

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

26 January 2004

FINAL  
**A5-0017/2004**

**\*\*\*I**

## **REPORT**

on the proposal for a European Parliament and Council regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC

(COM(2003) 333 – C5-0273/2003 – 2003/0119(COD))

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.

## CONTENTS

	Page
PROCEDURAL PAGE .....	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	37
EUROPEAN PARLIAMENT .....	40
OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY .....	43

## PROCEDURAL PAGE

By letter of 12 June 2003 the Commission submitted to Parliament, pursuant to Articles 251(2), 95(1) and 175(1) of the EC Treaty, the proposal for a European Parliament and Council regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC (COM(2003) 333 – 2003/0119(COD)).

At the sitting of 19 June 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 (C5-0273/2003).

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 Commission proposal and draft report at its meetings of 27 November 2003 and 21 January 2004.

At the last meeting it adopted the draft legislative resolution by 36 votes to 8, with no abstentions.

The following were present for the vote: Mauro Nobilia, Alexander de Roo, Guido Sacconi; vice-chairmen, Pernille Frahm; rapporteur, María del Pilar Ayuso González, María Luisa Bergaz Conesa, Jean-Louis Bernié, Hans Blokland, David Robert Bowe, John Bowis, Philip Bushill-Matthews (for Avril Doyle), Chris Davies, Saïd El Khadraoui, Jillian Evans (for Hiltrud Breyer), Karl-Heinz Florenz, Cristina García-Orcóyen Tormo, Robert Goodwill, Françoise Grossetête, Jutta D. Haug (for Anne Ferreira), Marie Anne Isler Béguin, Christa Klauf, Eija-Riitta Anneli Korhola, Bernd Lange, Paul A.A.J.G. Lannoye (for Inger Schörling), Peter Liese, Minerva Melpomeni Malliori, Patricia McKenna, Erik Meijer (for Mihail Papayannakis), Bill Miller (for Elena Valenciano Martínez-Orozco), Rosemarie Müller, Antonio Mussa (for Jim Fitzsimons), Riitta Myller, Marit Paulsen, Frédérique Ries, Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Jonas Sjöstedt, María Sornosa Martínez, Catherine Stihler, Nicole Thomas-Mauro, Astrid Thors, Peder Wachtmeister, Phillip Whitehead.

The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis and the opinion of the Committee on Industry, External Trade, Research and Energy are attached.

The report was tabled on 26 January 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC (COM(2003) 333 – C5-0273/2003 – 2003/0119(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 333)<sup>1</sup>,
  - having regard to Articles 251(2), 95(1) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0273/2003),
  - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
  - having regard to Rules 67 and 63 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0017/2004),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

---

Text proposed by the Commission

---

Amendments by Parliament

### Amendment 1 CITATION 1

Having regard to the Treaty establishing the European Community, and in particular **Article 95(1) and** Article 175(1) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

### *Justification*

*The purpose of the proposed Regulation is to give effect to the main provisions of the Stockholm*

---

<sup>1</sup> Not yet published in OJ.

*Convention and the Protocol to the 1979 CLRTAP which are not yet sufficiently covered by Community legislation. The legal basis of the Regulation should therefore be based on the content of these two international agreements. The main purpose of both the Convention and the Protocol is the protection of human health and the environment against the harmful effects of the use of POPs, rather than the functioning of the internal market. Therefore, Article 175(1) TEC is the appropriate legal basis for the proposed Regulation.*

Amendment 2  
RECITAL 1

(1) This Regulation primarily concerns environmental protection and the legal basis is therefore Article 175(1) of the Treaty. ***However, in so far as the prohibitions and restrictions as regards the production, placing on the market and use of persistent organic pollutants are relevant to the functioning of the internal market, this Regulation is based also on Article 95(1) of the Treaty.***

(1) This Regulation primarily concerns environmental protection and the ***protection of human health. The*** legal basis is therefore Article 175(1) of the Treaty.

*Justification*

*The purpose of the proposed Regulation is to give effect to the main provisions of the Stockholm Convention and the Protocol to the 1979 CLRTAP which are not yet sufficiently covered by Community legislation. The legal basis of the Regulation should therefore be based on the content of these two international agreements. The main purpose of both the Convention and the Protocol is the protection of human health and the environment against the harmful effects of the use of POPs, rather than the functioning of the internal market. Therefore, Article 175(1) TEC is the appropriate legal basis for the proposed Regulation.*

Amendment 3  
RECITAL 3 A (new)

***(3a) The main deficiencies in the present Community legislation are that there is none or incomplete legislation on prohibition of the production and use of any of the currently listed chemicals, that there is no framework to add additional POPs substances to the list for elimination, nor any framework to prohibit the production and use of new substances that***

***exhibit POPs characteristics.***

*Justification*

*According to the explanatory memorandum of this Regulation there is no Community legislation on mirex, chlordane or hexabromobiphenyl. Most of the existing Community prohibitions on the marketing and use of specific POPs are not complete, as Directive 79/117/EEC only covers use of substances on plant production products, not e.g. biocidal or industrial uses.*

Amendment 4

RECITAL 4

***Does not affect the English version.***

Amendment 5

RECITAL 4 A (new)

***(4a) Coordination and coherence need to be ensured between the work in the Rotterdam, Stockholm and Basel Conventions and the development of the Strategic Approach to International Chemicals Management (SAICM) within the United Nations framework.***

*Justification*

*Co-ordination is needed because this package of chemicals-related treaties, when in force and fully implemented, will help protect wildlife and people from hazardous industrial chemicals and pesticides while also tackling collateral problems of obsolete stockpiles and toxic waste trafficking and disseminate relevant information.*

Amendment 6

RECITAL 4 B (new)

***(4b) No emission reduction targets as such have been set at Community level***

***and the current release inventories do not cover all sources of persistent organic pollutants.***

*Justification*

*Although the Community legislation concerning control measures is in accordance with the requirements set in the two international agreements, the present Community legislation e.g. on PAHs is very limited.*

Amendment 7  
RECITAL 5

(5) Moreover, ***having regard to the*** precautionary principle and in view of the ***ultimate objective of eliminating*** the release of persistent organic pollutants into the environment, it is appropriate in certain cases to provide for control measures stricter than those under the Protocol and the Convention.

(5) Moreover, ***considering that the provisions of this Regulation are underpinned by the*** precautionary principle ***as set forth in Principle 15 of the Rio Declaration on Environment and Development,*** and in view of the ***need to eliminate as soon as possible*** the release of persistent organic pollutants into the environment, it is appropriate in certain cases to provide for control measures stricter than those under the Protocol and the Convention.

*Justification*

*The adoption and implementation of the precautionary principle is an approach based on preventive action to ensure the prevention rather than end-of-pipe measures that merely concentrate pollution and thereby create another problem in the form of hazardous wastes. As the Community has clearly expressed its concern about the continuous release of persistent organic pollutants into the environment, the objective to eliminate these substances should be achieved as soon as possible. However, the word "ultimate" may give the impression that the release of POPs into the environment is a medium- or long-term goal and should therefore be deleted.*

Amendment 8  
RECITAL 6

***(6) The best instrument by means of which to implement the necessary control***

***deleted***



*measures on production, placing on the market and use of the listed substances would be the legislation planned to implement the Commission's White Paper on Strategy for a future Chemicals Policy. However, on account of its scale and complexity, that legislation is expected to take some time to be adopted and, since it is important to ratify the Convention and the Protocol as soon as possible, this Regulation should temporarily implement those measures.*

#### *Justification*

*The urgency to present this proposal is evidently based on the political commitment of the Community to ratify the Stockholm Convention and the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants.*

#### Amendment 9 RECITAL 7

(7) In the Community, the placing on the market and use of most of the persistent organic pollutants listed in the Protocol or the Convention has already been phased out as a result of the prohibitions laid down in Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances and Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations. However, in order to fulfil the Community's obligations under the Protocol and the Convention and to minimise the release of persistent organic pollutants, it is necessary and appropriate also to prohibit the production of those substances and to restrict

(7) In the Community, the placing on the market and use of most of the persistent organic pollutants listed in the Protocol or the Convention has already been phased out as a result of the prohibitions laid down in Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances and Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations. However, in order to fulfil the Community's obligations under the Protocol and the Convention and to minimise the release of persistent organic pollutants, it is necessary and appropriate also to prohibit the production of those substances and to restrict exemptions to a minimum *so that*

exemptions to a minimum.

***exemptions only apply where a substance fulfils an essential function in a specific application.***

#### *Justification*

*This is to ensure that chemicals with high persistence of bioaccumulative effects are not released to the environment, unless their properties are an essential function in a specific application.*

#### Amendment 10 RECITAL 7 A (new)

***(7a) As most of the substances listed in the Protocol and the Convention so far are neither used nor produced within the EU, there is an important additional task: To develop a strategy for the sustainable use of pesticides. As laid down in the Communication from the Commission "Towards a thematic strategy on the sustainable use of pesticides"\*, this strategy should incorporate the substitution of substances that will be added to the list of internationally banned substances in the future.***

---

***\*COM(2002) 349.***

#### *Justification*

*The substances listed so far pose no problem to the EU. But preparation for the addition of more substances should start now and alternatives should be developed as well as a global strategy.*

#### Amendment 11 RECITAL 8

***(8) The production and use of hexachlorocyclohexane (HCH), including lindane, is subject to restrictions under the Protocol but not totally prohibited. That substance is still used in some***

***deleted***

***Member States and therefore it is not yet appropriate to prohibit all uses. However, in view of the harmful properties of HCH and the possible risks related to its release into the environment, its production and uses should be confined to a minimum and ultimately phased out.***

*Justification*

*The very existence of HCH, including lindane, undermines the POPs' elimination goal. This amendment is in line with the rapporteur's modification of Article 1 and the deletion of Annex II.*

Amendment 12  
RECITAL 9 A (new)

***(9a) Existing stockpiles of obsolete pesticides which contain POPs should be disposed of as soon as possible and in a state of the art fashion. If other substances are added to the annexes of this regulation in the future, their stocks should also be destroyed immediately and no new stockpiling shall be made.***

*Justification*

*In some candidate countries, important quantities of obsolete pesticides are still stored, mostly containing POPs. Not all of these stocks meet adequate safety standards. It is thus important that they are disposed of soon and in a safe way. Some of the existing stockpiles date from 20 or 30 years ago. Similar developments should be prevented in the future as inadequate stockpiling can lead to large-scale environmental damage.*

Amendment 13  
RECITAL 10

(10) In line with the Communication from the Commission on the Community Strategy for Dioxins, Furans and Polychlorinated Biphenyls (PCBs), and with the Protocol and the Convention, releases of persistent organic pollutants

(10) In line with the Communication from the Commission on the Community Strategy for Dioxins, Furans and Polychlorinated Biphenyls (PCBs), and with the Protocol and the Convention, releases of persistent organic pollutants

which are unintentional by-products of industrial processes should be identified and reduced ***with the aim of their ultimate elimination***. Appropriate national action plans, covering all sources and measures, including those provided for under existing Community legislation, should be drawn up and implemented to reduce ***the*** releases ***continuously and cost-effectively***.

which are unintentional by-products of industrial processes should be identified and reduced ***immediately and eliminated as soon as possible***. Appropriate national action plans, covering all sources and measures, including those provided for under existing Community legislation, should be drawn up and implemented to reduce releases ***as soon as possible. To this end, appropriate tools need to be made available***.

#### *Justification*

*The Amendment stresses that also unintentional by-products should be phased out as soon as possible.*

#### Amendment 14 RECITAL 11

(11) In line with that Communication, appropriate programmes and mechanisms should be established to provide adequate monitoring data on the presence of dioxins, furans and PCBs in the environment. ***However, it is necessary to ensure that appropriate tools are available and can be used under economically and technically viable conditions.***

(11) In line with that Communication, appropriate programmes and mechanisms should be established to provide adequate monitoring data on the presence of dioxins, furans and PCBs in the environment.

#### Amendment 15 RECITAL 12

(12) Under the Convention, the persistent organic pollutant content in waste is to be destroyed or irreversibly transformed into substances that do not exhibit similar characteristics. Since current Community legislation on waste does not lay down specific rules as regards those substances, they should be laid down in this Regulation. To ensure ***both the*** high level of protection ***and the feasibility of the requirements***, limit values defining a low content of the substances in waste will be

(12) Under the Convention, the persistent organic pollutant content in waste is to be destroyed or irreversibly transformed into substances that do not exhibit similar characteristics. Since current Community legislation on waste does not lay down specific rules as regards those substances, they should be laid down in this Regulation. To ensure ***a*** high level of protection, limit values defining a low content of the substances in waste will be established ***before 31 December 2005***.

established *later*.

#### *Justification*

*There are technical difficulties in establishing these limits, so some time must be given in order for the necessary studies to be carried out by the Commission. Work is also being done within the framework of the UN Basel Convention where international limits are being discussed. The date 31 December 2005 is in accordance with the text that the Environment Committee has adopted on the waste shipment regulation (COD/2003/0139).*

#### Amendment 16 RECITAL 12 A (new)

***(12a) In order to guarantee the appropriate management of waste, the Commission should define, by 31 December 2005 at the latest, European strategies for the identification of contaminated sites and for wastes which must be handled, collected, transported and stored in an environmentally sound manner.***

#### *Justification*

*The date of 31 December 2005 has been set in line with the text adopted by the Environment Committee in relation to the regulation on shipments of waste (COD/2003/0139).*

#### Amendment 17 RECITAL 13

(13) The Convention provides that each Party is to draw up a plan for the implementation of its obligations under the Convention. Since the Community and the Member States share competence in that regard, implementation plans should be drawn up both at national and Community level. Co-operation and an exchange of information between the Commission and

(13) The Convention provides that each Party is to draw up a plan for the implementation of its obligations under the Convention. Since the Community and the Member States share competence in that regard, implementation plans should be drawn up both at national and Community level. ***The Commission should define European strategies for the identification***

the authorities of the Member States should be promoted.

*of wastes, including products and articles which have been reduced to the state of waste, by 31 December 2005 at the latest.* Co-operation and an exchange of information between the Commission and the authorities of the Member States should be promoted.

#### *Justification*

*The date of 31 December 2005 has been set in line with the text adopted by the Environment Committee in relation to the regulation on shipments of waste (COD/2003/0139).*

#### Amendment 18 RECITAL 14

(14) In accordance with the Convention and the Protocol, information on persistent organic pollutants should be provided to other Parties. The exchange of information with third countries not party to those Agreements should also be promoted.

(14) In accordance with the Convention and the Protocol, information on persistent organic pollutants should be provided to other Parties. The exchange of information with third countries not party to those Agreements should also be promoted. ***In accordance with the Convention, public awareness programmes on persistent organic substances, especially for the most vulnerable groups, should be developed and implemented, and public participation in addressing persistent organic pollutants as well as training of workers, scientists, educators and technical and managerial personnel should be promoted and facilitated.***

#### *Justification*

*Key provisions on public information, awareness and education of Article 10 of the Stockholm Convention need to be included.*

#### Amendment 19

RECITAL 14 A (new)

***(14a) Public awareness of the hazards that persistent organic pollutants pose to the health of present and future generations as well as to the environment, particularly in developing countries, is often lacking, and wide-scale information is therefore needed to increase the level of caution and gain support for restrictions and bans.***

*Justification*

*Increased public access to information about POPs and the dissemination of such information contribute to a more effective protection of health and to a better environment.*

Amendment 20  
RECITAL 15

***(15) In order to achieve the aims of the Convention, it is necessary, where appropriate, to give technical assistance to developing countries and countries with economies in transition.*** The Commission and the Member States should ***therefore*** provide appropriate and timely technical assistance designed especially to strengthen the capacity of those countries to implement the Convention, including such issues as the remaining use of DDT in disease vector control and development and implementation of suitable alternative products, methods and strategies.

(15) The Commission and the Member States should provide appropriate and timely technical assistance designed especially to strengthen the capacity of ***developing countries and countries with economies in transition*** to implement the Convention, including such issues as the remaining use of DDT in disease vector control ***in accordance with World Health Organisation recommendations and guidelines***, and ***the*** development and implementation of suitable alternative products, methods and strategies.

*Justification*

*Developing countries or countries with economies in transition generally lack the resources, commitment and/or infrastructure to implement and enforce legislation and therefore they should be provided with assistance. The use of DDT must be authorised for public health purposes only and according to WHO recommendations.*

Amendment 21  
RECITAL 15 A (new)

***(15a) There should be a yearly evaluation of the technical assistance provided by the Commission and the Member States to developing countries and countries with economies in transition in order to evaluate whether the technical assistance provided is sufficient to ensure that those countries have the capacity to implement the Convention. Following the yearly evaluations, the Commission and the Member States should without delay take the appropriate measures, including adjusting the technical assistance, to ensure the implementation of the Convention.***

*Justification*

*Developing countries and countries with economies in transition are in many cases severely contaminated, yet these same countries are without the necessary infrastructure to effectively implement commitments made under the POP elimination Convention. Therefore a yearly evaluation of the effectiveness of the technical assistance is necessary so that better results can be achieved.*

Amendment 22  
RECITAL 16

(16) There should be regular evaluation of the effectiveness of the measures taken to reduce releases of persistent organic pollutants. To that end, Member States should report regularly to the Commission, in particular as regards release inventories, notified stockpiles and the production and placing on the market of restricted substances.

(16) There should be regular evaluation of the effectiveness of the measures taken to reduce releases of persistent organic pollutants. To that end, Member States should report regularly to the Commission, in particular as regards release inventories, notified stockpiles and the production and placing on the market of restricted substances. ***The Commission should determine the methods to be used in order to draw up inventories in each compartment of the environment.***



### *Justification*

*The POP Regulation and the Stockholm Convention require inventories for all compartments of the environment (air, soil, water, waste, articles and products).*

### Amendment 23

#### RECITAL 19

(19) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(19) ***In order to ensure transparency, impartiality and consistency at the level of enforcement activities***, Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive, ***since non-compliance can result in damage to human health and the environment. Infringements of the provisions of this Regulation should be made public by Member States and the Commission.***

### *Justification*

*A workable and transparent procedure should be established on sanctions for non-compliance. Furthermore, the "name and shame" system shall ensure compliance with the rules laid down in this Regulation.*

### Amendment 24

#### ARTICLE 1, TITLE AND PARAGRAPH 1, SUBPARAGRAPH 1

#### ***Subject-matter*** and scope

1. This Regulation ***concerns the production, placing on the market, use, release and disposal of substances subject to prohibitions or restrictions under the Stockholm Convention on Persistent Organic Pollutants, hereinafter "the Convention", or the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent***

#### ***Objective*** and scope

1. ***In accordance with the precautionary principle, the objective of this Regulation is to protect human health and the environment from persistent organic substances by prohibiting or phasing out as soon as possible the production, placing on the market and use of substances subject to the Stockholm Convention on Persistent Organic***

Organic Pollutants, hereinafter “the Protocol”.

Pollutants, hereinafter “the Convention”, or the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, hereinafter “the Protocol”, *and by eliminating releases and establishing provisions for disposal of such substances.*

*Justification*

*Common sense alone should dictate an approach based on the prevention and phase out of substances that are toxic. This is particularly true given that many of the hazardous substances persist in the environment to cause damage not only to today's generation but also for generations to come.*

Amendment 25

ARTICLE 1, PARAGRAPH 1, SUBPARAGRAPH 2

Those substances are listed in Annexes I *to IV* to this Regulation.

Those substances are listed in Annexes I, *III and IV* to this Regulation.

*Justification*

*In line with the deletion of Annex II.*

Amendment 26

ARTICLE 1, PARAGRAPH 2

2. Articles 3 and 4 shall not apply to waste consisting of, containing or contaminated by any substance listed in *Annexes I or II*.

2. Articles 3 and 4 shall not apply to waste consisting of, containing or contaminated by any substance listed in *Annex I*.

*Justification*

*The amendment is in line with the deletion of Annex II.*

Amendment 27  
ARTICLE 2, PARAGRAPH 1, POINT (A)

(a) 'placing on the market' means supplying or making available, ***whether in return for payment*** or free of charge;

(a) 'placing on the market' means supplying or making available ***to third persons, for payment*** or free of charge. ***Imports into the customs territory of the Community shall also be deemed to be placed on the market;***

*Justification*

*The amendment contributes to more consistency and clarification.*

Amendment 28  
ARTICLE 2, PARAGRAPH 1, POINT (C A) (new)

***(ca) 'preparation' is as defined in Article 2 of Council Directive 67/548/EEC;***

Amendment 29  
ARTICLE 2, PARAGRAPH 2

***For the purposes of this Regulation, imports into the customs territory of the Community shall also be deemed to be placed on the market.***

***deleted***

*Justification*

*This text has been integrated in the definition of 'placing on the market', Article 2, point (a).*

Amendment 30

## ARTICLE 3, PARAGRAPH 1

1. The production, placing on the market and use of substances listed in Annex I, whether on their own, in preparations or as constituents of articles, shall be prohibited.

1. The production, placing on the market, **export** and use of substances listed in Annex I, whether on their own, in preparations or as constituents of articles, shall be prohibited.

## Amendment 31 ARTICLE 3, PARAGRAPH 2

***2. The production, placing on the market and use of substances listed in Annex II, whether on their own, in preparations or as constituents of articles, shall be restricted in accordance with the conditions set out in that Annex.***

***deleted***

### *Justification*

*The amendment is in line with the deletion of Annex II of the Regulation.*

## Amendment 32 ARTICLE 3, PARAGRAPH 2 A (new)

***2a. Member States and the Commission shall, within the assessment and authorisation schemes for existing and new chemicals and pesticides under relevant Community legislation, take into consideration the criteria in paragraph 1 of Annex D of the Stockholm Convention and take measures to control existing chemicals and prevent the production, placing on the market and use of new chemicals which exhibit characteristics of POPs.***

*Justification*

*Pesticide or industrial chemical assessment schemes should facilitate the detection of substances exhibiting the criteria in paragraph 1 of Annex D of the Stockholm Convention with the aim of preventing the production and use of POPs.*

*Furthermore, the creation of new POPs has to be prevented according to the Stockholm Convention.*

Amendment 33  
ARTICLE 5, PARAGRAPH 2

2. The holder of a stockpile greater than **100 kg** and consisting of or containing **any substance listed in Annex II** shall provide the competent authority of the Member State in which the stockpile is established with information concerning the nature and size of that stockpile. Such information shall be provided within 12 months of the entry into force of the relevant provision of this Regulation and annually thereafter ***until the deadline specified in Annex II for restricted use.*** The holder shall manage the stockpile in a safe, efficient and environmentally sound manner.

2. The holder of a stockpile greater than **50 kg** and consisting of or containing **HCH, including lindane**, shall provide the competent authority of the Member State in which the stockpile is established with information concerning the nature and size of that stockpile. Such information shall be provided within 12 months of the entry into force of the relevant provision of this Regulation and annually thereafter. The holder shall manage the stockpile in a safe, efficient and environmentally sound manner.

*Justification*

*In line with the deletion of Annex II.*

Amendment 34  
ARTICLE 5, PARAGRAPH 3

3. Member States shall monitor the use and management of notified stockpiles.

3. Member States shall monitor the use and management of notified stockpiles. ***They shall assist the holder through financial and technical instruments. Member States shall also provide technical and financial assistance in response to requests from developing country Parties and Parties with economies in transition via a financial mechanism as defined in Article 13 of the Stockholm Convention.***

*Justification*

*To dispose of stockpiles safely within the EU, it is possible to obtain EU financial and technical assistance through existing financial instruments. It may be necessary to emphasise this.*

*Concerning developing countries, Article 13 of the Stockholm Convention foresees that financial assistance should be provided to them. This should be mentioned in the legislative text.*

Amendment 35

ARTICLE 5, PARAGRAPH 3 A (new)

***3a. Sufficient financial resources shall be made available for the disposal of obsolete stockpiles as waste. The Commission is invited to propose a re-allocation of resources under existing instruments.***

*Justification*

*Obsolete stockpiles which contain persistent organic pollutants are particularly dangerous for the environment. It is therefore essential to provide for financial resources aimed at their elimination.*

Amendment 36

ARTICLE 6, TITLE and PARAGRAPH 1

Release reduction

1. Within two years of the date of entry into force of this Regulation, Member States shall draw up and maintain release inventories for the substances listed in Annex III.

Release reduction ***and elimination***

1. Within two years of the date of entry into force of this Regulation, Member States shall draw up and maintain release inventories ***of air, water, land and products*** for the substances listed in Annex III ***and for all materials, products and processes that give rise to releases of Annex III substances.***

### *Justification*

*As the Stockholm Convention covers all releases, it is necessary to draw up inventories for all media. Secondly, it is crucial to identify all materials, products and processes that give rise to Annex III substances, in order to facilitate the reduction, elimination and substitution measures. (For example, according to the last EU dioxin inventory, pesticide production was the source of 30% of total dioxin releases to the environment and municipal solid waste incineration was the source of 20%. For pesticide production, all releases were to land; for municipal solid waste incineration, 17% of releases to air and 83% to land.)*

### Amendment 37 ARTICLE 6, PARAGRAPH 2

2. Within the same period, Member States shall also draw up a national action plan designed to identify, characterise and reduce the total releases derived from anthropogenic sources of each of the substances listed in Annex III.

2. Within the same period, Member States shall also draw up a national action plan designed to identify, characterise and ***minimise with a view to eliminating as soon as possible*** the total releases derived from anthropogenic sources of each of the Annex III, ***and as a matter of priority, promote the development and where appropriate require the use of substitute materials, products and processes to prevent the formation and release of the substances listed in Annex III.***

### *Justification*

*Wording of the Stockholm Convention, Article 5 c; this is supported by Annex C, part V.A of the Convention and the Communication on a Community Strategy for Dioxins, Furans and Polychlorinated Biphenyls [COM(2001) 593].*

### Amendment 38 ARTICLE 6, PARAGRAPH 2 A (new)

***2a. Member States shall, when considering proposals to construct new facilities or significantly modify existing facilities using processes that release chemicals listed in Annex III, give priority consideration to alternative processes, techniques or practices that have similar usefulness but***

***which avoid the formation and release of Annex III chemicals.***

*Justification*

*Wording from the Stockholm Convention, Annex C, Part V(B)(b). It will ensure that Member States move towards elimination of Annex III substances instead of "getting stuck" with a new generation of facilities that generate unintentional Annex III-byproducts.*

*It is also stated in the Communication on a Community Strategy for Dioxins, Furans and Polychlorinated Biphenyls [COM(2001) 593]: "The most efficient way to reduce the levels in the foodchain is to reduce the contamination in the environment. This should be done by 1) avoiding new releases....".*

Amendment 39  
ARTICLE 7, PARAGRAPH 1

1. Waste consisting of, containing or contaminated by any substance listed in Annex IV shall be disposed of without undue delay and in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants.

1. Waste consisting of, containing or contaminated by any substance listed in Annex IV shall be disposed of without undue delay and ***in the case of obsolete pesticides within 36 months after the entry into force of this Regulation*** and in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants. ***Permanent storage, in whatever conditions, is not permitted.***

*Justification*

*Most stockpiles of obsolete pesticides containing POPs are already stored centrally within the respective State and are monitored by the State. It should thus be possible to plan their disposal in such a way that the complete destruction is finalised within 36 months after the entry into force of this Regulation.*

*The second part of the amendment refers to the state of the art of disposal. Controlled incineration in an appropriate plant is the method of choice for destruction. Long-term storage, e.g. in salt mines, leaves the POPs intact with the risk that they will resurface later.*

Amendment 40  
ARTICLE 7, PARAGRAPH 2



2. By way of derogation from paragraph 1, waste consisting of, containing or contaminated by any substance listed in Annex IV may be otherwise disposed of in accordance with Article 4 of Directive 75/442/EEC, provided that the content of the listed substances in the waste is below the concentration limits specified in Annex IV to this Regulation.

2. By way of derogation from paragraph 1, waste consisting of, containing or contaminated by any substance listed in Annex IV may be otherwise disposed of in accordance with Article 4 of Directive 75/442/EEC, provided that the content of the listed substances in the waste is below the concentration limits ***to be*** specified in Annex IV to this Regulation ***by 31 December 2005.***

Amendment 41  
ARTICLE 8, PARAGRAPH 2 A (new)

***2a. When preparing their implementation plans, the Commission and the Member States shall exchange information on the content, as appropriate.***

*Justification*

*Information exchange is important within the European Community. Better results can be achieved if methods and ideas are shared. As experience is shared, efforts to end such pollution will become more effective.*

Amendment 42  
ARTICLE 9

The Commission and the Member States shall establish, in close co-operation, appropriate programmes and mechanisms, consistent with the state of the art, for the ***continuous*** provision of comparable monitoring data on the presence of dioxins, furans and PCBs in the environment. When establishing such programmes and mechanisms, due account shall be taken of developments under the Protocol and the Convention.

The Commission and the Member States shall establish, in close co-operation, appropriate programmes and mechanisms, consistent with the state of the art, for the ***regular*** provision of comparable monitoring data on the presence of dioxins, furans and PCBs in the environment. When establishing such programmes and mechanisms, due account shall be taken of developments under the Protocol and the Convention.

*Justification*

*'Regular' is more realistic.*

Amendment 43  
ARTICLE 10, PARAGRAPH 1

1. The Commission and the Member States shall facilitate and undertake the exchange within the Community and with third countries of information relevant to the **reduction or** elimination of the production, use and release of persistent organic pollutants and to alternatives to those substances, specifying the risks **and the economic and social costs related to such alternatives.**

1. The Commission and the Member States shall facilitate and undertake the exchange within the Community and with third countries of information relevant to the elimination **as soon as possible** of the production, use and release of persistent organic pollutants and to alternatives to those substances, specifying the risks.

*Justification*

*In order to stress that risk is first priority and should always be specified.*

Amendment 44  
ARTICLE 10, PARAGRAPH 2

2. The Commission and the Member States shall promote and facilitate awareness and public availability of information on persistent organic pollutants and on the reduction or elimination of their production, use and release.

2. The Commission and the Member States shall promote and facilitate awareness and **ensure** public availability of information on persistent organic pollutants and on the reduction or elimination of their production, use and release.

*Justification*

*Public availability of information needs to be ensured, not just promoted and facilitated.*

Amendment 45  
ARTICLE 10, PARAGRAPH 2 A (new)

**2a. Member States shall develop and**

***implement - especially for women, children and the least educated - educational and public awareness programmes on persistent organic pollutants, as well as on their health and environmental effects.***

*Justification*

*Implementation of Article 10 (1) (c) of the Stockholm Convention. Proper implementation of the Convention requires awareness raising, especially for the most vulnerable groups.*

Amendment 46  
ARTICLE 10, PARAGRAPH 2 B (new)

***2b. Member States shall ensure public participation in addressing persistent organic pollutants and their health and environmental effects and in developing adequate responses, including opportunities for providing input at the national level.***

*Justification*

*Implementation of Article 10 (1) (d) of the Stockholm Convention. Public participation is an essential element for the successful implementation of the Convention.*

Amendment 47  
ARTICLE 10, PARAGRAPH 2 C (new)

***2c. Member States shall promote and facilitate training of workers, scientists, educators and technical and managerial personnel on persistent organic pollutants and their health and environmental effects.***

### *Justification*

*Implementation of Article 10 (1) (e) of the Stockholm Convention. Specific training programmes for workers and other target groups is essential to ensure successful implementation of the Convention.*

### Amendment 48 ARTICLE 10, PARAGRAPH 3

**3. The Commission and the Member States shall protect any confidential information received from a third country, in accordance with any agreement with that third country.**

Without prejudice to **Council** Directive 90/313/EEC, information on **human** health and safety and **on** the environment shall not be regarded as confidential.

3. Without prejudice to Directive 2003/4/EC<sup>1</sup>, information on health and safety **of humans** and the environment shall not be regarded as confidential. **The Commission and the Member States that exchange other information with a third country may protect any confidential information as mutually agreed.**

<sup>1</sup>Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

### *Justification*

*In principle, there should be no confidentiality for any information related to POPs. In balancing the interests of business confidentiality with the public right to information affecting its health and the environment they live in, clearly the public interest must prevail the confidentiality argument. However, the Commission and the Member States, when exchanging other information with a third country, may protect any confidential information as mutually agreed.*

### Amendment 49 ARTICLE 11

The Commission and the Member States shall co-operate in providing appropriate and timely technical assistance, including training, **or** support to non-governmental organisations, to developing countries and countries with economies in transition to assist them, taking into account their particular needs, to develop and strengthen

The Commission and the Member States shall co-operate in providing appropriate and timely technical **and financial** assistance, including training, **infrastructure development, capacity building and** support to non-governmental organisations, to developing countries and countries with economies in transition to

their capacity to implement their obligations under the Convention.

assist them, taking into account their particular needs, to develop and strengthen their capacity to implement their obligations under the Convention.

*Justification*

*Developing countries and countries with economies in transition are in many cases severely contaminated, yet these same countries are without the necessary infrastructure to effectively implement commitments made under the POP elimination Convention. Non-governmental organizations have an important role to play in disposal operations.*

Amendment 50  
ARTICLE 12, PARAGRAPH 1

1. Member States shall every **three** years forward to the Commission information on the application of this Regulation.

1. Member States shall every **two** years forward to the Commission information on the application of this Regulation.

*Justification*

*In order to secure updated reporting from the Member States to the Commission.*

Amendment 51  
ARTICLE 12, PARAGRAPH 2

2. Member States shall provide the Commission every year with statistical data on the actual or estimated total production and placing on the market of any substance listed in ***Annex I or II***.

2. Member States shall provide the Commission every year with statistical data on the actual or estimated total production and placing on the market of any substance listed in ***Annex I***.

*Justification*

*The amendment is in line with the deletion of Annex II.*

Amendment 52  
ARTICLE 12, PARAGRAPH 3, INTRODUCTION

3. Within **three** years of the date of entry

3. Within **two** years of the date of entry

into force of this Regulation and every three years thereafter, Member States shall provide the Commission with:

into force of this Regulation and every three years thereafter, Member States shall provide the Commission with:

*Justification*

*In order to secure updated reporting from the Member States to the Commission.*

Amendment 53  
ARTICLE 12, PARAGRAPH 5

5. The Commission shall regularly compile a report on the application of this Regulation and shall integrate it with the information provided by the Member States under paragraphs 1, 2 and 3 to form a synthesis report. It shall forward a summary of the synthesis report to the European Parliament and to the Council.

5. The Commission shall regularly ***and at least every two years*** compile a report on the application of this Regulation and shall integrate it with ***the information already available in the context of the European pollutant emission register (EPER) or any other programme*** and with the information provided by the Member States under paragraphs 1, 2 and 3 to form a synthesis report. ***This report shall include information provided by the Member States on technical assistance to developing countries.*** It shall forward a summary of the synthesis report to the European Parliament and to the Council ***and make it available to the public without delay. Information concerning non-compliance shall be made public by the Commission on the Internet without delay. The information shall be provided clearly and transparently to the public.***

*Justification*

*Maximum transparency is a condition of consumer confidence. Account should be taken of all available sources of information in the context of information exchange.*

Amendment 54  
ARTICLE 12, PARAGRAPH 5 A (new)

***5a. Member States shall every year forward to the Commission an evaluation of the technical assistance provided to developing countries and countries with economies in transition. The evaluation shall examine whether the technical assistance provided is sufficient to ensure that those countries have the capacity to implement the Convention. The Commission shall make a similar evaluation of its assistance.***

***Following the yearly evaluation, the Commission shall without delay take the appropriate measures, including adjusting technical assistance, to ensure the implementation of the Convention.***

*Justification*

*Developing countries and countries with economies in transition are in many cases severely contaminated, yet these same countries are without the necessary infrastructure to effectively implement commitments made under the POP elimination Convention. Therefore a yearly evaluation of the effectiveness of the technical assistance is necessary so that better results can be achieved.*

Amendment 55  
ARTICLE 12, PARAGRAPH 5 B (new)

***5b. Member States shall ensure that the names of those who infringe the provisions of this Regulation are made public. Member States shall every year forward to the Commission information on infringements of this Regulation. The information provided by Member States to the Commission shall ensure that the Commission can publish a list, including names, of severe infringements of this Regulation.***

*Justification*

*Due to the seriousness of infringements of this Regulation, which will threaten the environment and human health, it is proportionate to require publication of the names of those who infringe the Regulation. Implementation of the name and shame system is introduced in order to prevent and reduce infringements of the Regulation and to send a strong from the Parliament to the public that infringements are not accepted.*

Amendment 56  
ARTICLE 12, PARAGRAPH 5 C (new)

:

***5c. The Commission shall develop a common format for the provision by Member States of data and information pursuant to this Article.***

*Justification*

*In order to secure comparable data.*

Amendment 57  
ARTICLE 13

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission one year after entry into force of this Regulation at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission one year after entry into force of this Regulation at the latest and shall notify it without delay of any subsequent amendment affecting them. ***The Commission shall make all information regarding penalties available in its database, which will be publicly accessible on the Internet, and shall provide anyone with the information upon request.***



*Justification*

*The Regulation will be more effective under transparent conditions. As such, information on penalties should be made publicly available.*

Amendment 58  
ARTICLE 14, PARAGRAPH 2, SUBPARAGRAPH 2

***In particular, the Commission shall, before 31 December 2007, review the entry in Part B of Annex II concerning hexachlorocyclohexane HCH, including lindane, in the light of the results of risk assessments and of the development of knowledge and techniques in respect of substitutes for HCH.*** ***deleted***

*Justification*

*Lindane should be subject to immediate prohibition (see corresponding amendments).*

Amendment 59  
ANNEX I, PART B

Text proposed by the Commission

SUBSTANCE	CAS No	EC No	SPECIFIC EXEMPTION ON INTERMEDIATE USE OR OTHER SPECIFICATION
Chlordecone	143-50-0		-
Hexabromobiphenyl	36355-01-8		-

Amendment by Parliament

SUBSTANCE	CAS No	EC No	SPECIFIC EXEMPTION ON INTERMEDIATE USE OR OTHER SPECIFICATION
Chlordecone	143-50-0		-
Hexabromobiphenyl	36355-01-8		-
<b><i>HCH, including Lindane</i></b>	<b><i>608-73-1, 58-89-9</i></b>	<b><i>210-168-9, 200-401-2</i></b>	-

*Justification*

*Lindane should be subject to immediate prohibition and therefore part of Annex I.*

Amendment 60  
ANNEX II

***ANNEX II***

***This annex is deleted.***

*Justification*

*Lindane should be subject to immediate prohibition and therefore be moved to Annex I (see the corresponding amendment).*

Amendment 61  
ANNEX IV, TABLE

Text proposed by the Commission

-

SUBSTANCE	CAS No	EC No	LIMIT CONCENTRATION REFERRED TO IN ARTICLE 7(2), ppm (parts per million)
Aldrin	309-00-2	206-215-8	

Chlordane	57-74-9	200-349-0	
Dieldrin	60-57-1	200-484-5	
Endrin	72-20-8	200-775-7	
Heptachlor	76-44-8	200-962-3	
Hexachlorobenzene	118-74-1	200-273-9	
Mirex	2385-85-5	219-196-6	
Toxaphene	8001-35-2	232-283-3	
Polychlorinated Biphenyls (PCB)	1336-36-3 and others	215-648-1	
DDT (1,1,1-trichloro-2,2-bis(4-chlorophenyl) ethane)	50-29-3	200-024-3	
Chlordecone	143-50-0		
Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF)			
HCH, including lindane	608-73-1, 58-89-9	210-168-9, 200-401-2	

Amendment by Parliament

SUBSTANCE	CAS No	EC No	LIMIT CONCENTRATION REFERRED TO IN ARTICLE 7(2), ppm (parts per million) (*)
Aldrin	309-00-2	206-215-8	
Chlordane	57-74-9	200-349-0	
Dieldrin	60-57-1	200-484-5	
Endrin	72-20-8	200-775-7	
Heptachlor	76-44-8	200-962-3	
Hexachlorobenzene	118-74-1	200-273-9	
Mirex	2385-85-5	219-196-6	
Toxaphene	8001-35-2	232-283-3	
Polychlorinated Biphenyls (PCB)	1336-36-3 and others	215-648-1	
DDT (1,1,1-trichloro-2,2-bis(4-chlorophenyl) ethane)	50-29-3	200-024-3	
Chlordecone	143-50-0		

<b><i>Hexabromobiphenyl</i></b>	<b><i>36355-01-8</i></b>		
Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF)			
HCH, including lindane	608-73-1, 58-89-9	210-168-9, 200-401-2	

*(\*) The competent authorities in the Member States shall decide on limit concentrations until limit concentrations have been set in Annex IV.*

### *Justification*

*Hexabromobiphenyl should be included in Annex IV concerning the substances subject to waste management provisions set out in Article 7. Article 7 can be implemented only if limit concentrations are laid down. Given that work on this point within the framework of the Basel and Stockholm Conventions has not yet been completed, the competent authorities should take the relevant decisions on a provisional basis.*

## **EXPLANATORY STATEMENT**

### **Background**

Production and generation of Persistent Organic Pollutants expanded dramatically since mid 20<sup>th</sup> century. At least 500 of the chemicals that we carry in our body are chemicals that no one was exposed to before. Both people and wildlife, everywhere in the world, carry body burdens of POPs at or near levels that can cause injury to human health and to entire ecosystems. Many of these chemicals build up in the body and remain in human tissues from one generation to the next.

Persistent Organic Pollutants are chemical substances that persist in the environment, bioaccumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. These pollutants are transported across international boundaries far from their sources, even to regions where they have never been used or produced.

The European Community and its Member States signed the Protocol to the regional UNECE Convention on Long-Range Transboundary Air Pollution (CLRTAP) on POPs in June 1998 and the global Stockholm Convention on POPs in May 2001. The Protocol has entered into force on 25 October 2003, the Stockholm Convention will enter into force when 50 ratifications have been handed in (40 in November 2003). Separate proposals for Council Decisions concerning the Community's conclusions on these two international agreements are being examined in parallel to this proposal.

### **Commission proposal**

The proposed Regulation aims at putting in place appropriate implementing legislation in order to give effect to the main provisions of the Convention and the Protocol, which are not yet sufficiently covered by Community legislation. Current Community legislation includes restrictions on marketing and use of most of the intentionally produced substances listed in the Convention and in the Protocol.

The main deficiency in the present Community legislation is that there is no legislation on prohibition of the production of any of the currently listed chemicals nor is there any framework to prohibit the production of new POPs added in the agreements in future. Another significant deficiency is that most of the existing Community prohibitions on the marketing and use of specific POP chemicals are not complete.

### **Position of the Environment committee**

The Environment committee endorses in general the Commission proposal and agrees that it should be dealt with as a matter of urgency in view of the Community's commitment to ratify the international agreements without delay.

However, the committee would like to be more ambitious in pursuing the objectives of the Regulation and has therefore adopted a number of amendments.

### *Horizontal issues*

The Commission proposes a dual legal basis, Articles 95(1) and 175(1) ECT. The committee believes that the appropriate legal basis of the proposal should be exclusively Article 175 (1) of the Treaty since the principal objective of the two international agreements, which this legislation aims to implement, is the protection of human health and the environment against the harmful effects of the use of POPs rather than the functioning of the internal market.

Besides, the committee underlines that the objective of this Regulation, in accordance with the precautionary principle, is to protect human health and the environment from persistent organic pollutants. This should be achieved by prohibiting or phasing out as soon as possible the production, placing on the market and the use of POPs and by minimising with a view to eliminating releases and establishing provisions for disposal of substances subject to the Convention and the Protocol. As the Community has clearly expressed its concern about the continuous release of POPs into the environment, any releases intentionally or unintentionally of POPs into the environment should be eliminated as soon as possible.

#### *Unintentional by-products*

Releases of POPs which are unintentional by-products of industrial processes should be identified and reduced with a view to eliminating them as soon as possible. Action Plans should be drawn up and implemented to reduce releases as soon as possible. To this end, all appropriate tools should be available.

#### *Derogations*

In order to ensure that chemicals with high persistence of bioaccumulative effects are not released into the environment, unless their properties are an essential function in a specific application, the committee insists that it is necessary and appropriate to prohibit the production and to restrict exemptions to a minimum.

In view of the harmful properties of HCH, including lindane, and the possible risks related to its release into the environment, its production and uses should immediately be prohibited. The committee cannot support the derogation concerning HCH, including lindane, as proposed by the Commission.

#### *Developing countries and NGOs*

Developing countries or countries with economies in transition generally lack the resources, commitment and/or infrastructure to implement and enforce legislation and international commitments. The committee therefore stresses that the Commission and the Member States should provide appropriate and timely technical assistance to strengthen the capacity of these countries to implement the Convention. This shall include support to NGOs.

A yearly evaluation of the technical assistance to developing countries and countries with economies in transition should be carried out to assess the technical assistance provided by the Commission and Member States.

#### *"Name and shame"*

The public has a right to know about non-compliance with this legislation. Infringements of the provisions of this Regulation shall therefore be made public by Member States and the Commission. The "name and shame" system shall ensure compliance with the rules in order to protect human health and the environment.

#### *Waste*

To ensure a high level of protection, limit values defining a low content of the substances in waste should be established before 31 December 2005. Re-use or recovery of waste containing or contaminated by any substance listed in the Annex IV of the proposal shall be prohibited entirely, without any derogation.

The committee stresses further the importance of reducing the total amount of waste in the EU and to consider alternative waste treatment. Priority should be given to non-incineration alternatives and in particular to resource recovery, re-use, recycling, waste separation, and the promotion of products that generate less waste. The substitution of such techniques for waste incineration not only prevents formation and release of dioxins and other unintentional POPs, but these techniques are substantially less costly. Also these techniques provide opportunities for local development, entrepreneurship and employment.

#### *Information*

Due to lacking awareness of the hazards of POP to the health as well as to the environment, particularly in developing countries, it is essential to increase public access to information on POPs. As a general rule, but without prejudice to Council Directive 2003/4/EC, information on human health and safety and on the environment shall not be regarded as confidential.

#### *Closing remarks*

In view of the danger emanating from POPs, the committee urges Parliament and the Council to adopt the proposal at the beginning of 2004.

The amendments adopted by the committee will improve the legislation with the aim of obliging Member States to

- phase out and eliminate all production, use and trade of POPs that are products or by-products of human activity,
- identify, collect and destroy all stockpiles,
- address the issue of stockpiles, based on the polluter pays principle, and recognise that avoiding incineration (a major source of POPs formation and release) through alternatives - waste separation and re-use/recycling - is a priority.

Health and safety should not in any way be compromised during the process of the elimination of a POP and no unnecessary delay should be tolerated.

# EUROPEAN PARLIAMENT

1999



2004

---

*Committee on Legal Affairs and the Internal Market*  
*The Chairman*

Mrs Caroline F. Jackson  
Chairwoman  
Committee on the Environment, Public Health and Consumer Policy  
BRUSSELS

Subject: Legal basis of the Proposal for a regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC (COM(2003) 333 – C5-0273/2003 – 2003/0119(COD))

Dear Madam Chairwoman,

By letter of 13 October 2003 you requested the Committee on Legal Affairs and the Internal Market, under Rule 63(2), to consider the validity of the legal basis of the above Commission proposal.

Proposal for a regulation COM(2003) 333 is based on Articles 95 (1) and 175 (1) of the EC Treaty.

The purpose of the proposal 'is to give effect to the main provisions of the [Stockholm] Convention and the [1998] Protocol which are not yet sufficiently covered by Community legislation' (explanatory memorandum of proposal for a regulation, paragraph 1).

The proposal for a 'regulation concerns the production, placing on the market, use, release and disposal of substances subject to prohibitions or restrictions under the Stockholm Convention (...) or the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (...)'.

Under Article 3 of the proposal, the production, placing on the market and use of substances listed in Annex I is to be prohibited while the production, placing on the market and use of substances listed in Annex II is to be restricted. Article 4 provides for derogations to Article 3.

The holder of a stockpile which consists of or contains any substance listed in Annex I must dispose of that stockpile as waste (Article 5). Article 7 provides that 'waste consisting of,



containing or contaminated by any substance listed in Annex IV shall be disposed of without undue delay and in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants.'

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 stem 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 2003 the Committee on Legal Affairs and the Internal Market thus decided, unanimously<sup>1</sup>, that the appropriate legal basis for the proposal in question is Articles 95(1) and 175(1) of the EC Treaty.

Yours sincerely,

Giuseppe Gargani

---

<sup>1</sup> The following were present for the vote: Giuseppe Gargani (chairman), Ioannis Koukiadis (vice-chairman), François Zimeray (draftsman), 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.

2 December 2003

## **OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY**

for the Committee on the Environment, Public Health and Consumer Policy

on the proposal for a European Parliament and Council regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC  
(COM(2003) 333 – C5-0273/2003 – 2003/0119(COD))

Draftsman: Bill Newton Dunn

PA\_Leg

### **PROCEDURE**

The Committee on Industry, External Trade, Research and Energy appointed Bill Newton Dunn draftsman at its meeting of 2 October 2003.

It considered the draft opinion at its meetings of 4 November and 2 December 2003.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Jaime Valdivielso de Cué (Acting Chairman), Bill Newton Dunn (Draftsman), Gordon J. Adam (for Massimo Carraro), Konstantinos Alyssandrakis, Sir Robert Atkins, Guido Bodrato, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Concepció Ferrer, Norbert Glante, Alfred Gomolka (for Werner Langen), Michel Hansenne, Roger Helmer (for Bashir Khanbhai), Hans Karlsson, Rolf Linkohr, Erika Mann, Marjo Matikainen-Kallström, Eryl Margaret McNally, Seán Ó Neachtain, Paolo Pastorelli, Samuli Pohjamo (for Colette Flesch), Imelda Mary Read, Paul Rübig, Esko Olavi Seppänen, Gary Titley, Claude Turmes, Alejo Vidal-Quadras Roca, Myrsini Zorba and Olga Zrihen Zaari..

## SHORT JUSTIFICATION

Persistent organic pollutants (POPs) are chemicals that persist in the environment and bioaccumulate through the food chain because they can reside in body fat. Therefore, they pose a risk to the environment and human health. Fragile ecosystems such as the Arctic are particularly at risk because of long-range transportation and biomagnification.

The Commission proposal is necessary in order to transpose two international agreements into EU legislation. This has to be done because, at the same time, the Commission proposes to ratify these agreements and this would probably lead to at least one of the agreements entering into force. The two are:

1. The Stockholm Convention on POPs from May 2001
2. The UNECE Convention on Long-Range Transboundary Air Pollution on POPs from June 1998.

Both agreements concern a range of POPs, which are largely identical.

The draft regulation foresees rules for adding new substances to the scope of the agreements, to prohibit the production, use and placing on the market and to foresee the controlled destruction of existing stockpiles.

Your rapporteur supports the ratification of both agreements which are the subject of separate reports in the Committee on the environment, public health and consumer protection.

### **Industry aspects:**

#### **– Production**

The substances listed in the draft regulation, at least those which are not by-products or accidental impurities, are no longer produced by European industry and have not been produced for many years. The regulation thus would not have an impact on the chemical industry. The main producer for DDT, the one substance for which exemptions from the Conventions are foreseen, is China. The International Council of Chemical Associations welcomes both international agreements.

Other industrialised nations with important chemical industry have already ratified, e.g. Switzerland, or support the aims, e.g. USA. Russia has only signed one of the agreements, but has not yet ratified it.

#### **– Destruction**

For the EU, the problem is mainly with enlargement. Some candidate countries hold large stocks of obsolete pesticides. According to the regulation, they will have to be disposed of in a safe way, meaning by incineration in specialised plants or as hazardous waste. As most of these stocks are in the hands of the respective states, not industry, this has no effect on industry. There seems to be a discussion on allowing other means of disposal than destruction, i.e. long term storing in hazardous waste storage sites (mainly salt mines). This is current practice in some member states. The Commission seems to think that it is wise to use incineration only.

But hazardous waste incineration plants are not available in all states. Thus it could have a positive effect for existing incineration plants if the obsolete stocks could be destroyed there. Financing of the destruction is possible through different means, e.g. the World Bank, and also for the accession countries through EU funding. But the accession states have to apply for the grants, which so far only a minority has done. They can also receive grants to draw up their implementation plans.

#### **Trade aspects:**

All the substances covered by this proposal are no longer produced within the EU. Addition of more substances to the list in the future might have a positive effect on EU industries because they produce alternative substances. This could be seen by developing countries as an unfair advantage. The draft proposal as it stands should have no negative trade consequences for the Union.

The exceptions foreseen for DDT will make it more difficult to develop alternative substances, therefore this should be specifically targeted in the European Research Policy and in future legislation concerning the sustainable use of pesticides. Naturally, the recommendations of the World Health Organisation should be taken into account in this matter.

### **AMENDMENTS**

The Committee on Industry, External Trade, Research and Energy calls on the Committee on the Environment, Public Health and Consumer Policy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

---

Amendments by Parliament

---

#### Amendment 1 RECITAL 7 a (new)

***(7 a) As most of the substances listed in the Protocol and the Convention so far are neither used nor produced within the EU, there is an important additional task: To develop a strategy for the sustainable use of pesticides. As laid down in the Commission's Communication\*, this strategy should incorporate the substitution of substances that will be added to the list of internationally banned substances in the future.***

---

***\*COM(2002) 349, OJ Cxx2002.***

---

<sup>1</sup> OJ C ... / Not yet published in OJ..

### *Justification*

*The substances listed so far pose no problem to the EU. But preparation for the addition of more substances should start now and alternatives should be developed as well as a global strategy.*

### Amendment 2 RECITAL 9 a(new)

***(9a) Existing stockpiles of obsolete pesticides which contain POPs must be disposed of as soon as possible and in a state of the art fashion. If other substances are added to the annexes of this regulation in the future, their stocks must also be destroyed immediately and no new stockpiling shall be made.***

### *Justification*

*In some candidate countries, important quantities of obsolete pesticides are still stored, mostly containing POPs. Not all of these stocks meet adequate safety standards. It is thus important that they are disposed of soon and in a safe way. Some of the existing stockpiles date from 20 or 30 years ago. Similar developments should be prevented in the future as inadequate stockpiling can lead to large-scale environmental damage.*

### Amendment 3 Article 5, paragraph 3

3. Member States shall monitor the use and management of notified stockpiles.

3. Member States shall monitor the use and management of notified stockpiles. ***They shall assist the holder through financial and technical instruments. Member States shall also provide technical and financial assistance in response to requests from developing country Parties and Parties with economies in transition via a financial mechanism as defined in Article 13 of the Stockholm Convention.***

### *Justification*

*To dispose of stockpiles safely within the EU, it is possible to obtain EU financial and technical assistance through existing financial instruments. It may be necessary to emphasise this.*

*Concerning developing countries, Article 13 of the Stockholm Convention foresees that financial assistance should be provided to them. This should be mentioned in the legislative text.*

### Amendment 4 Article 7, paragraph 1

1. Waste consisting of, containing or contaminated by any substance listed in Annex IV shall be disposed of without undue delay and in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants.

1. Waste consisting of, containing or contaminated by any substance listed in Annex IV shall be disposed of without undue delay and ***in the case of obsolete pesticides within 36 months after the entry into force of this Regulation*** and in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants. ***Permanent storage, in whatever conditions, is not permitted.***

### *Justification*

*Most stockpiles of obsolete pesticides containing POPs are already stored centrally within the respective State and are monitored by the State. It should thus be possible to plan their disposal in such a way that the complete destruction is finalised within 36 months after the entry into force of this Regulation.*

*The second part of the amendment refers to the state of the art of disposal. Controlled incineration in an appropriate plant is the method of choice for destruction. Long-term storage, e.g. in salt mines, leaves the POPs intact with the risk that they will resurface later.*