

Hazardous substances: Rotterdam convention on international trade of hazardous chemicals and pesticides, legal basis

2006/0080(CNS) - 30/05/2006 - Legislative proposal

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

PROPOSED ACT : Council Decision.

CONTENT : the European Commission proposes that the Rotterdam Convention signed by the Community on 11 September 1998 under the auspices of the Food and Agriculture Organisation (FAO) and the United Nations Environment Programme (UNEP), should be approved on behalf of the Community.

It should be recalled that Council Decision 2003/106/EC of 19 December 2002 on the approval, on behalf of the European Community, of the Convention, of the Rotterdam Convention 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. The instrument of approval, together with the declaration of competence was lodged with the depositary on 20 December 2002. The Rotterdam Convention entered into force on 24 February 2004.

In its judgment of 10 January 2006 in case C-94/03 (Commission v. Council), the Court of Justice of the EC 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.

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.