

EUROPEAN PARLIAMENT

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5 November 2003

REPORT

on the proposal for a Council decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (COM(2003) 332 – C5-0318/2003 – 2003/0117(CNS))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Pernille Frahm

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 11 July 2003 the Council consulted Parliament, pursuant to Article 300(3), first subparagraph of the EC Treaty, on the proposal for a Council decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (COM(2003) 332 - C5-0318/2003 - 2003/0117(CNS)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0318/2003).

The Committee on the Environment, Public Health and Consumer Policy appointed Pernille Frahm rapporteur at its meeting of 9 September 2003.

At its meeting of 7 October 2003 the Committee decided to request the opinion of the Committee on Legal Affairs and the Internal Market on the proposal's legal basis pursuant to Rule 63(2).

The committee considered the proposal for a Council decision and draft report at its meeting of 4 November 2003.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Mauro Nobilia, acting chairman; Alexander de Roo, vice-chairman; Pernille Frahm, rapporteur; María del Pilar Ayuso González, Hans Blokland, John Bowis, Dorette Corbey, Chris Davies, Avril Doyle, Jillian Evans (for Hiltrud Breyer), Anne Ferreira, Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcóyen Tormo, Robert Goodwill, Françoise Grossetête, Marie Anne Isler Béguin, Bernd Lange, Giorgio Lisi (for Martin Callanan), Torben Lund, Minerva Melpomeni Malliori, Rosemarie Müller, Riitta Myller, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Yvonne Sandberg-Fries, Karin Scheele, Ursula Schleicher (for Raffaele Costa), Inger Schörling, Renate Sommer (for Cristina Gutiérrez Cortines), María Sornosa Martínez, Elena Valenciano Martínez-Orozco and Peder Wachtmeister.

The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis is attached. The Committee on Industry, External Trade, Research and Energy decided on 2 October 2003 not to deliver an opinion.

The report was tabled on 5 November 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants
(COM(2003) 332 – C5-0318/2003 – 2003/0117(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2003) 332)¹,
 - having regard to the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants,
 - having regard to Articles 95(1), 175(1) and 300(2), first subparagraph, of the EC Treaty,
 - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0318/2003),
 - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
 - having regard to Rules 63, 67 and 97(7) of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0372/2003),
1. Approves the proposal for a Council decision as amended and approves conclusion of the Convention;
 2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States and the Secretary General of the United Nations.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Citation 1, introduction

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

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¹ Not yet published in OJ.

Article 95(1) and Article 175(1), in conjunction with Article 300(2), first sentence of the first subparagraph and Article 300(3), first subparagraph thereof,

Article 175(1), in conjunction with Article 300(2), first sentence of the first subparagraph and Article 300(3), first subparagraph thereof,

Justification

The Commission proposal concerning the conclusion, on behalf of the EC, of the Protocol to the 1979 CLRTAP on Persistent Organic Pollutants, is based on a double legal basis, Articles 175(1) and 95(1) TEC. When a Community measure pursues a twofold purpose and if one is identifiable as the main or predominant purpose whereas the other is merely incidental, the measure must be founded on a single legal basis, merely that required by the main or preponderant purpose. The main purpose of the Protocol is the protection of human health and the environment against the harmful effects of the use of POPs, in particular from their transboundary movement and not the functioning of the internal market. Therefore, Article 175(1) TEC is the appropriate legal basis for conclusion of the Protocol on behalf of the EC.

Amendment 2

Recital 6

(6) **While** the provisions of the Protocol concern environmental protection, **certain provisions on the control of intentional production and use of chemicals, are also relevant to the functioning of the internal market. Consequently,** it is appropriate to choose **Articles 175(1) and 95(1)** as the legal basis, in conjunction with Article 300.

(6) **As most of** the provisions of the Protocol concern environmental protection **and the protection of human health,** it is appropriate to choose **Article 175(1)** as the legal basis, in conjunction with Article 300.

Justification

The Commission proposal concerning the conclusion, on behalf of the EC, of the Protocol to the 1979 CLRTAP on Persistent Organic Pollutants, is based on a double legal basis, Articles 175(1) and 95(1) TEC. When a Community measure pursues a twofold purpose and if one is identifiable as the main or predominant purpose whereas the other is merely incidental, the measure must be founded on a single legal basis, merely that required by the main or preponderant purpose. The main purpose of the Protocol is the protection of human health and the environment against the harmful effects of the use of POPs, in particular from their transboundary movement and not the functioning of the internal market. Therefore, Article 175(1) TEC is the appropriate legal basis for conclusion of the Protocol on behalf of the EC.

Amendment 3
Recital 8

(8) The Protocol foresees that Parties submit proposals to the Secretariat of the Protocol for listing additional substances in Annexes I, II or III. As these proposals may affect relevant Community legislation and as it is necessary to ensure that proposals are justified and have sufficient support in the Community, only joint proposals by the Community and the Member States should be submitted to the Secretariat. When preparing draft proposals, due account of the Decision 1998/2 of the Executive Body for the Convention on Long-Range Transboundary Air Pollution should be taken.

Deletion

Justification

The Commission suggests a centralised procedure for how proposals to amend the international agreements on POPs should be agreed. However, this is not necessary because a procedure is already provided for in the agreements themselves. Furthermore, the spheres of competence of the Community and the Member States are defined in Article 174(4) of the Treaty, which guarantees individual Member States the right to negotiate in international bodies and conclude international agreements.

Amendment 4
Article 3

Proposals to amend Annexes I, II and III to the Protocol shall only be made, on behalf of the European Community and the Member States, by the Commission following a Council Decision adopted by qualified majority on a proposal from the Commission.

Deletion

Justification

The Commission suggests a centralised procedure for how proposals to amend the international agreements on POPs should be agreed. However, this is not necessary because a procedure is already provided for in the agreements themselves. Furthermore, the spheres of competence of the Community and the Member States are defined in Article 174(4) of the Treaty, which guarantees individual Member States the right to negotiate in international bodies and conclude international agreements.

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Committee on Legal Affairs and the Internal Market

To Caroline F. Jackson
Chairman of the Committee on the Environment, Public Health and Consumer Policy
BRUSSELS

Subject: Legal basis of the proposal for a Council decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (COM(2003) 332 – C5-0318/2003 – 2003/0117(CNS))

Dear Mrs Jackson,

By letter of 13 October 2003, the Committee on the Environment, Public Health and Consumer Policy requested that the legal basis of the above-mentioned proposal be verified.

Proposal for a decision COM(2003) 332 is based on Article 95(1) 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(2) of the EC Treaty.

The Commission states that 'while the provisions of the Stockholm Convention and of the 1998 Protocol concern environmental protection, certain provisions on the control of intentional production and use of chemicals are also relevant to the functioning of the internal market. Consequently, it is appropriate to choose Articles 175(1) and 95(1) as the legal basis, in conjunction with Article 300.' (Sixth recital of proposal for a decision COM(2003) 332).

The proposal for a decision concerns the conclusion, on behalf of the Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution.

The 1998 Protocol concerns persistent organic pollutants. Article 2 of the Protocol states that its objective is 'to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants'.

The parties are required to take effective measures to eliminate the production and use of the substances listed in Annex I and to destroy or dispose of them. The transboundary movement of the substances listed in Annex I must be conducted 'in an environmentally sound manner, taking into consideration applicable subregional, regional, and global regimes governing the transboundary movement of hazardous wastes, in particular the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal'. The use of the substances listed in Annex II must be restricted (Article 3 of the Protocol). Article 4 of the Protocol sets out exemptions from Article 3(1).

The Committee on Legal Affairs and the Internal Market was requested to verify the choice of legal basis adopted for the proposal.

By way of derogation from Article 94 of the EC Treaty, Article 95(1) of that Treaty provides for the codecision procedure as regards measures for the approximation of Member State provisions which have as their object the establishment and functioning of the internal market. Article 95(3) of the EC Treaty stipulates that 'the Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective'.

Article 174 of the EC Treaty sets out the objectives to be pursued in the context of environmental policy, while Article 175 of the EC Treaty constitutes the legal basis under which the actions to be taken by the Community are adopted. It is true that Article 174(4) of the EC Treaty specifies that 'the arrangements for Community cooperation may be the subject of agreement between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300'. However, in the case in point, the Convention does not simply establish arrangements for cooperation concerning environmental protection, but sets out, in particular, precise rules concerning the procedures governing transboundary movements of persistent organic pollutants.

Article 300 of the EC Treaty lays down the procedure the Community has to follow where the Treaty provides for the conclusion of agreements between the Community and one or more states or international organisations. This provision does not in itself confer any power on the Community to act at international level, but applies each time the Community wishes to conclude an agreement by virtue of powers conferred explicitly or implicitly in the Treaty.

It is settled case-law that the choice of the legal basis for a measure, including one adopted to conclude an international agreement, does not follow from its author's conviction alone, but must be based on objective factors. Those factors include in particular the aim and the content of the measure.

If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component (see Case C-155/91 *Commission v Council* [1993] ECR I-939, paragraphs 19 and 21 (waste directive judgement), Case C-42/97 *Parliament v Council* [1999] ECR I-869, paragraphs 39 and 40, and Case C-36/98 *Spain v Council* [2001] ECR I-779, paragraph 59). By way of exception, if

it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure may be founded on the corresponding legal bases (see, to that effect, Case C-300/89 Commission v Council [1991] ECR I-2867, paragraphs 13 and 17 (titanium dioxide judgement), and Case C-42/97 Parliament v Council, paragraph 38).

In the case in point, application of those criteria amounts to asking whether the proposal, in the light of its context, its aim and its content, principally concerns environmental protection which is liable to have incidental effects on the internal market, whether, conversely, it is principally a proposal concerning the internal market which incidentally takes account of certain environmental requirements, or whether it is inextricably concerned both with environmental protection and with the internal market.

At its meeting of 4 November 2003¹, the Committee on Legal Affairs and the Internal Market decided unanimously, in the light of the points set out above, that the appropriate legal basis for the proposal in question is Article 175(1) of the EC Treaty in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) of that Treaty.

Yours sincerely,

(sgd) Giuseppe Gargani

¹ The following were present for the vote: Giuseppe Gargani (chairman), Ioannis Koukiadis, (vice-chairman), François Zimeray (rapporteur), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Hans Karlsson, Kurt Lechner, Sir Neil MacCormick, Manuel Medina Ortega, Marcelino Oreja Arburúa, Barbara O'Toole, Fernando Pérez Royo, Imelda Mary Read and Diana Wallis.