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REPORT

on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade
(COM(2006)0250 – C6-0186/2006 – 2006/0080(CNS))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Johannes Blokland

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade (COM(2006)0250 – C6-0186/2006 – 2006/0080(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2006)0250)¹,
 - having regard to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade,
 - having regard to Article 133 and Article 175(1), in conjunction with the first sentence of the first subparagraph of Article 300(2) of the EC Treaty,
 - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0186/2006),
 - having regard to Rules 51 and 83(7) of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on International Trade (A6-0239/2006),
1. 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.

¹ OJ C ... / Not yet published in OJ.

EXPLANATORY STATEMENT

On 24 October 2002 the European Parliament gave its favourable opinion to Council approval, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade¹ (Report A5-0290/2002). The Commission had proposed to base the Council Decision on Article 133 of the EC Treaty. However, Parliament proposed to change the legal base of the Decision to Article 175 EC. This amendment was agreed unanimously by the Council.

The Council Decision to approve the Convention, based on Article 175, was adopted on 19 December 2002 (Decision 2003/106/EC²) and the instrument of ratification, together with the European Community declaration of competence, was deposited with the Secretary-General of the United Nations on 20 December 2002. The Rotterdam Convention entered into force on 24 February 2004.

However, the Commission opposed to the changing of the legal base, and on 28 February 2003 it filed a request, under Article 230 EC, for annulment of the Council Decision to the European Court of Justice. As the issue of the legal base was also of concern for the Parliament, the Parliament intervened in Court on the side of the Council.

In her opinion delivered on 26 May 2005, the Advocate General stated: *“To sum up: if the content and objectives of the Convention and the context in which it was concluded are taken into account, its centre of gravity is not in the sphere of the common commercial policy but in the sphere of environmental policy. [...] I agree with the view taken by the Council and the interveners that the Convention, with reference to the legal basis for its approval, has more in common with the Cartagena Protocol on Biosafety than with the Energy Star Agreement. It was therefore correct to base the approval of the Convention on Article 175(1) EC, not on Article 133 EC.”*³

Both for the Council, the Commission and also for the Parliament and your rapporteur, it was therefore a surprise to be informed that on 10 January 2006, in its judgment⁴, the Court of Justice annulled the Council Decision approving the Convention, ruling that there should have been a dual legal base including both Articles 133 and 175 first paragraph, instead of the sole Article 175, or the sole Article 133 which was requested by the Commission.

As there is no appeal possible to the judgment of the Court, the legislator is required to restart the procedure leading to the Council Decision, this time with the legal base as ordered by the Court.

The annulment of Council Decision 2003/106/EC does not affect the original Community ratification of the Convention and the EC remains a Party in accordance with the Vienna Convention on the Law of Treaties. However, it is necessary to adopt a new Council Decision with the above-mentioned dual legal base together with an amended declaration of competence reflecting the change in the legal base. To avoid any legal vacuum, it is proposed

¹ OJ C 300, 11.12.2003, p.443-607 E.

² OJ L 63, 6.3.2003, p.27.

³ Point 45 of the Advocate General's opinion in Case C-94/03, delivered on 26 May 2005.

⁴ Case C-94/03.

that the new decision should have retroactive effect back to the date of adoption of the previous Council Decision.

The present Commission proposal seeks to replace the annulled Council decision with a new one based on the correct legal basis. The rapporteur recommends that the Commission proposal be approved without amendment.

PROCEDURE

Title	Proposal for a Council decision on the conclusion, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade
References	COM(2006)0250 – C6-0186/2006 – 2006/0080(CNS)
Date of consulting Parliament	13.6.2006
Committee responsible Date announced in plenary	ENVI 15.6.2006
Committee(s) asked for opinion(s) Date announced in plenary	INTA 15.6.2006
Not delivering opinion(s) Date of decision	INTA 20.6.2006
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Johannes BLOKLAND 14.6.2006
Previous rapporteur(s)	
Simplified procedure – date of decision Date of decision	
Legal basis disputed Date of JURI opinion	/
Financial endowment amended Date of BUDG opinion	/
Parliament to consult European Economic and Social Committee – date decided in plenary	
Parliament to consult Committee of the Regions – date decided in plenary	
Discussed in committee	6.7.2006
Date adopted	6.7.2006
Result of final vote	+: 26 -: 0 0: 0
Members present for the final vote	Georgs Andrejevs, Johannes Blokland, John Bowis, Frieda Brepoels, Martin Callanan, Chris Davies, Mojca Drčar Murko, Anne Ferreira, Karl-Heinz Florenz, Satu Hassi, Christa Klauß, Eija-Riitta Korhola, Holger Kraemer, Peter Liese, Jules Maaten, Marios Matsakis, Riitta Myller, Vittorio Prodi, Guido Sacconi, Richard Seeber, María Sornosa Martínez, Thomas Ulmer, Anja Weisgerber
Substitute(s) present for the final vote	Jutta D. Haug, Erna Hennicot-Schoepges
Substitute(s) under Rule 178(2) present for the final vote	Zuzana Roithová
Date tabled	10.7.2006
Comments (available in one language only)	