spread over a period of approximately 4 years in conformity with the resources available.

Total costs: 600,000 ECUs

7.2 Itemised breakdown of cost

Commitment appropriations
ECU
(at current prices)

Breakdown	1995	1996	1997	1998	1999	2000 and subs. yrs	Total
B7-6210	pm	pm	150,000	150,000(1)	150,000(1)	150,000(1)	600,000
Total	pm	pm	150,000	150,000	150,000	150,000	600,000

It should be noted that budget line B7-6210 covers expenditures related to external action.

(1) The amounts mentioned for 1998, 1999 and 2000 are subject to the resultats of the relevant budgetary procedures.

7.3 Schedule of commitment and payment appropriations

ECU million

B7-6210	1995	1996	1997	1998	1999	2000 and subs. yrs	Total
Commitment appropriations	pm	pm	0.150	0.150	0.150	0.150	
Payment appropriations							
1995	p.m.						pm
1996		p.m.					pm
1997			0.150				0.150
1998				0.150			0.150
1999					0.150		0.150
2000 and subs. yrs						0.150	0.150
Total	pm	pm	0.150	0.150	0.150	0.150	0.600

8. FRAUD PREVENTION MEASURES

In addition to the regular reports on international cooperation in precursors to be made to the Committee on Drugs Precursors established under Regulation (EEC) No 3677/90 as amended, the agreement will provide for the setting-up of a Joint Follow-Up Group to evaluate implementation and supervise dissemination of any funds made available to assist in achieving the objectives of the agreement.

Following ratification of the agreements, one mission should be organized each year to selected OAS countries to ensure on-the-spot supervision of spending for technical assistance.

In carrying out the measures planned in the proposal, the authorities of the countries concerned and the Commission departments involved will take the usual precautions against fraud.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

Control of international trade in drugs precursors has a direct impact on the availability of chemicals to illicit drugs manufacture. Improved international co-operation thus renders the supply of illicit drugs more difficult, and helps to achieve public health objectives by reducing the quantity of illicit drugs on the market.

9.2 Grounds for the operation

The action corresponds to engagements taken by the Community at the international level (1988 UN Convention, Recommendations by the G-7 Chemical Action Task Force approved by the 1991 London Economic Summit).

9.3 Monitoring and evaluation of the operation

Effectiveness of the operation will be supervised by the Joint Follow-Up Group as well as by other bodies competent at the Community, regional or international level (in particular, 3677/90 Committee, CICAD and UNDCP,INCB). In addition, missions on the spot will ensure compliance with the objectives of the instrument.

10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

10.1 Effect on the number of posts

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	5 years
Officials or temporary staff	A B C	1	1	2		
Other resources						
Total		1	1	2		

10.2. Overall financial impact of additional human resources

(ECUs)

	Amounts	Method of calculation
Officials Temporary staff Other Ressources		
Total		

The expenses related to human resources required for the completion of this action will be made available upon mobilisation of existing resources:

Officials/Temporary staff (Titles A1,A2,A4,A5): 200,000 ECUs*5years= 1,000,000 ECUs

10.3. Increase in other administrative expenditure as a result of the operation

ECU

Budget heading	Amounts	Method of calculation
Total		

Tthe administrative expenditure required for the completion of this action will be made available by mobilisation of existing resources:

(1) A-130 (Mission): 2 missions/year for 2 officials each, thereof one to North America, one to South America. Duration: 7 days

- North America

(travel: 2x 2,800 ECUs, subsistence 2x776 ECUs) 7,150 ECUs

- South America
  (travel: 2x 4,500, subsistence 2x776 ECUs) 10,750 ECUs

Total A-130 (5years): 88,500 ECUs

(2) A-250 (Meetings): taking place once a year alternatively in Brussels, North America, Brussels and South America

- Brussels: travel costs (15 MSt delegates x 695 ECUs) 10,425 ECUs
- North America:
  travel costs (15 MSt delegates x 2,800 ECUs) 42,000 ECUs
- South America:
  travel costs (15 MSt delegates x 4,500 ECUs) 67,500 ECUs

Annual average costs: (12,500 + 42,000 + 12,500 + 67,500) ./. 4 = 33,000 ECUs

Total A-250 (5years): 165,000 ECUs

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