►**B**

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

(OJ L 357, 20.12.1990, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EEC) No 900/92 of 31 March 1992	L 96	1	10.4.1992
►**M2**	Commission Regulation (EEC) No 3769/92 of 21 December 1992	L 383	17	29.12.1992
►**M3**	Commission Regulation (EC) No 260/2001 of 8 February 2001	L 39	11	9.2.2001
►**M4**	►**C2** Council Regulation (EC) No 1116/2001 of 5 June 2001 ◄	L 153	4	8.6.2001
►**M5**	Council Regulation (EC) No 988/2002 of 3 June 2002	L 151	1	11.6.2002

Corrected by:

►**C1** Corrigendum, OJ L 176, 30.6.1992, p. 68 (900/92)

►**C2** Corrigendum, OJ L 215, 9.8.2001, p. 57 (1116/2001)

▼B

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;

▼B

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 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:

▼M4
▼C2

(a) ‘scheduled substance’ means any substance listed in the Annex, including mixtures and natural products containing such substances. This excludes medicines, pharmaceutical preparations, mixtures, natural products 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 or economically viable means;

▼B

(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 transhipment 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

[1] OJ No L 144, 2. 6. 1981, p. 1.
[2] OJ No L 90, 2. 4. 1987, p. 3.

▼B

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;

▼M1

(f) 'ultimate consignee' means any natural or legal person to which the scheduled substances are delivered in the country of destination. This person may be different from the end-user;

▼B

►M1 (g) ◄ '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,

▼M1

   — the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of the mixture as well as the quantity and weight or the percentage of any substance or substances listed in the Annex which are contained in the mixture,

▼M5

   — the names and addresses of the exporter, the importer, the distributor and, in accordance with Articles 4, 4a, 5 and 5a, the ultimate consignee.

▼B

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.

▼M1

4. The documents and records referred to in points 1 and 3 shall be kept for a period of three 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 2a

Licensing and registration of operators

1. Operators, other than customs agents, warehouse depositors and transporters when acting solely in that capacity, engaged in the import, export or transit of scheduled substances listed in Category 1 of the Annex shall be required to obtain a licence from the Member State in which they are established to qualify for this activity. In considering whether to grant a licence, the competent authority shall take into account the competence and integrity of the applicant.

The licence may be suspended or revoked by the competent authorities whenever there are reasonable grounds for belief that the holder is no longer a fit and proper person to hold a licence, or that the conditions under which the licence was issued are no longer fulfilled.

▼M1

2. Operators, other than customs agents, warehouse depositors and transporters when acting solely in that capacity, engaged in the import, export or transit of scheduled substances listed in Category 2 or the export of scheduled substances listed in Category 3 of the Annex are required to register and update with the competent authorities the addresses of the premises from which they manufacture or trade in these substances.

However, this requirement shall not apply in respect of operators engaged in the export of small quantities of scheduled substances listed in Category 3 or the export of mixtures containing scheduled substances listed in Category 3 which have been identified to that end.

3. The Member States shall determine the procedures for issuing licences, including the attachment of specific conditions, such as the length of their validity and the charging of fees for their issue.

Article 3

Cooperation

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 inteded for import, export or transit may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances,

— provide the competent authorities in summary form such information about their export transactions as the competent authorities may require.

▼M4
▼C2

Article 3a

Guidelines

1. In order to facilitate cooperation between the authorities of the Member States and the chemical industry in particular as regards non-scheduled substances commonly used in the illicit manufacture of narcotic drugs and psychotropic substances, the Commission shall, acting in accordance with the management procedure referred to in Article 10(2), draw up and update guidelines to assist the chemical industry.

2. The guidelines shall provide, in particular:

(a) information on how to recognise and notify suspect transactions;

(b) a regularly updated list of non-scheduled substances commonly used in the illicit manufacture of narcotic drugs and psychotropic substances, to enable the industry to monitor on a voluntary basis the trade in such substances;

(c) other information which may be deemed useful.

3. The Member States shall ensure that the guidelines and the list referred to in paragraph 2(b) are regularly disseminated in a manner deemed appropriate by the competent authorities in line with the objectives of the guidelines.

▼M5

Article 4

Pre-export notificationScheduled substances listed in Category 1 of the Annex

1. Any exportation of scheduled substances listed in Category 1 of the Annex shall be preceded by pre-export notification sent to the country of destination in accordance with the provisions of Article 12(10) of the United Nations Convention against Illicit Traffic in

▼M5

Narcotic Drugs and Psychotropic Substances of 19 December 1988, and with Resolution 20/4 of the 1998 Special Session on drugs of the United Nations General Assembly.

The country of destination shall be allowed a period of time in which to reply of up to 15 working days, at the end of which the export operation shall be authorised by the competent authorities of the Member State of export, unless advice to the contrary is received.

2. The competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the country of destination, supply the information specified in Article 4a(2) to the competent authorities of that country.

The authority furnishing such information shall require the authority in the third country receiving the information to keep confidential any trade, business, commercial or professional secret or any trade process referred to therein.

Article 4a

Export authorisationScheduled substances listed in Category 1 of the Annex

1. The exportation of scheduled substances listed in Category 1 of the Annex shall be subject to authorisation in the form of individual export authorisations issued by the competent authorities of the Member State in which the customs export declaration is to be made in accordance with the provisions in force.

2. Applications for authorisations referred to in paragraph 1 shall contain the following information:

(a) the names and addresses of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also the ultimate consignee;

(b) the name of the scheduled substance as given in Category 1 in the Annex;

(c) the quantity and weight of the scheduled substance and, where a mixture is concerned, the quantity and weight of the mixture as well as the quantity and weight, or the percentage, of any substance listed in the Annex which is contained in the mixture;

(d) details as to the transport arrangements, and in particular the expected date of dispatch, method of transport, name of the customs office where the customs export declaration is to be made and, in so far as such information is available at this stage, identification of the means of transport, itinerary, expected point of exit from Community customs territory and the point of entry into the importing country.

In the cases referred to in paragraph 9, a copy of the import permit issued by the country of destination shall be attached to the application.

3. A decision on the application shall be taken within a period of 15 working days from the date on which the competent authority considers the file to be complete. This period shall be extended if, in the cases referred to in paragraph 9, the competent authorities are obliged to make further enquiries in order to satisfy themselves that the importation of the substances has been properly authorised.

4. Without prejudice to any possible implementation of enforcement measures, the export authorisation referred to in paragraph 1 shall be refused if:

(a) there are reasonable grounds for suspecting that the information supplied in compliance with paragraph 2 is false or incorrect;

(b) in the cases referred to in paragraph 9, it is established that the importation of the scheduled substances has not been properly authorised by the competent authorities of the country of destination;

▼M5

(c) there are reasonable grounds for suspecting that the substances in question are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

5. If the particulars concerning the itinerary and means of transport were not provided in the application referred to in paragraph 2, the export authorisation shall state that the operator must furnish those particulars to the customs authority or other competent authority at the point of exit from the Community customs territory before the physical departure of the consignment. In such cases the export authorisation shall be annotated accordingly at the time of issue.

6. In all cases, the export authorisation shall be presented to the customs authorities when the customs export declaration is made. A copy of the authorisation shall, furthermore, accompany the consignment to the customs office at the point of exit of the scheduled substances from the Community customs territory. That office shall insert, where appropriate, the particulars referred to in paragraph 5 and any other necessary particulars and affix its stamp to the copy of the authorisation before returning it to the issuing authority.

7. The issue of an export authorisation shall not preclude any possible administrative or other liability of the holder of the authorisation.

8. An export authorisation may be suspended or revoked by the competent authorities whenever there are reasonable grounds for suspecting that the substances might be diverted to the illicit manufacture of narcotic drugs or psychotropic substances.

9. Whenever, under an agreement between the Community and a third country, exports are not to be authorised unless an import permit has been issued by the competent authorities of the latter country for the substances in question, the Commission shall communicate to the competent authorities of the Member States the name and address of the competent authority of the third country, together with any operational information obtained from that country.

The competent authorities in the Member States shall satisfy themselves that any importation has been properly authorised, if necessary by requesting confirmation from the competent authority of the third country.

▼M1

Article 5

Specific export requirements

Scheduled substances listed in Category 2 of the Annex

1. The exportation of scheduled substances listed in Category 2 of the Annex shall be subject to an authorization issued in accordance with paragraphs 2 and 3 by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

▼M5

2. Articles 4 and 4a shall apply *mutatis mutandis* to exports referred to in paragraph 1 wherever they appear to be intended, directly or indirectly, for any third country which has been identified as being concerned by the illicit manufacture of narcotic drugs or psychotropic substances through the use of the scheduled substances in question. The said identification shall be based, in particular, on a reasoned request to the Commission from the third country concerned.

Article 4a shall also apply whenever an open individual authorisation cannot be issued under paragraph 3.

▼M1

3. In all other cases, the exportation of scheduled substances listed in Category 2 may be authorized at the request of the operators concerned on a global basis by the issue of an open individual authorization. The decision to issue such an authorization shall take into

▼M1

account the competence and integrity of the applicant together with the nature, volume and pattern of his involvement in these substances. In such cases, the holder shall enter the details of this authorization in the relevant customs export declaration.

In accordance with the provisions laid down by the competent authorities, the holder of such an authorization shall furnish information in a summary form about exports made under the authority of the authorization.

The open individual authorization may be suspended or revoked whenever there are reasonable grounds for belief that its holder is not longer a fit and proper person to hold an authorization, or that the conditions under which the authorization was issued are no longer valid.

Article 5a

Specific export requirements

Scheduled substances listed in Category 3 of the Annex

1. Wherever the export of scheduled substances listed in Category 3 of the Annex is intended, directly or indirectly, for any third country:

(a) with which the Community has concluded an agreement whereby no export from the Community to that country shall be authorized unless the competent authorities of the country have issued an import permit in respect of the consignment in question; or

(b) which has been identified as a country concerned by the illicit manufacture of heroin or cocaine on its territory or as a sensitive country as regards the possible diversion of the said substances,

such export shall be subject to an authorization issued in accordance with paragraphs 2 and 3 by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

▼M5

2. Exports of substances referred to in paragraph 1 shall be subject *mutatis mutandis* to the provisions of Articles 4 and 4a wherever, under specific arrangements agreed with the third countries concerned, an export authorisation and a pre-export notification are required for each operation.

Article 4a shall also apply whenever an open individual authorisation cannot be issued in accordance with paragraph 3.

▼M1

3. In appropriate circumstances, the exportation of substances in Category 3 may be authorized on a global basis by the issue of an open individual authorization. The decision to issue, suspend or revoke such authorizations shall be taken by the application *mutatis mutandis* of Article 5 (3).

In addition, it shall be a condition of the issue of such authorizations that, for control purposes, the holder shall retain for inspection by the competent authorities of the Member State from which the export has taken place, where appropriate and in respect of each export, a copy of the import permit issued by the authorities of the third country. In cases of doubt, the competent authorities of the third country. In cases of doubt, the competent authorities of the Member State of exportation may contact the authorities which have issued the import permit.

▼B

TITLE III

CONTROL MEASURES

▼M1

Article 6

Powers of competent authorities

▼M5

1. In order to ensure the correct application of Article 2 and Articles 4, 4a, 5 and 5a, each Member State shall adopt within the framework 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 provisions laid down in Articles 4, 4a, 5 and 5a and in paragraph 1 of this Article, the competent authorities of each Member State may prohibit the introduction of scheduled substances into Community customs 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.

▼M1

3. For the purpose of preventing specific risks of diversion in free zones as well as in other sensitive areas such as bonded warehouses, Member States shall ensure that controls applied to operations carried out in these areas are effective at every stage of these operations and not less stringent than those applied in the other parts of the customs territory.

▼B

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.

▼B

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.

▼M4
▼C2

Article 9a

The measures necessary for the implementation of this Regulation relating to the matters referred to below shall be adopted in accordance with the management procedure referred to in Article 10(2):

(a) the determination of the quantities of the scheduled substances listed in Category 3 and the identification of mixtures containing scheduled substances listed in Category 3 pursuant to the second subparagraph of Article 2a(2);

(b) the identification of countries and substances pursuant to Article 5(2);

(c) the adoption of export authorisation requirements pursuant to Article 5a(1)(b) whenever there is no agreement with the third country in question;

(d) the adoption of the model export authorisation form referred to in Article 4, as well as the detailed rules concerning its use and the detailed rules for implementation of the open individual authorisation system referred to in Articles 5 and 5a;

(e) the amendment of the Annex to this Regulation in cases where the tables in the Annex to the United Nations Convention are themselves amended.

Article 10

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC [1] shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The committee shall adopt its rules of procedure.

▼B

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.

▼M1

Article 11a

The Commission is hereby authorized to adopt a position, on behalf of the Community, in favour of amendments to Tables I and II of the Annex to the United Nations Convention which conform to the Annex to this Regulation.

▼B

Article 12

This Regulation shall enter into force on 1 January 1991.

It shall apply from 1 July 1991.

[1] OJ L 184, 17.7.1999, p. 23.

▼B

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

▼**M3**

ANNEX

CATEGORY 1 (1)

Substance	CN designation (if different)	CN code (2)
1-Phenyl-2-propanone	Phenylacetone	2914 31 00
N-acetylanthranilic acid	2-Acetamidobenzoic acid	2924 22 00
Isosafrol (cis + trans)		2932 91 00
3,4-Methylenedioxyphenyl-propane-2-one	1-(1,3-Benzodioxol-5-yl)propan-2-one	2932 92 00
Piperonal		2932 93 00
Safrole		2932 94 00
Ephedrine		2939 41 00
Pseudoephedrine		2939 42 00
Norephedrine		ex 2939 49 00
Ergometrine		2939 61 00
Ergotamine		2939 62 00
Lysergic acid		2939 63 00

(1) The salts of the substances listed in this category whenever the existence of such salts is possible.
(2) OJ L 278, 28.10.1999, p. 1.

CATEGORY 2 (1)

Substance	CN designation (if different)	CN code (2)
Acetic anhydride		2915 24 00
Phenylacetic acid		2916 34 00
Anthranilic acid		2922 43 00
Piperidine		2933 32 00

(1) The salts of the substances listed in this category whenever the existence of such salts is possible.
(2) OJ L 278 du 28.10.1999, p. 1.

CATEGORY 3

Substance	CN designation (if different)	CN code (1)
Hydrochloric acid	Hydrogen chloride	2806 10 00
Sulphuric acid		2807 00 10
Potassium permanganate (*)		2841 61 00
Toluene (*)		2902 30 10 (90)
Ethyl ether (*)	Diethyl ether	2909 11 00
Acetone (*)		2914 11 00
Methylethylketone (MEK) (*)	Butanone	2914 12 00

(*) The salts of these substances whenever the existence of such salts is possible.
(1) OJ L 278 du 28.10.1999, p. 1.