Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast) (Text with EEA relevance)

REGULATION (EU) No 649/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 July 2012

concerning the export and import of hazardous chemicals

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) and Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals[(3)] has been substantially amended several times. Since further amendments are to be made, Regulation (EC) No 689/2008 should be recast in the interest of clarity.

(2) Regulation (EC) No 689/2008 implements the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade[(4)] (the 'Convention'), which entered into force on 24 February 2004, and replaces Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals[(5)].

(3) For reasons of clarity and consistency with other relevant Union legislation, certain definitions should be introduced or clarified and terminology should be aligned with that used in Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency[(6)], on the one hand, and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures[(7)] on the other hand. It is appropriate to ensure that this

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Regulation reflects the transitional provisions of Regulation (EC) No 1272/2008, in order to avoid any inconsistencies between the timetable of application of that Regulation and this Regulation.

(4) The Convention allows Parties the right to take action that is more stringently protective of human health and the environment than that called for in the Convention, provided that such action is consistent with the provisions of the Convention and is in accordance with international law. It is necessary and appropriate, in order to ensure a higher level of protection of the environment and the general public of importing countries, to go further than the provisions of the Convention in certain respects.

(5) As regards the participation of the Union in the Convention, it is essential to have a single contact point for Union interaction with the Secretariat of the Convention (the 'Secretariat') and other Parties to the Convention as well as with other countries. The Commission should act as that contact point.

(6) There is a need to ensure the effective coordination and management of technical and administrative aspects of this Regulation at Union level. The Member States and the European Chemicals Agency established by Regulation (EC) No 1907/2006 (the 'Agency') have the competence and experience in implementing Union legislation on chemicals and international agreements on chemicals. The Member States and the Agency should, therefore, carry out tasks with regard to the administrative, technical and scientific aspects of the implementation of the Convention through this Regulation, as well as the exchange of information. In addition, the Commission, the Member States and the Agency should cooperate in order to implement the Union's international obligations under the Convention effectively.

(7) Given that certain tasks of the Commission should be transferred to the Agency, the European Database on Export and Import of Dangerous Chemicals initially established by the Commission should be further developed and maintained by the Agency.

(8) Exports of hazardous chemicals that are banned or severely restricted within the Union should continue to be subject to a common export notification procedure. Accordingly, hazardous chemicals, whether in the form of substances on their own or in mixtures or in articles, which have been banned or severely restricted by the Union as plant protection products, as other forms of pesticides, or as industrial chemicals for use by professional users or by the public, should be 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 Convention, namely as pesticides or chemicals for industrial use. In addition, chemicals subject to the international prior informed consent (PIC) procedure (the'PIC procedure') should also be subject to the same export notification rules. That common export notification procedure should apply to Union exports to all third countries, whether or not they are Parties to the Convention or participate in its procedures. Member States should be permitted to charge administrative fees, in order to cover their costs in carrying out this procedure.

(9) Exporters and importers should be obliged to provide information concerning the quantities of chemicals in international trade covered by this Regulation so that the

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impact and effectiveness of the arrangements laid down therein can be monitored and assessed.

(10) Notifications to the Secretariat of Union or Member State final regulatory actions banning or severely restricting chemicals, with a view to their inclusion in the PIC procedure, should be submitted by the Commission in cases where the criteria laid down in the Convention in this regard are met. Additional information to support such notifications should be sought where necessary.

(11) In cases where Union or Member State final regulatory actions do not qualify for notification because they do not meet the criteria laid down in the Convention, information concerning the actions should nevertheless be conveyed to the Secretariat and other Parties to the Convention in the interests of exchange of information.

(12) It is also necessary to ensure that the Union takes decisions with regard to the import into the Union of chemicals that are subject to the PIC procedure. These decisions should be based on applicable Union legislation and take into account bans or severe restrictions imposed by Member States. Where justified, amendments to Union legislation should be proposed.

(13) Arrangements are needed to ensure that Member States and exporters are aware of the decisions of importing countries as regards chemicals that are subject to the PIC procedure, and that exporters comply with those decisions. Furthermore, in order to prevent undesired exports, no chemicals banned or severely restricted within the Union that meet the criteria for notification under the Convention or that are subject to the PIC procedure should be exported unless the explicit consent of the importing country concerned has been sought and obtained, whether or not that country is a Party to the Convention. At the same time, an exemption from this obligation is appropriate in relation to exports of certain chemicals to countries that are members of the Organisation for Economic Cooperation and Development (OECD) provided that certain conditions are met. Furthermore, a procedure is needed to deal with cases in which, despite all reasonable efforts, no response is obtained from the importing country, so that exports of certain chemicals may proceed on a temporary basis under specified conditions. It is also necessary to provide for periodic review of all such cases as well as those in which explicit consent is obtained.

(14) It is also important that all chemicals exported have an adequate shelf-life so that they may be used effectively and safely. As regards pesticides, in particular those exported to developing countries, it is essential that information about appropriate storage conditions be provided and that suitable packaging and sizes of containers be used to avoid creating obsolete stocks.

(15) Articles containing chemicals do not fall within the scope of the Convention. Nevertheless, it seems appropriate that articles, as defined in this Regulation, containing chemicals that could be released under certain conditions of use or disposal and that are banned or severely restricted in the Union within one or more of the use categories laid down in the Convention or are subject to the PIC procedure should also be subject to the export notification rules. Furthermore, certain chemicals and articles containing specific

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chemicals falling outside the scope of the Convention but giving rise to particular concern should not be exported at all.

(16) In accordance with the Convention, information on transit movements of chemicals subject to the PIC procedure should be provided to Parties to the Convention who request such information.

(17) Union rules on packaging and labelling and other safety information should apply to all chemicals when intended for export to Parties and other countries unless those provisions would conflict with any specific requirements of those countries, taking into account relevant international standards. Since Regulation (EC) No 1272/2008 established new provisions on classification, labelling and packaging of substances and mixtures, a reference to that Regulation should be included in this Regulation.

(18) In order to ensure effective control and enforcement, Member States should designate authorities such as customs authorities that should have the responsibility of controlling imports and exports of chemicals covered by this Regulation. The Commission, supported by the Agency, and the Member States have a key role to play and should act in a targeted and coordinated way. Member States should provide for appropriate penalties in the event of infringements.

(19) In order to facilitate customs control and to reduce the administrative burden for both exporters and authorities, a system of codes to be used in export declarations should be established. Special codes should also be used, as appropriate, for 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.

(20) Exchange of information, shared responsibility and cooperative efforts between the Union and the Member States and third countries should be promoted with a view to ensuring sound management of chemicals, whether or not those third countries are Parties to the Convention. In particular, technical assistance to developing countries and countries with economies in transition should be provided directly by the Commission and the Member States, or indirectly via support for projects by non-governmental organisations, especially assistance seeking to enable those countries to implement the Convention, thereby contributing to the prevention of harmful effects of chemicals on human health and the environment.

(21) There should be regular monitoring of the operation of the procedures if they are to be effective. To this end, Member States and the Agency should regularly submit reports in standardised form to the Commission, which should in turn regularly report to the European Parliament and the Council.

(22) Technical notes for guidance should be drawn up by the Agency to assist the designated authorities, including such authorities as customs authorities controlling exports, exporters and importers, in the application of this Regulation.

(23) In order to adapt this Regulation to technical progress, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of inclusion of chemicals

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in Part 1 or 2 of Annex I and other amendments to that Annex, inclusion of chemicals in Part 1 or 2 of Annex V and other amendments to that Annex, and amendments to Annexes II, III, IV and VI. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(24) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(8)].

(25) Since the objectives of this Regulation, namely to ensure coherent and effective implementation of the Union's obligations under the Convention, cannot be sufficiently achieved by the Member States and can therefore, by reason of the necessity to harmonise the rules concerning imports and exports of hazardous chemicals, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(26) Regulation (EC) No 689/2008 should be repealed.

(27) It is appropriate to provide for the deferred application of this Regulation so as to allow the Agency sufficient time to prepare for its new role and allowing industry to familiarise itself with the new procedures,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1 The objectives of this Regulation are to:

a implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the 'Convention');

b promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm;

c contribute to the environmentally sound use of hazardous chemicals.

The objectives set out in the first subparagraph shall be achieved by facilitating the exchange of information concerning the characteristics of hazardous chemicals, by providing for a decision-making process within the Union on their import and export and by disseminating decisions to Parties and other countries as appropriate.