31997F0396
97/396/JHA: Joint Action of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs
Official Journal L 167 , 25/06/1997 P. 0001 - 0003

JOINT ACTION of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs (97/396/JHA)

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on European Union, in particular Article K.3 (2) (b) thereof,
Having regard to the initiative of the Netherlands,
NOTING that the Dublin European Council welcomed the progress report on drugs on 13 and 14 December 1996 and endorsed the action proposed in that report, including the proposal to tackle the problem of synthetic drugs at three levels, namely, through legislation, practical cooperation against production and trafficking and international cooperation,
REFERRING to the Joint Action 96/750/JHA of 17 December 1996, adopted by the Council on the basis of Article K.3 of the Treaty on the European Union, concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking (1),
REFERRING in particular to Article 5 of the said Joint Action, which provides that the Member States shall endeavour to draft convergent legislation to the extent necessary to make up legal ground or fill legal vacuums as regards synthetic drugs. In particular they shall promote the establishment of a rapid information system to enable such drugs to be identified as substances liable to be prohibited as soon as they appear anywhere in a Member State,
CONSIDERING that the particular dangers inherent in the development of synthetic drugs require rapid action by the Member States,
CONSIDERING that when new synthetic drugs are not brought within the scope of criminal law in all Member States, problems may arise in the international cooperation between the judicial authorities and law enforcement agencies of the Member States owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested State,
CONSIDERING that from an inventory drawn up since the adoption of the said Joint Action it can be concluded that new synthetic drugs have appeared within the Member States,
CONSIDERING that common action can be taken only on the basis of reliable information on the emergence of new synthetic drugs and the results of expert assessment of the risks caused by the use of the new synthetic drugs and implications of submitting such drugs under control,
CONSIDERING that it is therefore necessary to set up a common mechanism permitting expeditious action, in taking necessary measures or introducing controls on new synthetic drugs, on the basis of a rapid exchange of information on new synthetic drugs emerging in the Member States and the common assessment of the risks thereof,
WITHOUT PREJUDICE to the powers of the European Community,
HAS ADOPTED THIS JOINT ACTION:

Article 1
Purpose
This Joint Action aims at the creation of a mechanism for rapid exchange of information on

new synthetic drugs and the assessment of their risks in order to permit the application of the measures of control on psychotropic substances, applicable in the Member States, equally to new synthetic drugs. This mechanism will be jointly implemented in accordance with the procedures established hereunder.

Article 2
Scope
This Joint Action concerns new synthetic drugs which are not currently listed in any of the Schedules to the 1971 United Nations Convention on Psychotropic Substances, and which pose a comparable serious threat to public health as the substances listed in Schedules I or II thereto and which have a limited therapeutic value. It relates to end-products, as distinct from precursors in respect of which Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances (2) and Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (3) provide for a Community regime.

Article 3
Exchange of information
1. Each Member State shall ensure that its Europol National Unit and its representative in the Reitox network provide information on the production, traffic and use of new synthetic drugs to the Europol Drugs Unit (EDU) of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), taking into account the respective mandates of these two bodies. The EDU and and the EMCDDA shall collect the information received and the communicate this information in an appropriate manner immediately to each other and to the Europol National Units and the representatives of the Reitox-network of the Member States, to the Commission and the European Agency for the Evaluation of Medicinal Products.
2. The information referred to in paragraph 1 shall include:
(a) - a chemical and physical description, including the name under which a new synthetic drug is known,
- information on the frequency, circumstances and/or quantities in which a new synthetic drug is encountered,
- a first indication of the possible risks associated with the new synthetic drug,
and, as far as possible:
(b) - information on the chemical precursors,
- information on the mode and scope of the established or expected use of the new synthetic drug as a psychotropic substance,
- information on other use of the new synthetic drug and the extent of such use,
- further information on the risks of use of the new synthetic drug, including the health and the social risks.

Article 4
Risk assessment
1. At the request of one of the Member States or the Commission, the EMCDDA shall convene a special meeting under the auspices of the Scientific Committee extended with experts nominated by the Member States and to which representatives of the Commission, the EDU and the European Agency for the Evaluation of Medicinal Products shall be invited. This committee shall assess the possible risks, including the health and social risks, caused by the use of, and traffic in, new synthetic drugs, and possible consequences of prohibition.

2. The risk assessment shall be carried out on the basis of information provided by the Member States, the Commission, the EMCDDA, the EDU of the European Agency for the Evaluation of Medicinal Products and taking into account all factors which, according to the 1971 United Nations Convention on Psychotropic Substances, would warrant the placing of a substance under international control.
3. On completion of the risk assessment, a report will be drawn up on the findings. In the report all aspects shall be addressed. All opinions on these aspects shall be reflected in the report.

Article 5
Procedure for bringing specific new synthetic drugs under control
1. The Council may, on the basis of an initiative to be presented within a month from the date on which the report of the results of the risk assessment pursuant to Article 4 (1) is established and acting in accordance with Article K.3 (2) (b) of the Treaty, adopt unanimously a decision defining the new synthetic drug or drugs which are to be made subject to necessary measures of control.
If the Commission deems it not necessary to present an initiative to have the new synthetic drug or drugs submitted to control measures, it shall present a report to the Council explaining its views.
The Member States undertake, in accordance with the decision taken by the Council, within such delay as that decision may specify, to take the necessary measures in accordance with their national law to submit these new synthetic drugs to control measures and criminal penalties as provided under their legislation complying with their obligations under the 1971 United Nations Convention on Psychotropic Substances with respect to substances listed in Schedules I or II thereto.
2. Nothing in this Joint Action shall prevent a Member State from maintaining or introducing on its territory any national control measure it deems appropriate once a new synthetic drug has been identified by a Member State.
3. The Presidency shall each year submit a report to the Council on the implementation of the decisions adopted by the Council on the basis of paragraph 1.

Article 6
Publication and entry into force
This Joint Action shall be published in the Official Journal.
It shall enter into force on the day of its publication.

Done at Luxembourg, 16 June 1997.
For the Council
The President
H. VAN MIERLO

(1) OJ No L 342, 31. 12. 1996, p. 6.
(2) OJ No L 357, 20. 12. 1990, p. 1. Regulation as last amended by Commission Regulation (EEC) No 3769/92 (OJ No L 383, 29. 12. 1992, p. 17).
(3) OJ No L 370, 19. 12. 1992, p. 76. Directive as amended by Directive 93/46/EEC (OJ No L 159, 1. 7. 1993, p. 134).