



COMMISSION OF THE EUROPEAN COMMUNITIES

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2006/0080 (CNS)

Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the European Community, of the Rotterdam Convention
on the Prior Informed Consent Procedure for certain hazardous chemicals and
pesticides in international trade**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Under the auspices of the Food and Agriculture Organisation (FAO) and the United Nations Environment Programme (UNEP), negotiations for a Convention for the application of the Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade were concluded in March 1998. The Convention was opened for signature at a Ministerial Diplomatic Conference held in September 1998 in Rotterdam. It was signed by the Community on 11 September 1998.

In January 2002, the Commission put forward a proposal, based on Article 133 (relating to common commercial policy), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) of the Treaty, for a Council Decision concerning the Community's ratification of the Convention. Article 2(2) of the proposal indicated that the 'the Community is competent in respect of all matters governed by the Convention'.

After the European Parliament had been consulted pursuant to Article 300(3), the Council unanimously decided to replace Article 133 by Article 175(1) and adopted Council Decision 2003/106/EC of 19 December 2002 on the approval, on behalf of the European Community, of the Convention¹ together with a declaration of competence, as required by Article 25(3) of the Convention, which read as follows:

“The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

Moreover the European Community declares that it has already adopted legal instruments, including Regulation (EC) No 304/2003 of the European Parliament and the Council of 28 January 2003 concerning the export and import of dangerous chemicals, binding on its Member States, covering matters governed by this Convention, and will submit and update, as appropriate, a list of those legal instruments to the Secretariat of the Convention.

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force.

The exercise of Community competence is, by its nature, subject to continuous development.”

¹ OJ L63, 6.3.2003, p.27

The instrument of ratification, together with the declaration of competence, was deposited with the Secretary-General of the United Nations on 20 December 2002. The Convention entered into force on 24 February 2004.

On 10 January 2006, in its judgment in case *Commission v. Council*², the Court of Justice annulled the Council Decision on approval of the Convention, ruling that there should have been a dual legal base including both Articles 133 and 175 first paragraph. In a parallel judgment³, the Court also annulled for the same reasons Regulation (EC) No 304/2003 of the European Parliament and the Council concerning the export and import of dangerous chemicals, although it ruled that this could remain in effect until the adoption, within a reasonable period, of a new regulation founded on the appropriate legal bases.

The annulment of Council Decision 2003/106/EC does not affect the original Community ratification of the Convention and the EC remains a Party in accordance with the Vienna Convention on the Law of Treaties. However it is necessary to adopt a new Council Decision with the above-mentioned dual legal base together with an amended declaration of competence to be delivered to the UN depositary reflecting the change in the legal base. To avoid any legal vacuum, it is proposed that the new decision should have retroactive effect back to the date of adoption of the previous Council Decision.

As regards the required change to the legal base of the Council Regulation implementing the Convention's provisions, this as well other amendments will be included in a separate proposal that the Commission will be putting forward.

² Case C-94/03.

³ Case C-178/03 *Commission v. European Parliament and Council*.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 and Article 175(1), in conjunction with the first sentence of the first subparagraph of Article 300(2), and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Whereas:

- (1) Council Decision 2003/106/EC of 19 December 2002 concerning the approval, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade⁶ authorised the President of the Council to designate the person or persons empowered to deposit the instrument of approval on behalf of the Community with the Secretary-General of the United Nations, in accordance with Article 25(1) of that Convention, hereinafter “the Rotterdam Convention”⁷. The instrument of approval, together with the declaration of competence set out in Annex B to that Decision, was lodged with the depositary on 20 December 2002. The Rotterdam Convention entered into force on 24 February 2004.
- (2) In its judgment of 10 January 2006 in case C-94/03 (Commission v. Council)⁸, the Court of Justice of the European Communities annulled Decision 2003/106/EC as it was based solely on Article 175(1), in conjunction with Article 300 of the Treaty, ruling that both Articles 133 and 175(1), in conjunction with the relevant provisions of Article 300, were the appropriate legal basis.
- (3) The Court’s judgment does not affect the Community’s status as Party to the Convention. In accordance with Article 46 of the Vienna Convention on the Law of Treaties, the deposit of a new instrument of ratification is therefore not required. A

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ L 63, 6.3.2003, p.27.

⁷ OJ L 63, 6.3.2003, p. 29.

⁸ [Not yet reported]

new Council Decision approving the Rotterdam Convention is however necessary together with an amended declaration of competence to reflect the change in the legal base, in accordance with Article 25(3) of the Rotterdam Convention.

- (4) To ensure legal certainty and to avoid a legal void, it is appropriate for this Decision to take effect from the date at which Decision 2003/106/EC was adopted,

HAS DECIDED AS FOLLOWS:

Article 1

The Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade signed in Rotterdam on 11 September 1998, hereinafter “the Rotterdam Convention”, is hereby approved on behalf of the Community.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit the declaration of competence attached to this Decision as required by Article 25(3) of the Rotterdam Convention.

Article 3

This Decision shall take effect from 19 December 2002.

Done at

*For the Council
The President*

ANNEX

Declaration by the European Community in accordance with Article 25(3), of the Rotterdam Convention

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

The European Community also declares that, in accordance with Article 133 of the Treaty establishing the European Community, it has exclusive competence on commercial policy, including, *inter alia*, trade in goods.

Moreover the European Community declares that it has already adopted legal instruments, including Regulation (EC) No 304/2003 of the European Parliament and the Council concerning the export and import of dangerous chemicals, binding on its Member States, covering matters governed by this Convention, and will submit and update, as appropriate, a list of those legal instruments to the Secretariat of the Convention.

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law.

The exercise of Community competence is, by its nature, subject to continuous development.