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2013/0005 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Russian Federation on drug precursors

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 23 March 2009 the Council authorised the Commission to open negotiations with the Russian Federation for an Agreement on drug precursors. Following the launch of negotiations in September 2009, four negotiating rounds took place. In September 2012, the text of the Agreement was finally agreed between the Parties.

This Agreement aims to strengthen the cooperation between the European Union and the Russian Federation to prevent diversion of drug precursors from the legal trade to counter illicit manufacture of narcotic drugs and psychotropic substances.

As this Agreement may occasionally imply an exchange of personal data, it includes specific provisions on data protection in order to provide sufficient protection for citizens in the use of their data.

The Commission considers that the text is in accordance with the negotiating directives.

The Commission is therefore invited to adopt the attached proposal for a Council decision on the conclusion of this Agreement.

In parallel, a separate proposal for a Council decision on the signing of this Agreement is also submitted.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Member States were regularly informed on the draft of the Agreement within the Drug Precursors Working Group/Committee and within the Council Working Party on Customs Union.

There was no need for an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Council is asked to adopt a decision authorising the conclusion of the draft Agreement based on Article 207 (4) in conjunction with Article 218 (6) (a) of the Treaty on the Functioning of the European Union.

The proposal falls under the common commercial policy, exclusive competence of the Union. The subsidiarity principle therefore does not apply.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications for the Union budget.

5. OTHER

The draft Agreement is consistent with the drug policy outlined in the EU Drug Strategy 2005-2012, providing for action to reduce the supply of precursors and, thereby, decrease the production of drugs.

A proposal for a Council decision on the signing of the draft Agreement is submitted in parallel to this proposal for a Council decision on the conclusion of the draft Agreement.

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Russian Federation on drug precursors

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) The European Union and the Russian Federation should strengthen their cooperation to prevent diversion of drug precursors from the legal trade to counter illicit manufacture of narcotic drugs and psychotropic substances.
- (2) In accordance with Council Decision [XXX] of [...]², the Agreement between the European Union and the Russian Federation on drug precursors, hereinafter referred to as "the Agreement" was signed on [...], subject to its conclusion at a later date.
- (3) The Agreement should ensure full respect of fundamental rights, in particular a high level of protection for the processing and transfer of personal data between the Parties.
- (4) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Russian Federation on drug precursors is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

¹ OJ C , , p. .

² OJ L , , p. .

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 11 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption³.

Done at Brussels,

*For the Council
The President*

³ 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.

ANNEX
AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE RUSSIAN FEDERATION
ON DRUG PRECURSORS

THE EUROPEAN UNION

on the one part, and

THE RUSSIAN FEDERATION,

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, hereinafter referred to as the "1988 Convention";

DETERMINED to prevent and to combat the illicit manufacture of narcotic drugs and psychotropic substances by preventing the diversion from the legitimate trade of substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances (hereinafter referred to as the "precursors");

TAKING into account the overall legal framework between the Russian Federation and the European Union;

NOTING that international trade may be used for the diversion of such precursors;

CONVINCED of the necessity to conclude and to implement agreements between the Parties concerned, with the purpose of establishing wide cooperation, in particular pertaining to export and import controls;

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

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the Agreement

1. This Agreement sets out measures to strengthen cooperation between the Parties to prevent the diversion from the legitimate trade of precursors, without prejudice to the legitimate trade in these precursors.
2. The Parties shall assist each other, as set out in this Agreement, in particular by:
 - monitoring the trade between the Parties in the precursors with the aim of preventing their use for illicit purposes,
 - providing mutual assistance for the purpose of prevention of diversion of such precursors.
3. The measures referred to in paragraph 2 of this Article shall apply to the precursors listed in Annex I of this Agreement (hereinafter referred to as "scheduled precursors").

Article 2

Implementation measures

1. The Parties shall inform each other in writing about their respective competent authorities. These authorities shall communicate directly with one another for the purposes of this Agreement.
2. The Parties shall inform each other about their respective legal provisions and other measures applied to implement this Agreement.

Article 3

Trade monitoring

1. The competent authorities of the Parties shall inform each other on their own initiative whenever they have reasonable grounds to believe that scheduled precursors in legitimate trade between the Parties may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances.
2. With regard to the scheduled precursors the competent authorities of the exporting Party

shall forward a pre-export notification containing the information referred to in Article 12 (10) point a) of the 1988 Convention to the competent authorities of the importing Party.

The reply in writing by the competent authorities of the importing Party shall be provided through technical means of communication within 21 days after the receipt of the message from the competent authorities of the exporting Party. The absence of a reply within this period shall be considered as non-objection to sending the shipment. Any objection shall be notified in writing through technical means of communication to the competent authorities of the exporting Party within this period after the receipt of the pre-export notification giving the reasons for refusal.

Article 4

Mutual assistance

1. The Parties shall within the scope of this agreement provide each other mutual assistance through exchange of information referred to in Article 12 (10) point a) of the 1988 Convention to prevent the diversion of scheduled precursors to the illicit manufacture of narcotic drugs or psychotropic substances. They shall, in accordance with the legislation of the Parties, take appropriate steps to prevent diversion.
2. The Parties shall also provide each other upon written request or at their own initiative with mutual assistance if there are reasons to believe that other relevant information is of interest to the other Party.
3. The request shall contain information about the following:
 - aim and foundation of the request;
 - time of the expected execution of the request;
 - other information that may be used for the execution of the request.
4. The request directed in writing on the official letter head of the competent authorities of the requesting Party shall be accompanied by a translation in one of the official languages of the requested Party and shall be signed by duly authorised persons of the competent authorities of the requesting Party.
5. The competent authorities of the requested Party shall take all necessary measures for the complete execution of the request as promptly as possible.

6. Requests for assistance shall be executed in accordance with the legislation of the requested Party.

7. The competent authorities of the requested Party should as promptly as possible inform the competent authorities of the requesting Party about the circumstances that prevent or delay the execution of the request.

If the competent authorities of the requesting Party state that there is no more necessity to complete the request, they shall as promptly as possible inform the competent authorities of the requested Party accordingly.

8. The Parties may cooperate with each other to minimise the risk of illicit shipments of precursors brought into or out of the territory of the Russian Federation and the customs territory of the European Union.

9. Assistance provided under this Article shall not prejudice the rules governing mutual assistance in criminal matters and extradition, 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.

Article 5

Confidentiality and data protection

1. The Parties shall take all measures to ensure confidentiality of the received information. If it is impossible to ensure confidentiality of the requested information, the Party requesting the information shall inform the other Party accordingly which shall decide whether to provide the information upon these conditions.

2. Information obtained under this Agreement, including personal data, shall be used solely for the purposes of this Agreement and must not be kept longer than necessary for the purposes for which it is transferred pursuant to this Agreement.

3. By derogation to paragraph 2, the use of information, including personal data, for further purposes by the Authorities or public bodies of the Party which received the information shall only be authorized after prior express and written approval of the authority of the Party which transmitted the information in accordance with the legislation of that Party.

Such use shall then be subject to any conditions established by that authority.

4. The Parties may in proceedings instituted for failure to comply with legislation on scheduled precursors use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement following prior written consent of the competent authorities of the requested Party which provided the data.

5. In case personal data are exchanged, their processing shall comply with the principles set out in Annex II which are mandatory for the Parties to the Agreement.

Article 6

Exceptions to the obligation to provide mutual assistance

1. Provision of assistance may be refused or may be made subject to certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Agreement would be likely to prejudice the sovereignty the security, the public policy or other essential interests, of the Russian Federation or that of a Member State of the European Union which has been requested to provide assistance under this Agreement.

2. For the cases referred to in this Article, the decision of the competent authorities of the requested Party and the reasons therefore must be communicated to the competent authorities of the requesting Party as promptly as possible.

Article 7

Cooperation regarding precursors not listed in Annex I

1. The Parties may, on a voluntary basis, exchange information about precursors not listed in Annex I of this Agreement (hereinafter referred to as "non-scheduled precursors").

2. In the case of paragraph 1 of this Article, the provisions of Article 4 (2) – (9) shall apply.

3. The Parties may exchange their available lists of non-scheduled precursors.

Article 8

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 9

Joint Follow-Up Expert Group

1. According to this Agreement, a Joint Follow-Up Expert Group is hereby established which consists of the representatives of competent authorities of the Parties (hereinafter referred to as "the Joint Follow-Up Expert Group".)
2. The Joint Follow-Up Expert Group shall make recommendations by consensus.
3. The Joint Follow-Up Expert Group shall meet, with the date, place and programme being fixed by consensus.
4. The Joint Follow-Up Expert Group shall administer this Agreement and ensure its proper implementation. For this purpose:
 - It shall address questions relating to the implementation of the Agreement,
 - It shall study and recommend technical cooperation measures referred to in Article 8,
 - It shall study and recommend other possible forms of cooperation,
 - It shall consider other issues of the Parties about the implementation of this Agreement.
5. The Joint Follow-Up Expert Group may recommend amendments to this Agreement to the Parties.

Article 10

Obligations under other international agreements

1. Unless otherwise provided by this Agreement, its provisions shall not affect the obligations of the Parties under any other international agreement.

2. The exchange of secret information is regulated by the Agreement between the Russian Federation and the European Union on the protection of classified information⁴.
3. The provisions of this Agreement shall take precedence over the provisions of any bilateral or multilateral international agreement covering drug precursors between the Russian Federation and the EU Member States.
4. The Parties shall inform each other about the conclusion of international agreements on the aforementioned issues with other countries.
5. This Agreement is to be seen and interpreted in the context of the overall legal framework in force between the EU and the Russian Federation, including in respect of any obligation contained therein.

Article 11

Entry into force

This Agreement shall enter into force on the first day of the second month following the date of the reception of the last written notification of the Parties about completion of their internal procedures required for its entry into force.

Article 12

Duration, denunciation and amendments

1. This Agreement shall be concluded for five years at the end of which it is automatically/tacitly renewed for further successive five year periods until one of the Parties, no later than 6 months prior the termination of the relevant 5 year period notifies the other Party in writing of its intention to terminate this present agreement.
2. This Agreement may be amended by mutual consent of the Parties.

Article 13

Costs

⁴ OJ L 155, 22.6.2010.

Each Party shall bear the costs it incurs arising from the measures to implement this Agreement.

Done at

Date

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 Russian languages, all these texts being equally authentic.

For the European Union

For the Russian Federation

ANNEX I

Acetic Anhydride
Acetone
Anthranilic Acid
Ephedrine
Ergometrine
Ergotamine
Ethyl Ether
Hydrochloric Acid
Isosafrole
Lysergic Acid
3,4-Methylenedioxyphenyl-2-propanal
Methyl Ethyl Ketone
N-Acetylanthranilic Acid
Norephedrine
Phenylacetic Acid
1-Phenyl-2-propanone
Piperidine
Piperonal
Potassium Permanganate
Pseudoephedrine
Safrole
Sulphuric Acid
Toluene

Note: The list of precursors must always include a reference to their salts, where appropriate.
(With the exception of the salts of Hydrochloric Acid and Sulphuric Acid.)

ANNEX II

Data protection definitions and principles

Definitions

For the purpose of this Agreement, "personal data" shall mean any information relating to an identified or identifiable natural person;

"Processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Principles

"Data quality and proportionality": data shall be adequate, accurate relevant and not excessive in relation to the purposes for which they are transferred and, where necessary, kept up to date. The Parties shall in particular ensure that the accuracy of data exchanged is regularly reviewed.

"Transparency": A data subject shall be provided with information as to the purposes of the processing and the identity of the data controller , the recipients and categories of recipients of the personal data, the existence of the right of access and the right to rectify, erasure or blocking data concerning him/her, the right to administrative and judicial recourses and other information insofar as this is necessary to ensure fair processing, unless such information has already been provided by the Parties to the Agreement.

"Rights of access, rectification, erasure and blocking of data": A data subject shall have a right of direct access without constraint to all data relating to him/her that are processed and, as appropriate, the right to the rectification, erasure or blocking of data the processing of which does not comply with this Agreement because the data are incomplete or inaccurate.

"Redress": the Parties shall provide that a data subject who considers that his/her right to privacy or that personal data concerning him/her have been processed in breach of this Agreement, shall have the right in accordance with their legislation to an effective

administrative remedy before a competent authority and a judicial remedy before an independent and impartial tribunal accessible by individuals regardless of their nationality or country of residence.

Any such infringements or violation shall be subject to appropriate, proportionate and effective sanctions including compensation for damages suffered as a result of an infringement of data protection rules. Where data protection provisions are found to have been breached sanctions including compensation are to be imposed in accordance with applicable domestic rules.

Onward transfers:

Onward transfers of personal data to other authorities and public bodies of a third country shall be allowed only with the prior written consent of the authority which has transmitted the data and for the purposes for which the data have been transmitted and if this country provides an adequate level of data protection. Subject to reasonable legal limitations provided by national law, the Parties shall inform the data subject on such onward transfer.

Supervision of data processing: Compliance with data protection rules by each Party shall be subject to control by one or more independent public authorities that have effective powers of investigation, intervention and to engage in legal proceedings or to bring to the attention of the competent judicial authorities any violation of the data protection principles of this agreement. Each independent public authority shall, in particular, hear claims lodged by any person concerning protection of his or her rights and freedoms with regard to the processing of personal data pursuant to this Agreement. The person concerned shall be informed of the outcome of the claim.

Exemptions from transparency and right of access: The Parties may restrict the right of access and transparency principles in accordance with their legislation when necessary in order not to:

- jeopardise an official investigation,
- violate the human rights of other persons.