Export and import of hazardous chemicals. Recast

2011/0105(COD) - 10/05/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 563 votes to 16 with 3 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals (recast) .

Parliament adopted its position in first reading following the ordinary legislative procedure bearing in mind the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

The amendments adopted in plenary are the result of a compromise agreement between Parliament and Council. They amend the Commission proposal as follows:

Protection of health and of the environment: the Regulation must contribute to the prevention of harmful effects of chemicals on human health and the environment, particularly with regard to assistance to developing countries and countries with economies in transition to enable those countries to implement the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

Scope: the Regulation shall not apply to chemicals exported for the purpose of research or analysis in quantities that are unlikely to affect human health or the environment and that in any event do not exceed 10 kg from each exporter to each importing country per calendar year. Exporters of the chemicals referred to shall obtain a special reference identification number using the Database on export and import of hazardous chemicals and provide that reference identification number in their export declaration.

Designated national authorities of the Member States: each Member State shall designate the authority or authorities, to carry out the administrative functions required by the Regulation. It shall inform the Commission of such designation within 3 months of entry into force of the Regulation unless that information has been already provided before entry into force of this Regulation, and shall also inform the Commission of any change of designated national authority.

Participation of the Union in the Convention: the amended text stipulates that participation in the Convention shall be a joint responsibility of the Commission and the Member States, in particular as regards technical assistance, the exchange of information and matters relating to dispute settlement, participation in subsidiary bodies and voting.

The Commission shall, in particular, be responsible for the transmission of Union export notifications to Parties and other countries.

Tasks of the European Chemicals Agency: the ECHA will:

- maintain, further develop and regularly update a database on export and import of hazardous chemicals (the ‘Database’);

- where appropriate, provide, with the agreement of the Commission and after consultations with Member States , assistance and technical and scientific guidance and tools for the industry in order to ensure the effective application of the Regulation;

- at the request of Member State or Commission experts of the Chemical Review Committee , and within the available resources, provide input in drafting of decision guidance documents referred to in Article 7 of the Convention and other technical documents related to the implementation of the Convention.

Export notifications forwarded to Parties and other countries: these provisions shall apply regardless of the intended use of the chemical in the importing Party or other country.

When an exporter is due to export a chemical for the first time on or after the date on which it becomes subject to the Regulation, the exporter shall notify the designated national authority of the Member State in which he is established, no later than 35 days before the export of the chemical is due to take place. Thereafter the exporter shall notify that designated national authority of the first export of the chemical each calendar year no later than 35 days before the export takes place. The notifications shall be made available to the Commission and to the Member States by means of the Database.

The designated national authority of the exporter's Member State shall check compliance of the information with Annex II and if the notification is complete forward it to the Agency no later than **25 days** before the expected date of export.

The Agency shall, on behalf of the Commission, transmit the notification to the designated national authority of the importing Party or the appropriate authority of the importing other country and take the measures necessary to ensure that they receive that notification no later than **15 days** before the first intended export of the chemical and thereafter **no later than 15 days** before the first export in any subsequent calendar year.

These obligations shall cease when all of the following conditions are fulfilled:

- the chemical has become a chemical subject to the PIC procedure,

- the importing country is a Party to the Convention and has provided the Secretariat with a response in accordance with Article 10(2) of the Convention indicating whether or not it consents to import of the chemical, and

- the Commission has been informed of that response by the Secretariat and has forwarded that information to the Member States and the Agency.

Member States may establish, in a transparent manner, systems obliging exporters to pay an administrative fee for each export notification made and for each request for explicit consent made, corresponding to the costs they incur in carrying out the procedures.

Export notifications received from Parties and other countries: export notifications received by the Agency from the designated national authorities of Parties or the appropriate authorities of other countries concerning the export to the Union of a chemical the manufacture, use, handling, consumption, transport or sale of which is subject to prohibition or severe restriction under that Party's or other country's legislation shall be made available by means of the Database **within 15 days** of the Agency's receipt of such notification.

Information on export and import of chemicals: at the request of the Commission, assisted by the Agency, or the designated national authority of its Member State, the exporter or importer shall provide any additional information relating to chemicals that is necessary to implement the Regulation.

Obligations in relation to exports of chemicals other than export notification requirements: in the case of chemicals listed in Parts 2 or 3 of Annex I, the designated national authority of the exporter's Member State may, in consultation with the Commission assisted by the Agency, on a case-by-case basis, decide that the export may proceed: (i) if no evidence from official sources of final regulatory action to ban or severely restrict the use of the chemical taken by the importing Party or other country exists and (ii) if, after all reasonable efforts, no response to a request for explicit consent has been received within 60 days and (iii) where one of the following conditions is met:

- there is evidence from official sources in the importing Party or other country that the chemical is licensed, registered or authorised; or

- the intended use declared in the export notification and confirmed in writing by the natural or legal person importing the chemical into a Party or other country, is not in a category for which the chemical is listed in Part 2 or 3 of Annex I, and there is evidence from official sources that the chemical has in the last 5 years been used in or imported into the importing Party or other country concerned.

In the case of chemicals listed in Part 3 of Annex I, an export based on the fulfilment of the condition under point (b) may not proceed if the chemical has been classified in accordance with Regulation (EC) No 1272/2008 as carcinogenic category 1A or 1B, or mutagenic category 1A or 1B, or toxic for reproduction category 1A or 1B or the chemical fulfils the criteria of Annex XIII of the Regulation (EC) No 1907/2006 (REACH) for being persistent, bioaccumulative and toxic or very persistent and very bioaccumulative.

When deciding on the export of chemicals listed in Part 3 of Annex I, the designated national authority of the exporter's Member State shall, in consultation with the Commission assisted by the Agency, consider the possible impact on human health or the environment of the use of the chemical in the importing Party or other country, and submit relevant documentation to the Agency, to be made available by means of the Database.

Information to accompany exported chemicals: chemicals that are intended for export shall be subject to the provisions on packaging and labelling established in, or pursuant to, Regulation (EC) No 1107 /2009, Directive 98/8/EC and Regulation (EC) No 1272/2008, or any other relevant Union legislation.

An amendment states that this provision shall apply unless those provisions would conflict with any specific requirements of the importing Parties or other countries.

Obligations of the authorities of the Member States for controlling import and export: the Commission, supported by the Agency, and the Member States shall act in a targeted and coordinated way in monitoring exporters‘ compliance with the Regulation.

A compilation of the information transmitted shall be prepared every two years by the Agency

Monitoring and reporting: Member States and the Agency shall forward information to the Commission every three years concerning the operation of the procedures provided for in the Regulation. The Commission shall adopt an implementing act laying down in advance a common format for reporting. The Commission shall compile a report every three years on the performance of the functions provided for in the Regulation for which it is responsible.

Delegated acts: the Commission shall be empowered to adopt delegated acts concerning the following measures: (i) inclusion of a chemical in Part 1 or 2 of Annex I and other amendments of Annex I, (ii) inclusion of a chemical that is subject to Part 1 or Part 2 of Annex V; (iii) amendments of Annexes II, III, IV and VI.

Transitional provisions: references in the Regulation to Regulation (EC) No 1272/2008 on classification, labelling and packaging shall be construed in order to avoid any inconsistencies between the timetable of application of that Regulation and this Regulation.