COUNCIL REGULATION (EEC) No 1734/88

of 16 June 1988

concerning export from and import into the Community of certain dangerous chemicals

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130 S thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas certain provisions of Community legislation, and in particular Directives 76/769/EEC (4), and 79/117/EEC (5), restrict the marketing and use of certain dangerous substances and preparations and prohibit the placing on the market and use of plant protection products containing certain active substances in the Member States of the Community; whereas these provisions do not apply to those products when they are intended for export to third countries;

Whereas international trade in certain chemicals which are banned or severely restricted in countries of export has caused international concern on grounds of protection of man and the environment;

Whereas measures are necessary for the protection of man and the environment, both in the Community and in third countries;

Whereas schemes for notification and information concerning international trade in such substances have been set up within the framework of international organizations, namely the Organization for Economic Cooperation and Development (OECD), the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization (FAO);

Whereas the Community and its Member States have actively participated in the work of these and of other international organizations relating to banned and severely restricted substances; whereas it is appropriate that the Community acts upon the results of this work through uniform Community procedures;

Whereas the export of chemicals to which this Regulation applies should be made subjects to a common notification procedure which would permit the Community to notify third countries with regard to such exports;

Whereas it is necessary to ensure that the rules applicable within the Community for the packaging and labelling of banned or severely restricted chemicals should apply to such chemicals when destined for export;

Whereas it is necessary to inform all the Member States of notifications received from third countries with regard to import into the Community of substances banned or severely restricted under the legislation of those countries;

Whereas the common notification procedures should also provide a basis for an appropriate exchange of information within the Community, including information on the implementation of the international notification scheme;

Whereas to this end the Commission will report to the Council and to the European Parliament, before 1 January 1990 and thereafter every two years, in particular on any possible reaction from the country of destination; whereas on the basis of this report, and on a proposal from the Commission, the Council will consider. before 1 July 1990, the possibility of introducing into this Regulation the principle of prior informed choice;

Whereas the list of chemicals in Annex I should be subject to review at intervals and amendment as necessary; whereas any such amendment to Annex I should be made on the basis of proposals from the Commission and should be the subject of a decision by the Council by a qualified majority;

Whereas to facilitate the amendment of Annex II, a system should be set up providing for close collaboration between the Member States and the Commission by means of the Committee for the adaptation of that Annex to technical progress;

Whereas the Commission, in the light of the operation of this Regulation, may propose to the Council appropriate amendments thereto,

HAS ADOPTED THIS REGULATION:

Article 1

Objectives

The purpose of this Regulation is to establish a common system of notification and information for imports from and exports to third countries of certain chemicals which are banned or severely restricted on account of their effects on human health and the environment.

(1) OJ No C 177, 15. 7. 1986, p. 5.
(2) OJ No C 281, 19. 10. 1987, p. 199.
(3) OJ No C 232, 31. 8. 1987, p. 55.
(4) OJ No L 262, 27. 9. 1976, p. 201.
(5) OJ No L 33, 8. 2. 1979, p. 36.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'chemical subject to notification':

   the chemicals listed in Annex I, whether on their own or in preparations for which there is a labelling obligation;

2. 'export':

   (a) the permanent or temporary export of products meeting the conditions of Article 9 (2) of the Treaty;

   (b) the re-export of products not meeting the conditions referred to in (a) which are placed under a customs procedure other than transit procedures;

3. 'reference number':

   the number assigned by the Commission to each chemical when it is exported for the first time to a third country. This number remains unchanged for every subsequent export of the same chemical from the Community to the same third country.

Article 3

Designation of authorities

Each Member State shall designate the authority or authorities, hereinafter referred to as the 'designated authority' or 'designated authorities', competent for the notification and information procedures laid down by this Regulation. It shall inform the Commission of such designation.

Article 4

Exports to third countries

1. When a chemical subject to notification is exported for the first time from the Community to a third country, the designated authority of the State, from which it is exported, shall take the necessary measures to ensure that the appropriate authorities of the country of destination receive notification of the fact. Such notification, which shall as far possible take place prior to export, must comply with the requirement set out in Annex II.

The designated authority shall send a copy of such notification to the Commission, which shall forward it to the designated authorities of the other Member States and to the International Register of Potentially Toxic Chemicals (IRPTC).

The Commission shall assign a reference number to each notification received and communicate it immediately to the designated authorities of the Member States. It shall periodically publish a list of these reference numbers in the *Official Journal of the European Communities*, stating the chemical concerned, and the third country of destination.

2. The designated authority of the relevant Member State shall inform the Commission as soon as possible of any significant reaction from the country of destination. The Commission shall ensure that the other Member States are informed as soon as possible of that country's reaction.

3. Every subsequent export of the chemical concerned from the Community to the same third country shall be accompanied by a reference to the number of the notification published in the *Official Journal of the European Communities* pursuant to the provisions of the third subparagraph of paragraph 1.

4. Notification must be given afresh, whenever major changes are made to the rules concerning the substances in question.

5. As regards the transmission of information within the meaning of paragraph 1, the Member States and the Commission shall take account of the need to protect the confidentiality of data and ownership, both in the Member States and in the countries of destination.

Article 5

Packaging and labelling

Any of the chemicals listed in Annex I which are intended for export shall be subject to such measures on packaging and labelling established in pursuance of Directive 67/548/EEC [1], as last amended by Directive 88/302/EEC [2], or as appropriate of other Directives covering dangerous preparations [3], as are applicable in the Member State from which the goods are to be exported or in which they have been produced. This obligation shall be without prejudice to any specific requirements of the importing country.

Article 6

Notification from third countries

1. Where the designated authority of a Member State receives a notification from the competent authority of a third country concerning the export to the Community of a chemical whose manufacture, use, handling, consumption, transport and/or sale is subject to prohibition or substantial legal restriction under that country's legislation, it shall send forthwith to the Commission a copy of that notification together with all relevant information.

2. The Commission shall forward forthwith to the Member States any notification received either directly or indirectly, together with all available information.

---

[1] OJ No 196, 16. 8. 1967, p. 1/67.
[2] OJ No L 133, 30. 5. 1988, p. 1.
[3] — Directive 73/173/EEC (OJ No L 189, 11. 7. 1973, p. 1), as amended by Directive 80/781/EEC (OJ No L 229, 30. 8. 1980, p. 57);
— Directive 77/728/EEC (OJ No L 303, 28. 11. 1977, p. 23), as amended by Directive 83/265/EEC (OJ No L 147, 6. 6. 1983, p. 11);
— Directive 78/631/EEC (OJ No L 206, 29. 7. 1978, p. 13), as amended by Directive 81/187/EEC (OJ No L 88, 2. 4. 1981, p. 29).

3. The Commission shall periodically evaluate the information received by the Member States and, if necessary, submit appropriate proposals to the Council.

Article 7

Exchange of information and monitoring

1. Member States shall regularly forward to the Commission information on the operation of the notification system provided for in this Regulation.

2. The Commission shall regularly compile a report on the basis of the information provided by the Member States and forward it to the Council and the European Parliament. This report shall consist, *inter alia,* of information on participation in international notification systems, on the cover provided by such systems and on how they are complied with by third countries.

3. As regards the information supplied pursuant to paragraphs 1 and 2, the Member States and the Commission shall take account of the need to protect the confidentiality of data ownership.

Article 8

If a Member State applies, with respect to substances other than those in Annex I, a national system using similar information procedures in respect of third countries to those laid down in this Regulation, it shall inform the Commission, specifying the substances concerned.

The Commission shall forward this information to the Member States.

Article 9

Updating of Annexes

1. The list of chemicals in Annex I shall be reviewed by the Commission at intervals particularly in the light of experience gained in implementing this Regulation, with special regard to information received pursuant to Article 8, and on the basis of developments in Community rules and of developments within the framework of the OECD, the UNEP and the FAO. It shall be amended as necessary by decisions taken by the Council by qualified majority on a proposal from the Commission.

2. The amendments required for adapting Annex II to scientific and technical progress shall be adopted in accordance with the procedure laid down in Article 21 of Council Directive 67/548/EEC.

Article 10

This Regulation shall enter into force 12 months after its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 16 June 1988.

For the Council

The President

K. TÖPFER

ANNEX I

List of chemicals banned or severely restricted to certain uses owing to their effects on human health and the environment

Chemical	CAS-numer (1)	EINECS number (2)
1. Mercuric oxide	21908-53-2	2446547
2. Mercurous chloride (calomel)	10112-91-1	2333075
3. Other inorganic mercury compounds		
4. Alkyl mercury compounds		
5. Alkoxyalkyl and aryl mercury compounds		
6. Aldrin	309-00-2	2062158
7. Chlordane	57-74-9	2003490
8. Dieldrin	60-57-1	2004845
9. DDT	50-29-3	2000243
10. Endrin	72-20-8	2007757
11. HCH containing less than 99,0 % of the gamma isomer	608-73-1	2101689
12. Heptachlor	76-44-8	2009623
13. Hexachlorobenzene	118-74-1	2042739
14. Camphechlor (toxaphene)	8001-35-2	2322833
15. Polychlorinated biphenyls (PCB), except mono- and dichlorinated biphenyls	1336-36-3	2156481
16. Polychlorinated terphenyls (PCT)	61788-33-8	2629682
17. Preparations with a PCB or PCT content higher than 0,01 % by weight		
18. Tris (2,3 dibromopropyl) phosphate	126-72-7	2047999
19. Tris-aziridinyl-phosphinoxide	545-55-1	2088925
20. Polybrominated biphenyls (PBB)		
21. Crocidolite	12001-28-4	

(1) CAS = Chemical Abstracts Service

(2) EINECS = European Inventory of Existing Commercial Chemical Substances

ANNEX II

Information required pursuant to Article 4

1. Identity of the substance or preparation to be exported:

1.1. *Substances:*

— name in nomenclature of the International Union of Pure and Applied Chemistry,

— other names (usual name, trade name, abbreviation),

— CAS-number (if available),

— main impurities of the substance, when particularly relevant.

1.2. *Preparations:*

— trade name or designation of the preparation,

— for each substance listed in Annex I, percentage and details as specified under 1.1.

2. Information on precautions to be taken, including category of danger and risk, and safety advice.

3. The name, address, telephone and telex numbers of the designated authority from whom further information may be obtained (1).

4. Summary of regulatory restrictions and reasons for them.

5. Expected date of export.

6. Reference number, if known.

7. Country of export and country of destination.

(1) Where the designated authority provides that the notification be made by the exporter, the data given under this point may be those concerning the exporter.