

# Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure

2006/0246(COD) - 30/11/2006 - Legislative proposal

**PURPOSE:** to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**CONTENT:** Regulation 304/2003/EC of the European Parliament and of the Council concerning the export and import of dangerous chemicals Community implements the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain hazardous chemicals and pesticides in international trade.

On 10 January 2006, in its judgment in case Commission v. Parliament and Council (C-178/03), the Court of Justice annulled the Regulation, ruling that there should have been a dual legal basis including both Articles 133 and 175 first paragraph of the Treaty. The Court however maintained the effects of the Regulation until the adoption, within a reasonable period of time, of a new regulation founded on appropriate legal bases.

The purpose of this proposal is therefore a new Regulation, based on the above-mentioned dual legal basis. At the same time, it is proposed to include certain technical amendments to the operative provisions in the light of a Commission report in accordance with Article 21 of the Regulation on the experience of the procedures to date. That report is being submitted in parallel to this proposal.

The main amendments are as follows:

**Changes and clarifications as regards certain definitions:** it is proposed to amend the term “exporter” since sometimes the exporter can be a trader not established in the Community who has obtained the chemicals from an EC chemical manufacturer or distributor. It is therefore proposed to adapt the definition to cover this situation. It is therefore proposed to revise the definition of “preparation” and to make it clearer in those operative provisions that preparations are only subject to the requirements when they contain a chemical(s) listed in the relevant part(s) of Annex I of the Regulation to the extent that its presence is such that it could trigger labelling, irrespective of the presence of any other substances in the preparation.

**Changes and clarifications to the so-called 'explicit consent' procedure:** in around half of the cases to date, despite the efforts made by the DNAs of the exporting Member States to obtain explicit consent, no response is forthcoming from the importing country, in some cases for many months or even years. As a result, exports cannot proceed, despite the fact that often the substances are not banned or severely restricted in the importing countries. The current system thus causes difficulties for exporters and exporting DNAs without necessarily affording greater protection to importing countries. Against this background, certain limited possibilities for exports to proceed on a temporary basis, while further efforts are made to obtain explicit consent, seem appropriate. It is proposed that, if, despite all reasonable efforts by the exporter’s DNA and the Commission, there is no response within 2 months, available documentary evidence from official sources that the chemical is registered, authorised or otherwise allowed for use in

the importing country can be regarded as sufficient indication of consent for exports to proceed ad interim pending a response. The rules as regards the period of validity of explicit consents obtained would also be clarified. The current provisions imply that consents obtained (unless otherwise qualified by the importing country) are potentially open-ended. However it is proposed that consents obtained, as well as cases where alternative evidence is accepted, should be periodically reviewed. To further improve and strengthen the functioning of the system, it is also proposed that requests for consent and renewals should be channelled through the Commission (subject to the necessary resources being made available).

**Changes to reinforce and strengthen customs control of exported chemicals while at the same time facilitating trade:** in most Member States the customs authorities play a key role in ensuring compliance with the Regulation, in particular as regards controlling exports. In order to meet their specific needs in this regard, several actions are already in hand, as follows:

- classifying chemicals subject to Regulation 304/2003 within the Combined Nomenclature (CN) so that 'warning flags' could be included in the Integrated Tariff of the European Communities (TARIC) against the relevant CN codes that would alert customs officers to the fact that the chemicals concerned are or could be subject to special rules;
- developing a version of the Commission's EDEXIM database (which includes data on export notifications made, explicit consents obtained etc) specifically for customs authorities. This would help them to check whether or not a particular export shipment can be allowed to proceed. To facilitate this, it is planned that there should be unique reference or code numbers generated by the system that would be quoted by exporters in their export declarations. It is proposed to make the use of the codes by exporters a requirement in the new Regulation. However there would be a short grace period of three months following entry into force to enable all concerned to become familiarised with the system.