EUROPEAN UNION
THE COUNCIL

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7601/97

LIMITE

CORDROGUE 19

NOTE

from :the Presidency of the K.4 Committee

to :COREPER

~~No. prev. doc. : 7071/97 CORDROGUE 10; 7527/97 CORDROGUE 18~~

Subject :**Proposal for a joint action based on article K.3 (2) (b) on an early warning system for synthetic drugs (doc. 7071/97 CORDROGUE 10)**
- Outstanding questions

A. 1. The presidency has presented on 27 March 1997 a proposal for a joint action based on article K.3 (2) (b) on an early warning system for synthetic drugs.

This proposal found its origin in:

- the text of the conclusions of the European council of Dublin (13/14 December 1996) which state on pages 15 and 16 that, "the momentum achieved must be maintained and further developed (on those bases) in particular through
continued examination of further harmonization of laws, so far as an agreed need for it is identified, complemented by reinforced cooperation between the Institutions and the Member States. In this context, the particular dangers posed by synthetic drugs deserve special attention."

- Article 5 of the Joint Action of 17 December 1996 which provides that Member States shall seek to prepare converging legislation as far as necessary to eliminate any discrepancies and seal any gaps in legislation and particularly to encourage the introduction of an early warning system whereby such drugs can be identified to be prohibited as soon as they appear in a Member State.

As stated in Article 1 of the Joint Action the objectives of the Joint Action are threefold:

- to signal rapidly new trends in traffic and use of new synthetic drugs in the Member States (phase 1);

- to examine the risks of the developments (phase 2);

- to decide about the desirability to bring new synthetic drugs under control in the individual Member States (phase 3).

2. The proposal was discussed at meetings of the horizontal drugs group on 2 April and 11 April. On 18 April 1997 a first exchange of views on the legal base of the instrument to be adopted took place in the light of an opinion of the Legal Service of the Council (cf. doc. 7213/97 JUR 122).

At its meeting of 21 April 1997 the K.4 Committee examined the main outstanding questions. Most delegations confirmed that they were not yet in a position to give a final comment on the aforementioned opinion of the Legal Service.

The question that was addressed at the meeting of the K.4 Committee was whether there is a need for a swift and efficient system for exchange of information and the assessment thereof, it being understood that Member States would be free to draw legal consequences from information exchanged and the assessment, or whether a system should be created in which the data-exchange and the assessment is to be completed by a decision to put certain new synthetic drugs under the control system of the national legislations.

According to the opinion of Legal Service of the Council (doc. 7219/97 JUR 122) the legal basis of the first option should be article 213 of the TEC, whereas the basis of the second option could be article K.3 of the TEU.

3. The Presidency concluded in the K.4 Committee that a large majority was in favour of a system with the following characteristics:

- information should be collected and exchanged, using existing channels (NCIS and REITOX networks that are connected to EDU and the EMCDDA) (phase 1);

- information should be sent to a central point, where subsequently by all Member States risk assessment is made (phase 2);

- information exchange and risk assessment concerning a new synthetic drug should be followed by a Council decision on the need to extend the control system of the Member States to cover this new synthetic drug (phase 3).

B. Outstanding problems

1. Although most delegations agree on a swift three phased mechanism as described under A.3, positions differ on the nature of the Council decision.

Most delegations seem to favour a binding decision by the Council based on article K.3. Two delegations expressed their concern that a thorough risk assessment could take too much time. Some delegations stressed the need for a step by step approach and/or a thorough risk assessment as a precondition for a binding Council decision.

Three delegations (Austria, Finland and Denmark) favour a non-binding decision by the Council, e.g. in the form of a recommendation. Some of these delegations could possibly accept a binding obligation, provided that the final decision is taken on the basis of a thorough risk assessment.

2. No agreement was yet reached on the institutional aspects nor the contents of the risk assessment.

Some delegations said that there is no need for a specific expert committee and that the Horizontal Drugs group could do this work, whereas other delegations felt that this task should be entrusted to the EMCDDA.

As these issues are closely linked to the outcome of the problem raised under B.1), the horizontal drugs group will examine these issues further after Coreper has confirmed the orientation under A.3 and defined orientations on the outstanding problem under B.1.

C. The horizontal drug group and the K.4 Committee invite Coreper to confirm the orientation under A.3 and to define orientations on the outstanding problem under B.1.