

# Export and import of hazardous chemicals.

## Recast

2011/0105(COD) - 05/05/2011 - Legislative proposal

**PURPOSE:** recast of provisions currently in force regarding the import and export of dangerous chemicals.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** [Regulation \(EC\) n° 689/2008](#) concerning the export and import of dangerous chemicals implements the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain hazardous chemicals and pesticides in international trade.

The Rotterdam Convention was adopted in September 1998. It entered into force on 24 February 2004. Its aim is to promote shared responsibility and co-operative efforts among the Parties in the international trade of dangerous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use.

Regulation (EC) n° 689/2008 go beyond those of the Convention and offer more protection to importing countries since they are addressed to all countries and not just Parties to the Convention. The scope of the Regulation is not limited to chemicals that are banned or severely restricted under the Convention but also covers chemicals that are banned or severely restricted at EU level. In addition the Regulation ensures that all chemicals are appropriately packed and labelled when exported.

It is now necessary to align Regulation (EC) No 689/2008 with [Regulation \(EC\) No 1272/2008](#) on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) 1907/2006.

**IMPACT ASSESSMENT:** as the overall impact of the review is expected to be limited, it was not considered imperative to carry out an impact assessment. The main effects of the changes can be summarised as follows:

- there will be more clarity, transparency and increased legal certainty for all parties involved in the implementation of the
- Regulation;
- the proposal will not add any additional administrative burden for exporters or the competent authorities involved in the implementation of the Regulation. On the contrary, with respect to exports that are exempted from export notification the proposed amendments will lead to a reduction of administrative burdens;
- some tasks will be transferred from the Commission to the European Chemicals Agency, which is expected to reduce the overall costs and to increase the scientific knowledge available for implementation;
- the current high level of protection of human health and the environment will be maintained.

**LEGAL BASIS:** in line with the judgment of the Court in case C-178/03 (*Commission v Parliament and Council*), the proposed Regulation will be based on Article 192(1) (relating to Environmental Protection) of the Treaty on the functioning of the European Union and Article 207 (relating to the Common Commercial Policy).

**CONTENT:** the proposed new Regulation would essentially maintain all provisions of the current Regulation, including those that go beyond the requirements of the Convention. However, certain technical amendments are deemed necessary to improve the clarity and functioning of the Regulation. The main changes are as follows:

**Definitions:** bearing in mind Regulation 1272/2008 and the experience gained from the implementation of Regulation (EC) No 689/2008, the proposal makes certain technical amendments to the operative provisions such as clarify the definitions of a substance, a mixture and an article, and the reference identification number required for exports that are not subject to export notification.–

**Explicit consent procedure:** in around 30% of the cases to date, despite the efforts made by the designated national authorities (DNAs) of the exporting Member States and the Commission 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 the substances are often not banned or severely restricted in the importing countries. The proposal makes provision for additional conditions that may allow exports to proceed in the absence of a reply from the importing country whilst not lowering the protection afforded to importing countries. It is proposed to allow the export to proceed if there is documentary evidence from official sources showing that the chemical has been imported or used in the last 5 years and no regulatory action has been taken, if, despite all reasonable efforts by the exporter's DNA, the Agency and the Commission, there is no response from the importing country within 2 months.

**Involvement of the European Chemicals Agency:** in order to support the Commission in its tasks as a common designated authority foreseen under the Regulation, it is proposed to involve the European Chemicals Agency in certain administrative, technical and scientific tasks necessary for the implementation of the Regulation, in particular regarding the management of the European Database on Export and Import of dangerous chemicals.

**Adaptation of provisions to the Lisbon Treaty:** in view of the changes introduced by the Lisbon Treaty, it is necessary to clarify provisions relating to the external representation of the European Union and to adapt the provisions concerning comitology. In particular, it should be specified which rules are subject to implementing acts and clarified which conditions apply to the adoption of delegated acts.

**FINANCIAL IMPLICATIONS:** the proposal is not expected to have important budgetary implications since no new tasks were introduced compared to Regulation (EC) 689/2008. The transfer of certain tasks from the Commission to the European Chemicals Agency is expected to reduce the overall costs of implementation. Further reductions may be achieved in a long-term perspective considering the potential for synergies with other tasks of the Agency. The financing of the tasks carried out by the European Chemicals Agency will be provided in form of a subsidy from the Union budget.

**DELEGATED ACTS:** the proposal contains certain provisions conferring on the Commission the power to adopt delegated acts in accordance with Article 290 of the TFEU.