

## **Manual of European Environmental Policy**

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# Export and import of dangerous chemicals

<b>Formal references</b>	
Regulation (EC) No <a href="#">689/2008</a> (OJ L204/1 31.7.2008)	Regulation concerning the export and import of certain <a href="#">dangerous chemicals</a>
Proposed 30.11.2006 – <a href="#">COM(2006)745</a>	
<b>Amended by</b>	
Regulation (EU) No <a href="#">15/2010</a> (OJ L 6 9.1.2010)	Regulation amending Annex I
Regulation (EU) No <a href="#">214/2011</a> (OJ L 59 4.3.2011)	Regulation amending Annexes I and V
Regulation (EU) No <a href="#">834/2011</a> (OJ L 215 20.8.2011)	Regulation amending Annex I
<b>Legal base</b>	Articles 207 and 192 TFEU (Articles 133 and 175(1) TEC)
<b>Repeals due to annulment</b>	
Regulation (EC) No <a href="#">304/2003</a> (OJ L63 6.3.2003)	Regulation concerning the export and import of certain dangerous chemicals
Regulation (EC) No <a href="#">775/2004</a> (OJ L123/27 27.4.2004)	Regulation amending Annex I
Regulation (EC) No <a href="#">777/2006</a> (OJ L136/9 24.5.2006)	Regulation amending Annex I
<b>Regulation (EC) No 304/2003 repeals</b>	
Regulation (EEC) No <a href="#">2455/92</a> (OJ L251 29.8.1992)	Regulation concerning the export and import of certain dangerous chemicals
<b>Legal base</b>	Article 192 TFEU (Article 175(1) TEC)
<b>Binding dates</b>	
Entry into force (apart from Article 17(2))	1 August 2008
Article 17(2)	1 November 2008

## Purpose of the Regulation

The purpose of Regulation (EC) No 689/2008 is to implement the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. It promotes shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm and contribute to the environmentally sound use of hazardous chemicals.

## Summary of the Regulation

The Regulation sets common export notification procedures for dangerous chemicals that are banned or severely restricted within the community. Accordingly, dangerous chemicals, whether in the form of substances on their own or in preparations or in articles, which have been banned or severely restricted by the Community as plant protection products, as other

forms of pesticides, or as industrial chemicals for use by professional users or by the public, are subject to export notification rules similar to those applicable to such chemicals when they are banned or severely restricted within either or both of the use categories laid down in the Rotterdam Convention (pesticides or chemicals for industrial use). In addition, the Regulation subjects chemicals under the international PIC under the Rotterdam Convention to the same rules. This export notification procedure applies to Community exports to all third countries, whether or not they are Parties to the Rotterdam Convention or participate in its procedures. Member States are permitted to charge administrative fees, in order to cover their costs in carrying out this procedure.

Under the Regulation, both exporters and importers are obliged to provide information concerning the quantities of chemicals in international trade covered by this Regulation so that the impact and effectiveness of the arrangements laid down therein can be monitored and assessed.

The chemicals covered by the provisions of this Regulation relating to export notification, PIC notification and the PIC procedure are listed in Annex I. The chemicals in Annex I are assignable to one or more of three groups of chemicals, set out as Parts 1, 2 and 3 of Annex I. The chemicals listed in Part 1 of Annex I are subject to the export notification procedure laid down in Article 7, with detailed information being given on the identity of the substance, on the use category and/or subcategory subject to restriction, the type of restriction and, where appropriate, additional information, in particular on exemptions to requirements for export notification. The chemicals listed in Part 2 of Annex I have to, in addition to being subject to the export notification procedure laid down in Article 7, qualify for the PIC notification procedure set out in Article 10, with detailed information being given on the identity of the substance and on the use category. The chemicals listed in Part 3 of Annex I are subject to the PIC procedure with the use category being given and, where appropriate, additional information, in particular on any requirements for export notification.

In January 2010 the Regulation was amended by Regulation (EU) No [15/2010](#), which adds and removes a number of chemicals in Annex I. In March 2011 Annexes I and V were amended by Regulation (EU) No [214/2011](#).

## **Development of the Regulations**

On the initiative of Kenya, the United Nations Environment Programme (UNEP) Governing Council adopted a resolution in 1977 that embodied the concept now known as ‘prior informed consent’<sup>1</sup>. The resolution urged governments ‘to take steps to ensure that potentially harmful chemicals, in whatever form or commodity, which are unacceptable for domestic purposes in the exporting country, are not permitted to be exported without knowledge and consent of appropriate authorities in the importing country’. This concept has subsequently been discussed extensively in meetings of the Organisation for Economic Co-operation and Development (OECD), the United Nations Food and Agriculture Organization (FAO) and of the UNEP where codes and guidelines have been produced.

In 1983, the European Parliament called for legislation on PIC (OJ C 307 14.11.83) but it was not until 1986 that the Commission embodied the concept in a proposal. This was then resisted by several Member States and Regulation (EEC) No [1734/88](#) that was adopted did not require the consent of the importing country, but only that information be supplied. The

Netherlands had in 1987 introduced a system of PIC and was able to secure a Council Resolution (OJ C 170 29.6.88) inviting the Commission to examine the question in greater detail in the light of experience.

In 1989 the UN Governing Council agreed to incorporate PIC into the 'Amended London Guidelines'<sup>2</sup> and the 25th FAO Conference in 1989 formally incorporated PIC into its Code<sup>3</sup> to strengthen its effectiveness. A joint UNEP/FAO working group of experts supervises the scheme and reports to the FAO Council on its implementation. The scheme requires the International Register of Potentially Toxic Chemicals (IRPTC) to send a list of chemicals that are banned or severely restricted in various countries to all countries interested in participating in the PIC scheme. The designated authorities in these countries will be asked if they wish to ban the import of the listed chemicals, accept their imports under certain conditions or accept imports with no conditions. IRPTC will provide 'Decision Guidance Documents'. Over 100 countries have notified IRPTC of their interest in participating.

In 1990 the Commission proposed what became Regulation (EEC) No 2455/92 which represented the first attempt to make the voluntary UNEP/FAO PIC scheme legally binding. Regulation 1734/88 was repealed.

Annex I was amended in 1994 by adding 15 chemicals to the original list of 24. The new list resulted from restrictions made in the EC to pesticides and other substances [Restrictions on marketing and use; Authorization and marketing of plant protection products].

The administrative responsibility for the export/import notifications procedure was transferred to the European Chemicals Bureau at the JRC in Ispra in 1995.

The 1998 Rotterdam Convention on PIC negotiated under the auspices of FAO and UNEP makes the voluntary international scheme mandatory and prompted a further revision of the Regulation. Regulation (EEC) No 304/2003 takes account of The Convention, requiring the implementation of the Rotterdam Convention on PIC procedure for certain hazardous chemicals in international trade; that exports of chemicals banned or severely restricted within the Community are subject to a common notification; that chemicals are exported at least six months before their expiry date; that substances that are banned for use with the Community are banned from export; and requires that exports to countries outside of the Community are packaged and labelled to at least the standard of those placed on the market in the Community.

On 10 January 2006, in a judgment on an action for annulment brought by the Commission, the Court of Justice annulled Regulation (EEC) No 304/2003, ruling that there should have been a dual legal basis including both Articles 133 and 175 (1) of the EC Treaty (Articles 207 and 192 TFEU). The Court however maintained the effects of the Regulation until the adoption, within a reasonable period of time, of a new Regulation founded on appropriate legal bases. This led to Regulation (EC) No 689/2008. This Regulation has an amended legal basis as well as exemptions from the PIC procedure in certain cases to overcome administrative delays in importing countries. Under the new Regulation, a 12-month export approval can be granted as long as the substance in question has already been licensed, registered or authorized in the importing country and no response to a request for consent has been received within 60 days from the country in question. The export must also be approved by the Commission.

## Implementation of the Regulation

Member States were able to comment on problems relating to implementation in their reports made pursuant to Article 21 of the Regulation. According to the proposed Regulation (COM(2006)745), the responses pursuant to the Article 21 reports confirmed the need for a limited number of technical amendments to improve the functioning of the Regulation without changing its objectives and core provisions. One issue has been the difficulty of obtaining consent from the importing country. In around half of the cases to date, despite the efforts made by the Designated National Authorities (DNAs) of the exporting Member States to obtain explicit consent, no response is forthcoming from the importing country, in some cases for many months or even years. As a result, exports cannot proceed, despite the fact that often the substances are not banned or severely restricted in the importing countries. The current system thus causes difficulties for exporters and exporting DNAs without necessarily affording greater protection to importing countries.

In March 2011 a technical guidance note for the implementation of the Regulation was published. The guide includes an article by article review of the Regulation, in which the key requirements of each provision are explained and the relationship between different provisions highlighted. It also outlines the role of the Commission in the day-to-day implementation of the Regulation as well as providing some examples that demonstrate how the requirements of the Regulation work in practice.

## Enforcement and court cases

Apart from the annulment, there have been no relevant European Court of Justice cases for this Regulation.

## Further Developments

In May 2011 the Commission published a Proposal [COM\(2011\)245](#) for a recast of this Regulation. The proposed Regulation would essentially maintain all provisions of the current Regulation. However, the Proposal would change and clarify some definitions and aspects of the consent procedure, would transfer certain tasks to the European Chemicals Agency as well as address changes stemming from the Treaty on the European Union and the Treaty on the Functioning of the European Union (see section on environment in the Treaties).

## References

- 1 Pallemarts, M (2003) *Toxics and Transnational Law*. Hart, Oxford.
- 2 UNEP (1989) *London Guidelines for the Exchange of Information on Chemicals in International Trade (as amended)*. UNEP, Geneva.
- 3 FAO (1990) *The International Code of Conduct on the Distribution and Use of Pesticides (Amended version)*. FAO, Rome.
- 4 CEC (2011) *Technical Guidance Notes for the implementation of Regulation (EC) No 689/2008, (2011/C 65/01)*.