



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.2.2008
COM(2008) 89 final

2008/0034 (ACC)

Proposal for a

COUNCIL REGULATION

establishing common rules for exports

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EEC) No 2603/69 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Regulation.

↓ 2603/69 (adapted)

2008/0034 (ACC)

Proposal for a

COUNCIL REGULATION

establishing common rules for exports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the instruments establishing common organisation of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 308 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principles that quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments,

Having regard to the proposal from the Commission,

Whereas:

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- (1) Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports¹ has been substantially amended several times². In the interests of clarity and rationality the said Regulation should be codified.

↓ 2603/69 Recital 1 (adapted)

- (2) The common commercial policy must be based on uniform principles, inter alia, as regards exports.

¹ OJ L 324, 27.12.1969, p. 25. Regulation last amended by Regulation (EEC) No 3918/91 (OJ L 372, 31.12.1991, p. 31).

² See Annex II.

↓ 2603/69 Recital 2 (adapted)

- (3) Common rules should therefore be established for exports from the Community .
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↓ 2603/69 Recital 3

- (4) Exports are almost completely liberalised in all the Member States. It is therefore possible to accept as a Community principle that exports to third countries are not subject to any quantitative restriction, subject to the exceptions provided for in this Regulation and without prejudice to such measures as Member States may take in conformity with the Treaty.
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↓ 2603/69 Recital 4

- (5) The Commission must be informed if, as a result of unusual developments on the market, a Member State considers that protective measures might be necessary.
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↓ 2603/69 Recital 5

- (6) It is essential that examination should take place at Community level, in particular on the basis of any such information and within an advisory committee, of export terms and conditions, of export trends, of the various aspects of the economic and commercial situation, and of the measures, if any, to be taken.
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↓ 2603/69 Recital 6

- (7) It may become apparent from this examination that the Community should exercise surveillance over certain exports, or that interim protective measures should be introduced as a safeguard against unforeseen practices. The need for rapid and effective action makes it justifiable for the Commission to be empowered to decide upon such measures, but without prejudice to the subsequent position of the Council, whose responsibility it is to adopt a policy consistent with the interests of the Community.
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↓ 2603/69 Recital 7

- (8) Any protective measures necessitated by the interests of the Community should be adopted with due regard for existing international obligations.

↓ 2603/69 Recital 8

- (9) It is desirable that Member States be empowered, in certain circumstances and provided that their actions are on an interim basis only, to take protective measures individually.

↓ 2603/69 Recital 9

- (10) It is desirable that while such protective measures are in operation there should be an opportunity for consultation for the purpose of examining the effects of the measures and of ascertaining whether the conditions for their application are still satisfied.

↓ 3918/91 Recital 6

- (11) It is necessary to authorise Member States which are bound by international commitments setting up, in cases of actual or potential supply difficulties, a system for the allocation of oil products between contracting parties to comply with the resulting obligations *vis-à-vis* third countries, without prejudice to Community provisions adopted to the same end. This authorisation should apply until the adoption by the Council of appropriate measures pursuant to commitments entered into by the Community or all the Member States.

↓ 2603/69 Recital 11 (adapted)

- (12) This Regulation is to apply to all products, whether industrial or agricultural. Its operation should be complementary to that of the instruments establishing common organisation of agricultural markets, and to that of the special instruments adopted under Article 308 of the Treaty for processed agricultural products. Any overlap between the provisions of this Regulation and the provisions of these instruments, particularly the protective clauses thereof, must however be avoided,

↓ 2603/69

HAS ADOPTED THIS REGULATION:

↓ 2603/69 (adapted)

⊠ CHAPTER ⊠ I

↓ 2603/69

Basic principle

Article 1

The exportation of products from the European Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation.

↓ 2603/69 (adapted)

⊠ CHAPTER ⊠ II

↓ 2603/69

Community information and consultation procedure

↓ 2603/69 (adapted)

Article 2

If, as a result of any unusual developments on the market, a Member State considers that protective measures within the meaning of ⊠ Chapter ⊠ III might be necessary, it shall so notify the Commission, which shall advise the other Member States.

Article 3

1. Consultations shall take place within an advisory committee (hereinafter called “the Committee”), which shall consist of representatives of each Member State with a representative of the Commission as Chairman.
2. The Committee shall meet when convened by its Chairman. He shall provide all the Member States, as promptly as possible, with all relevant information.

Article 4

1. Consultations may be held at any time, either at the request of a Member State or on the initiative of the Commission.
2. Consultations shall take place within four working days following receipt by the Commission of the notification provided for in Article 2, and in all cases before the introduction of any measure pursuant to Articles 5 to 7.
3. Consultation shall in particular cover:
 - (a) terms and conditions of export, export trends, and the various aspects of the economic and commercial situation as regards the product in question;
 - (b) the measures, if any, to be adopted.

Article 5

For the purpose of assessing the economic and commercial situation as regards a particular product, the Commission may request Member States to supply statistical data on market trends in that product and, to this end, acting in accordance with their national legislation and with a procedure to be specified by the Commission, to exercise surveillance over exports of such product. Member States shall take whatever steps are necessary in order to give effect to requests from the Commission and shall forward to the Commission the data requested. The Commission shall inform the other Member States.

⊠ CHAPTER ⊠ III

Protective measures

Article 6

1. In order to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation, and where Community interests call for immediate intervention, the Commission, acting at the request of a Member State or on its own initiative, and taking account of the nature of the products and of the other particular features of the transactions in question, may make the export of a product subject to the production of an export authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down pending subsequent action by the Council under Article 7.
2. The Council and the Member States shall be notified of the measures taken. Such measures shall take effect immediately.
3. The measures may be limited to exports to certain countries or to exports from certain regions of the Community. They shall not affect products already on their way to the Community frontier.
4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such request. Should the Commission refuse to give effect to the request, it shall forthwith communicate its decision to the Council, which may, acting by a qualified majority, decide differently.
5. Any Member State may, within twelve working days of the day of their communication to the Member States, refer the measures taken to the Council. The Council may, acting by a qualified majority, decide that different action be taken.
6. Where the Commission has acted pursuant to paragraph 1, it shall, not later than twelve working days following the entry into force of the measure which it has taken, make a proposal to the Council on appropriate measures as provided for in Article 7. If, at the end of six weeks following the entry into force of the measure, taken by the Commission, the Council has taken no decision on this proposal, the measure in question shall be deemed revoked.

Article 7

1. Where the interests of the Community so require, the Council may, acting by a qualified majority on a proposal from the Commission, adopt appropriate measures:

↓ 2603/69 (adapted)

⊗ (a) ⊗ to prevent a critical situation from arising owing to a shortage of essential products, or to remedy such a situation.

⊗ (b) ⊗ to allow international undertakings entered into by the Community or all the Member States to be fulfilled, in particular those relating to trade in primary products.

2. ⊗ The measures referred to in paragraph 1 ⊗ may be limited to exports to certain countries or to exports from certain regions of the Community. They shall not affect products already on their way to the Community frontier.

3. When quantitative restrictions on exports are introduced, account shall be taken in particular of:

⊗ (a) ⊗ the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a protective measure within the meaning of this ⊗ Chapter ⊗ and notified by the Member State concerned to the Commission in conformity with its national laws; and

⊗ (b) ⊗ the need to avoid jeopardising achievement of the aim pursued in introducing quantitative restrictions.

↓ 2603/69 Art. 9

Article 8

↓ 2603/69 (adapted)

1. While any measure referred to in Articles 6 ⊗ and 7 ⊗ is in operation, consultations within the Committee shall be held, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be:

↓ 2603/69

(a) to examine the effects of the measures

(b) to ascertain whether the conditions for its application are satisfied.

2. Where the Commission considers that any measure provided for in Article 6 or in Article 7 should be revoked or amended, it shall proceed as follows:

- (a) where the Council has taken no decision on a measure taken by the Commission, the latter shall amend or revoke such measure forthwith and shall immediately deliver a report to the Council;
- (b) in all other cases, the Commission shall propose to the Council that the measures adopted by the Council be revoked or amended. The Council shall act by a qualified majority.

↓ 2603/69 (adapted)

CHAPTER IV

↓ 2603/69

Transitional and final provisions

↓ 3918/91 Art. 1 pt. 1 (adapted)

Article 9

In respect of products listed in Annex I , until such time as the Council adopts appropriate measures pursuant to international commitments entered into by the Community or all its Member States, Member States shall be authorised to implement, without prejudice to rules adopted by the Community in this field, the emergency sharing system introducing an allocation obligation *vis-à-vis* third countries provided for in international commitments entered into before the entry into force of this Regulation.

Member States shall inform the Commission of measures they intend to adopt. The measures adopted shall be communicated by the Commission to the Council and other Member States.

↓ 2603/69 Art. 11

Article 10

Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of

humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

↓ 2603/69 Art. 12 (adapted)

Article 11

This Regulation shall be without prejudice to the operation of the instruments establishing common organisation of agricultural markets; or of the special instruments adopted under Article ~~308~~ of the Treaty for processed agricultural products; it shall operate by way of complement to those instruments.

However, in the case of products covered by such instruments, the provisions of Article 6 shall not apply to those in respect of which the Community rules on trade with third countries make provision for the application of quantitative export restrictions. The provisions of Article 5 shall not apply to those products in respect of which such rules require the production of a licence or other export document.

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Article 12

Regulation (EEC) No 2603/69 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

↓ 2603/69 (adapted)

Article 13

This Regulation shall enter into force on ~~the~~ the twentieth day following that of its publication in the *Official Journal of the European Union*. ~~the~~

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

Done at Brussels, [...]

For the Council
The President
[...]

↓ 3918/91 Art. 1 pt. 2 (adapted)

ANNEX I

Products referred to in Article 9

↓ 3918/91 Art. 1 pt. 2

CN code	Description
2709 00	Petroleum oils and oils obtained from bituminous minerals, crude
2710 00	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations:
2710 00 11 to 2710 00 39	Light oils
2710 00 41 to 2710 00 59	Medium oils
2710 00 61 to 2710 00 99	Heavy oils, except lubricating oils, used in clocks and watches and the like, presented in small receptacles containing not more than 250 g net of oil
ex 27 10 00 to ex 27 10 00	
2711	Petroleum gases and other gaseous hydrocarbons:
	- Liquefied
2711 12	- - Propane:
	- - - Propane of a purity not less than 99 %
	- - - Other
2711 13	- - Butanes
	- In gaseous state:

ex 2711 29 00

- - Other:

- - - Propane

- - - Butanes



ANNEX II

Repealed Regulation with its list of successive amendments

Council Regulation (EEC) No 2603/69
(OJ L 324, 27.12.1969, p. 25)

Council Regulation (EEC) No 234/71
(OJ L 28, 4.2.1971, p. 2)

Council Regulation (EEC) No 1078/71
(OJ L 116, 28.5.1971, p. 5)

Council Regulation (EEC) No 2182/71
(OJ L 231, 14.10.1971, p. 4)

Council Regulation (EEC) No 2747/72
(OJ L 291, 28.12.1972, p. 150)

Only Article 1, first indent

Council Regulation (EEC) No 1275/75
(OJ L 131, 22.5.1975, p. 1)

Council Regulation (EEC) No 1170/76
(OJ L 131, 20.5.1976, p. 5)

Council Regulation (EEC) No 1934/82
(OJ L 211, 20.7.1982, p. 1)

Council Regulation (EEC) No 3918/91
(OJ L 372, 31.12.1991, p. 31)

ANNEX III

CORRELATION TABLE

Regulation (EEC) No 2603/69	This Regulation
Articles 1 and 2	Articles 1 and 2
Article 3(1) and (2)	Article 4(1) and (2)
Article 4(1) and (2)	Article 3(1) and (2)
Article 4(3)	Article 4(3)
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Articles 5 and 6	Articles 5 and 6
Article 7(1) introductory part	Article 7(1) introductory part
Article 7(1) first indent	Article 7(1)(a)
Article 7(1) second indent	Article 7(1)(b)
Article 7(2)	Article 7(2)
Article 7(3) introductory part	Article 7(3) introductory part
Article 7(3) first indent	Article 7(3)(a)
Article 7(3) second indent	Article 7(3)(b)
Article 8	-
Article 9	Article 8
Article 10(1)	-
Article 10(2)	Article 9
Article 11	Article 10
Article 12(1)	Article 11 first paragraph
Article 12(2)	Article 11 second paragraph
-	Article 12
Article 13	Article 13
Annex I	-

Annex II

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Annex I

Annex II

Annex III