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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 988/2002

of 3 June 2002

amending Regulation (EEC) No 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the Commission proposal [1],

Whereas:

(1) Regulation (EEC) No 3677/90 [2] laid down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

(2) In the interests of clarity and in order to comply with Article 12(10) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988, and with Resolution 20/4 of the 1998 Special Session on drugs of the United Nations General Assembly, the provisions on export authorisation for the scheduled substances listed in Category 1 of the Annex to Regulation (EEC) No 3677/90 should be separated from those on pre-export notification.

(3) Regulation (EEC) No 3677/90 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3677/90 is hereby amended as follows:

1. In Article 2, point (1), the third indent shall be replaced by the following:

'— the names and addresses of the exporter, the importer, the distributor and, in accordance with Articles 4, 4a, 5 and 5a, the ultimate consignee'.

2. Article 4 shall be replaced by Articles 4 and 4a as follows:

'*Article 4*

Pre-export notification

Scheduled substances listed in Category 1 of the Annex

1. Any exportation of scheduled substances listed in Category 1 of the Annex shall be preceded by pre-export notification sent to the country of destination in accordance with the provisions of Article 12(10) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988, and with Resolution 20/4 of the 1998 Special Session on drugs of the United Nations General Assembly.

The country of destination shall be allowed a period of time in which to reply of up to 15 working days, at the end of which the export operation shall be authorised by the competent authorities of the Member State of export, unless advice to the contrary is received.

2. The competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the country of destination, supply the information specified in Article 4a(2) to the competent authorities of that country.

The authority furnishing such information shall require the authority in the third country receiving the information to keep confidential any trade, business, commercial or professional secret or any trade process referred to therein.

Article 4a

Export authorisation

Scheduled substances listed in Category 1 of the Annex

1. The exportation of scheduled substances listed in Category 1 of the Annex shall be subject to authorisation in the form of individual export authorisations issued by the competent authorities of the Member State in which the customs export declaration is to be made in accordance with the provisions in force.

[1] Proposal of 14 March 2002 (not yet published in the Official Journal).

[2] OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Regulation (EC) No 1116/2001 (OJ L 153, 8.6.2001, p. 4). The corrected version is in OJ L 215, 9.8.2001, p. 57.

2. Applications for authorisations referred to in paragraph 1 shall contain the following information:

(a) the names and addresses of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also the ultimate consignee;

(b) the name of the scheduled substance as given in Category 1 in the Annex;

(c) the quantity and weight of the scheduled substance and, where a mixture is concerned, the quantity and weight of the mixture as well as the quantity and weight, or the percentage, of any substance listed in the Annex which is contained in the mixture;

(d) details as to the transport arrangements, and in particular the expected date of dispatch, method of transport, name of the customs office where the customs export declaration is to be made and, in so far as such information is available at this stage, identification of the means of transport, itinerary, expected point of exit from Community customs territory and the point of entry into the importing country.

In the cases referred to in paragraph 9, a copy of the import permit issued by the country of destination shall be attached to the application.

3. A decision on the application shall be taken within a period of 15 working days from the date on which the competent authority considers the file to be complete. This period shall be extended if, in the cases referred to in paragraph 9, the competent authorities are obliged to make further enquiries in order to satisfy themselves that the importation of the substances has been properly authorised.

4. Without prejudice to any possible implementation of enforcement measures, the export authorisation referred to in paragraph 1 shall be refused if:

(a) there are reasonable grounds for suspecting that the information supplied in compliance with paragraph 2 is false or incorrect;

(b) in the cases referred to in paragraph 9, it is established that the importation of the scheduled substances has not been properly authorised by the competent authorities of the country of destination;

(c) there are reasonable grounds for suspecting that the substances in question are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

5. If the particulars concerning the itinerary and means of transport were not provided in the application referred to in paragraph 2, the export authorisation shall state that the operator must furnish those particulars to the customs authority or other competent authority at the point of exit from the Community customs territory before the physical departure of the consignment. In such cases the export authorisation shall be annotated accordingly at the time of issue.

6. In all cases, the export authorisation shall be presented to the customs authorities when the customs export declaration is made. A copy of the authorisation shall, furthermore, accompany the consignment to the customs office at the point of exit of the scheduled substances from the Community customs territory. That office shall insert, where appropriate, the particulars referred to in paragraph 5 and any other necessary particulars and affix its stamp to the copy of the authorisation before returning it to the issuing authority.

7. The issue of an export authorisation shall not preclude any possible administrative or other liability of the holder of the authorisation.

8. An export authorisation may be suspended or revoked by the competent authorities whenever there are reasonable grounds for suspecting that the substances might be diverted to the illicit manufacture of narcotic drugs or psychotropic substances.

9. Whenever, under an agreement between the Community and a third country, exports are not to be authorised unless an import permit has been issued by the competent authorities of the latter country for the substances in question, the Commission shall communicate to the competent authorities of the Member States the name and address of the competent authority of the third country, together with any operational information obtained from that country.

The competent authorities in the Member States shall satisfy themselves that any importation has been properly authorised, if necessary by requesting confirmation from the competent authority of the third country.'

3. in Article 5, paragraph 2 shall be replaced by the following:

'2. Articles 4 and 4a shall apply *mutatis mutandis* to exports referred to in paragraph 1 wherever they appear to be intended, directly or indirectly, for any third country which has been identified as being concerned by the illicit manufacture of narcotic drugs or psychotropic substances through the use of the scheduled substances in question. The said identification shall be based, in particular, on a reasoned request to the Commission from the third country concerned.

Article 4a shall also apply whenever an open individual authorisation cannot be issued under paragraph 3.'

4. in Article 5a, paragraph 2 shall be replaced by the following:

'2. Exports of substances referred to in paragraph 1 shall be subject *mutatis mutandis* to the provisions of Articles 4 and 4a wherever, under specific arrangements agreed with the third countries concerned, an export authorisation and a pre-export notification are required for each operation.

Article 4a shall also apply whenever an open individual authorisation cannot be issued in accordance with paragraph 3.'

5. in Article 6, paragraphs 1 and 2 shall be replaced by the following:

'1. In order to ensure the correct application of Article 2 and Articles 4, 4a, 5 and 5a, each Member State shall adopt within the framework of its domestic law the measures necessary to enable the competent authorities:

(a) to obtain information on any orders for or operations involving scheduled substances;

(b) to enter operators' business premises in order to obtain evidence of irregularities.

2. Without prejudice to the provisions laid down in Articles 4, 4a, 5 and 5a and in paragraph 1 of this Article, the competent authorities of each Member State may prohibit the introduction of scheduled substances into Community customs territory or their departure from it, if there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.'

Article 2

This Regulation shall enter into force on the twentieth day following that of 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, 3 June 2002.

For the Council

The President

J. C. APARICIO PÉREZ