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Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances

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COUNCIL REGULATION (EEC) No 3677/90 of 13 December 1990 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 COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas on 19 December 1988 a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in Vienna, hereinafter referred to as the "United Nations Convention" ; whereas the United Nations Convention is part of the world-wide efforts to combat drugs ; whereas the Community participated in the negotiation of that Convention, showing its political will to act within the limits of its competences;

Whereas the United Nations Convention contains an Article 12 concerning trade in precursors, i.e. substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances ; whereas the implementation of this Article represents a contribution by industrialized countries to the effort requested from drug-producing countries, which are generally much poorer than the former ; whereas the provisions on trade in such precursors affect the Community rules in customs matters ; whereas, on this basis, the United Nations Convention was signed on behalf of the Community on 8 June 1989 ;

whereas, on this basis, the Council decided on 22 October 1990 to conclude the United Nations Convention ; whereas it is thus appropriate, in order to concretize this political will, to lay down Community rules on trade between the Community and third countries;

Whereas the provisions of Article 12 of the United Nations Convention are based on a system monitoring trade in the substances in question ; whereas most of the trade in these substances is fully legitimate ; whereas documentation and possible labelling as regards consignments of these substances have to be sufficiently clear ; whereas it is furthermore important, whilst providing competent authorities with the necessary means of action, to develop, in compliance with the spirit of the United Nations Convention, mechanisms which are based on close cooperation with the economic operators concerned as well as on the development of intelligence gathering;

Whereas a system of pre-notification of consignments of certain substances providing, under certain conditions, for the operations in question to be forbidden, appears most appropriate to the situation ; whereas several countries have already obtained very positive results favouring this approach;

Whereas the competent authorities of Member States should have comparable means of action ; whereas it is indispensable, therefore, to establish common objectives in the matter at Community level ; whereas this aspect is essential with the completion of the internal market in prospect and in order to ensure the homogeneous application of the rules established ; whereas it is also important, in this context, that each Member State provide for sufficiently dissuasive penalties;

Whereas machinery for administrative cooperation should be provided for both within the Community and with third countries which are also Parties to the Convention ; whereas it is

advisable in this respect, as far as the competent authorities in the Community are concerned, to take as a basis Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (1), as amended by Regulation (EEC) No 945/87 (2) ; whereas particular attention has to be paid to the confidentiality of information received or exchanged;

Whereas, in the spirit of the United Nations Convention, the Community should contribute to efforts to combat drug trafficking by producer countries ; whereas, in this connection, special machinery should be introduced for (1) OJ No L 144, 2.6.1981, p. 1. (2) OJ No L 90, 2.4.1987, p. 3. monitoring the products listed in Table II of the Annex where they are the subject of trade with those countries, despite the fact that in general these products give rise to much lawful trade ; whereas the cooperation of the countries concerned should be sought to ensure better monitoring of such trade;

Whereas, in order to examine possible problems concerning the application of this Regulation and to enhance its implementation and the development of administrative cooperation in the matter, it is desirable to provide that the Commission should organize specific meetings,

HAS ADOPTED THIS REGULATION:

TITLE I GENERAL

Article 1

1. This Regulation lays down the measures to be taken to monitor trade between the Community and third countries in substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances for the purpose of preventing the diversion of such substances.

2. For the purposes of this Regulation: (a) "scheduled substance" means any substance listed in the Annex, including mixtures containing such substances. This excludes pharmaceutical preparations or other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means;

(b) "import" means any physical introduction of scheduled substances into the customs territory of the Community;

(c) "export" means any physical departure of scheduled substances from the customs territory of the Community which requires a customs export declaration;

(d) "transit" means any transport of scheduled substances between third countries through the customs territory of the Community and any transshipment in that territory;

(e) "operator" means any natural or legal person engaged in the manufacture, production, trade or distribution of scheduled substances in the Community or involved in other related activities such as import, export, transit, broking and processing of scheduled substances. This definition includes, in particular, persons pursuing the activity of making customs declarations on a self-employed basis, either as their principal occupation or as a secondary activity related to another occupation;

(f) "International Narcotics Control Board" means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.

TITLE II MONITORING OF TRADE

Article 2

Documentation, records and labelling

The import, export and transit of scheduled substances are subject to the following requirements: 1. All import, export and transit operations shall be properly documented. In particular, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall contain sufficient information positively to identify: - the name of the scheduled substance as given in the Annex,
- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of any substance or substances listed in the Annex,
- the name and address of the exporter, the importer, the distributor and, if known the ultimate consignee.

2. Where operators affix labels indicating the type of product or its trade name to scheduled substances in import, export or transit operations, such labels must show the names of the substances as given in the Annex.

3. Operators involved in import, export and transit of scheduled substances shall keep detailed records of those activities.

4. The documents and records referred to in points 1 and 3 shall be kept for a period of not less than two years from the end of the calendar year in which the operation referred to in point 1 took place, and must be readily available for inspection by the competent authorities upon request.

Article 3

Notification

The Member States shall take the necessary measures to establish close cooperation between the competent authorities and operators, so that operators notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving scheduled substances, which suggest that such substances intended for import or export may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

Article 4

Pre-export notification Substances listed in Table I of the Annex

1. Full particulars relating to exports of scheduled substances listed in Table I of the Annex must be supplied in advance to the competent authorities of the Member State in which the customs export formalities are to be completed. In addition to the obligations which arise for them under Article 3, the operators concerned must ensure that those authorities have actually received the particulars in question at least 15 working days before any customs export declaration is lodged.

The competent authorities shall immediately confirm receipt of the particulars referred to in the preceding subparagraph.

2. The particulars referred to in paragraph 1 must contain the following information: - the name and address of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also of the ultimate consignee if at all known to the operator concerned,

- the name of the scheduled substances as given in Table I in the Annex,

- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of any substance or substances listed in the Annex,

- details of the shipment such as expected date of dispatch, name of the customs office where

the customs export formalities will be carried out, transport arrangements and, where known, itinerary, expected point of exit from Community customs territory and, possibly, point of entry into the importing country.

3. Without prejudice to any possible implementation of technical repressive measures, if there are reasonable grounds for suspecting that scheduled substances listed in Table I of the Annex are intended for the illicit manufacture of narcotic drugs or psychotropic substances, the export of such substances shall be forbidden, by written order from the competent authorities, confirmation of receipt of which must be duly provided.

4. A decision must be taken on the particulars supplied by the operators within the period of 15 working days laid down in paragraph 1, where appropriate by issuing an export permit. Export shall be authorized: - where, within the said period, there has not been any decision to extend it, any request for further information or any order pursuant to paragraph 3, or - on presentation of a formal export permit, where the competent authority makes provision for the issue of such a document.

In all cases, the confirmation of receipt referred to in paragraph 1 or the export permit, where the competent authority makes provision for the issue of such a permit, must be produced for inspection by the customs authorities when the customs export declaration is lodged.

5. With regard to requests for pre-export notification addressed to the Community by a third country pursuant to Article 12 (10) of the United Nations Convention: (a) the Commission shall immediately communicate to the competent authorities of the Member States any such request received;

(b) the competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the requesting country, supply the information specified in paragraph 2 to the competent authorities of that country. A copy of this reply shall be communicated to the Commission for circulation to the other Member States;

(c) the authority furnishing such information may require that the authority in the third country receiving the information ensures the confidentiality of any trade, industrial, commercial or professional secret or any trade process referred to therein.

Article 5

Specific export machinery Substances listed in Table II of the Annex

For the purposes of supplementing the arrangements for monitoring international trade in scheduled substances between the Community and third countries, Article 4 shall apply *mutatis mutandis* to exports of scheduled substances listed in Table II of the Annex wherever they appear to be intended, directly or indirectly, for any country which has informed the Commission, that it wishes to be notified in advance of any shipment to it of the said products because they might be used for the illicit manufacture of narcotic drugs or psychotropic substances in its territory.

TITLE III CONTROL MEASURES

Article 6

Legal powers of competent authorities

1. In order to ensure the correct application of Articles 2, 4 and 5, each Member State shall adopt within the frame-work 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 measures laid down in Article 4 (3), Article 5 and paragraph 1 of this Article the customs authorities or other competent authorities of each Member State may prohibit the introduction of scheduled substances into Community 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.

TITLE IV ADMINISTRATIVE COOPERATION

Article 7

For the purposes of applying this Regulation and without prejudice to Article 10, the provisions of Regulation (EEC) No 1468/81 and in particular those on confidentiality shall apply *mutatis mutandis*. Each Member State shall communicate to the other Member States and to the Commission the name of the competent authorities appointed to act as correspondents in accordance with Article 2 (2) of Regulation (EEC) No 1468/81.

TITLE V FINAL PROVISIONS

Article 8

Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

Article 9

1. To permit any necessary adjustments to the arrangements for monitoring trade in scheduled substances between the Community and third countries, the competent authorities in each Member State shall each year communicate to the Commission all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture.

2. On the basis of the communications made pursuant to paragraph 1, the Commission shall, pursuant to Article 12 (12) of the United Nations Convention and in consultation with the Member States, draw up an annual report to be submitted to the International Narcotics Control Board.

Article 10

The Commission shall organize meetings with the representatives of the Member States in order to examine any questions concerning the application of this Regulation raised either on its own initiative or at the request of a Member State.

Article 11

Each Member State shall inform the Commission of the measures it takes pursuant to this Regulation.

The Commission shall communicate this information to the other Member States.

Article 12

This Regulation shall enter into force on 1 January 1991.

It shall apply from 1 July 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 December 1990.

For the Council

The President

P. ROMITA

ANNEX

TABLE I

- Ephedrine,
- Ergometrine,
- Ergotamine,
- Lysergic acid,
- 1-phenyl-2-propanone,
- Pseudoephedrine.

The salts of the substances listed in this table whenever the existence of such salts is possible.

TABLE II

- Acetic anhydride,
- Acetone,
- Anthranilic acid,
- Ethyl ether,
- Phenylacetic acid,
- Piperidine.

The salts of the substances listed in this table whenever the existence of such salts is possible.