

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0406/2007

23.10.2007

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals (COM(2006)0745 – C6-0439/2006 – 2006/0246(COD))

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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	19
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	23
PROCEDURE	29

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals
(COM(2006)0745 – C6-0439/2006 – 2006/0246(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0745),
 - having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0439/2006),
 - having regard to Rule 51 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 Industry, Research and Energy (A6-0406/2007),
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
Recital 6

(6) Exports of dangerous chemicals that are banned or severely restricted within the Community should continue to be subject to a common export notification procedure. Accordingly, dangerous chemicals, whether in the form of a substance by itself or in a preparation, which have been banned or severely restricted by the Community as plant protection products, as other forms of pesticides, or as industrial chemicals for use

(6) Exports of dangerous chemicals that are banned or severely restricted within the Community should continue to be subject to a common export notification procedure. Accordingly, dangerous chemicals, whether in the form of a substance by itself or in a preparation **or in an article**, which have been banned or severely restricted by the Community as plant protection products, as other forms of pesticides, or as industrial

by professional users or by the public, should be subject to similar export notification rules to those applicable to such chemicals when they are banned or severely restricted within either or both of the use categories laid down in the Convention, namely as pesticides or chemicals for industrial use. In addition, chemicals subject to the international PIC procedure should also be subject to the same rules. This export notification procedure should apply to Community exports to all third countries, whether or not they are Parties to the Convention or participate in its procedures. Member States should be permitted to charge administrative fees, in order to cover their costs in carrying out this procedure.

chemicals for use by professional users or by the public, should be subject to similar export notification rules to those applicable to such chemicals when they are banned or severely restricted within one or more of the use categories laid down in the Convention, namely as pesticides or chemicals for industrial use. In addition, chemicals subject to the international PIC procedure should also be subject to the same rules. This export notification procedure should apply to Community exports to all third countries, whether or not they are Parties to the Convention or participate in its provisions. Member States should be permitted to charge administrative fees, in order to cover their costs in carrying out this procedure.

Justification

The reference to 'articles' is added in line with Article 14, which foresees an export notification for articles containing substances listed in parts 2 and 3 of Annex I so as to align the recitals with the enacting clauses.

Amendment 2 Recital 21

(21) In particular power should be conferred on the Commission to adopt measures to add further chemicals to Annex I and chemicals subject to Regulation (EC) No 850/2004 of the European Parliament and of the Council to Annex V. Since those measures are of general scope and are designed to supplement this Regulation by the addition of new non-essential elements, they **should** be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

(21) In particular power should be conferred on the Commission to adopt measures to add further chemicals to Annex I and chemicals subject to Regulation (EC) No 850/2004 of the European Parliament and of the Council to Annex V, **and to modify Annexes I to VI**. Since those measures are of general scope and are designed to supplement this Regulation by the addition of new non-essential elements, they **must** be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

Justification

Linked to amendment 5 by the rapporteur.

The recital listing the areas for which the new regulatory procedure with scrutiny applies needs to reflect the enacting clauses. As the rapporteur rightly suggests to extend the new regulatory procedure with scrutiny in Article 22 to modifications of all Annexes, the corresponding recital needs to be modified accordingly.

Amendment 3
Article 7, paragraph 6

6. The obligations set out in paragraphs 2, 3 and 4 shall cease when the following conditions are fulfilled:

- (a) the chemical has become a chemical subject to the PIC procedure;
- (b) the importing country being a Party to the Convention has provided a response in accordance with Article 10(2) of the Convention to the Secretariat whether to consent or not to consent to import of the chemical;
- (c) the Commission has been informed about the response by the Secretariat and has forwarded that information to Member States.

The first subparagraph shall not apply where the importing country being Party to the Convention explicitly requires continued export notification by exporting Parties, for example through its import decision or otherwise.

The obligations set out in paragraphs 2, 3 and 4 shall also cease when the following conditions are fulfilled:

- (a)*** the appropriate authority of the importing Party or other country has waived the requirement to be notified before the export of the chemical;
- (b)*** the Commission has received the information from the Secretariat or from the appropriate authority of the importing Party or other country and has forwarded it

6. The obligations set out in paragraphs 2, 3 and 4 shall cease when the following conditions are fulfilled:

- (a) the chemical has become a chemical subject to the PIC procedure;
- (b) the importing country being a Party to the Convention has provided a response in accordance with Article 10(2) of the Convention to the Secretariat whether to consent or not to consent to import of the chemical;
- (c) the Commission has been informed about the response by the Secretariat and has forwarded that information to Member States;

- (ca)*** the appropriate authority of the importing Party or other country has waived the requirement to be notified before the export of the chemical;
- (cb)*** the Commission has received the information from the Secretariat or from the appropriate authority of the importing Party or other country and has forwarded it

to Member States and made it available on the Internet.

to Member States and made it available on the Internet.

Point (a) shall not apply where the importing country being Party to the Convention explicitly requires continued export notification by exporting Parties, for example through its import decision or otherwise.

Justification

The reference to "the first subparagraph" is not completely clear. To clarify this the amendment refers to point (a). It is more logical to put this text at the end of paragraph 6, so that the sentence "the obligations set out ... are fulfilled" can be deleted.

Amendment 4

Article 9, paragraph 1, subparagraph 1

1. Each exporter of substances listed in Annex I or preparations containing such substances in a concentration that could trigger labelling obligations under Directive 1999/45/EC irrespective of the presence of any other substances shall, during the first quarter of each year, inform the Designated National Authority of its Member State on the quantity of the chemical, as a substance and as contained in preparations, shipped to each Party or other country during the preceding year. That information shall be given together with a list of the names and addresses of each importer to which shipment took place during the same period.

1. Each exporter of substances listed in Annex I or preparations containing such substances in a concentration that could trigger labelling obligations under Directive 1999/45/EC irrespective of the presence of any other substances shall, during the first quarter of each year, inform the Designated National Authority of its Member State on the quantity of the chemical, as a substance and as contained in preparations ***or in articles***, shipped to each Party or other country during the preceding year. That information shall be given together with a list of the names and addresses of each importer to which shipment took place during the same period.

Justification

'Articles' containing substances listed in parts 2 and 3 of Annex I require an export notification pursuant to Article 14(1), just as it is required for substances and preparations. The provision on information on trade in chemicals therefore needs to also cover articles.

Amendment 5
Article 10, paragraph 4, subparagraph 2

When a chemical qualifies for PIC notification, but the information is insufficient to meet the requirements of Annex II, identified exporters or importers shall, upon request by the Commission, provide all relevant information available to them, including that from other national or international chemical control programmes.

When a chemical qualifies for PIC notification, but the information is insufficient to meet the requirements of Annex II, identified exporters or importers shall, upon request by the Commission, provide all relevant information available to them, including that from other national or international chemical control programmes ***within 60 days.***

Justification

In order to ensure that notifications are not unduly delayed, a deadline for the provision of information to complete the requirements of Annex II is needed.

Amendment 6
Article 13, paragraph 7, introductory part

7. The Designated National Authority of the exporter may, in consultation with the Commission, decide that the export may proceed if, after all reasonable efforts, no response to a request for explicit consent pursuant to paragraph 6(a) has been received within either of the following time-limits:

7. ***For the substances listed in Part 2 of Annex I,*** the Designated National Authority of the exporter may, in consultation with the Commission, decide that the export may proceed if, after all reasonable efforts, no response to a request for explicit consent pursuant to paragraph 6(a) has been received within either of the following time-limits:

Justification

Part 2 of Annex I lists substances that are not yet included in the PIC procedure, but that are restricted or even banned in the EU. Since they are not included in the Convention of Rotterdam, the request for explicit consent for these substances remains very often unanswered. This is very time consuming for the designated national authorities and it seriously hampers the exporters' competitiveness. Therefore, this derogation proposes to treat these substances in a more flexible way, but remains however in line with the Convention of Rotterdam.

Amendment 7
Article 13, paragraph 8

8. The validity of each explicit consent obtained pursuant to paragraph 6(a) or waiver granted pursuant to paragraph 7 shall be subject to periodic review by the Commission in consultation with the Member States concerned as follows:

(a) for each explicit consent obtained pursuant to paragraph 6(a) a new explicit consent shall be required by the end of the third calendar year after the consent was given, unless the terms of that consent require otherwise;

(b) unless a response to a request has been received in the meantime, each waiver granted pursuant to *paragraph 7(a)* shall be for a maximum period of *two calendar years*, upon expiry of which explicit consent shall be required;

(c) unless a response to a request has been received in the meantime, each waiver granted pursuant to paragraph 7(b) shall be for a maximum period of 12 months, upon expiry of which explicit consent shall be required.

In the cases referred to in points (a) and (b), exports may however continue beyond the expiry of the relevant period pending a response to a new request for explicit consent.

In the case referred to in point (c), exports may not continue beyond the expiry of the relevant period unless explicit consent is obtained or the conditions of paragraph 7(a) are met following a new request for explicit consent.

All new requests shall be channelled through the Commission.

8. The validity of each explicit consent obtained pursuant to paragraph 6(a) or waiver granted pursuant to paragraph 7 shall be subject to periodic review by the Commission in consultation with the Member States concerned as follows:

(a) for each explicit consent obtained pursuant to paragraph 6(a) a new explicit consent shall be required by the end of the third calendar year after the consent was given, unless the terms of that consent require otherwise;

(b) unless a response to a request has been received in the meantime, each waiver granted pursuant to *paragraph 7* shall be for a maximum period of *twelve months*, upon expiry of which explicit consent shall be required.

All new requests shall be channelled through the Commission.

Justification

Tacit consent for a longer period is not in line with the aim of this Regulation, i.e. the protection of states which are less able or even unable to assess these hazardous chemicals. In order to

avoid the uncontrolled import of hazardous chemicals (that are banned or severely restricted in the EU) in third countries, it is proposed to partly restrict this new provision.

Amendment 8
Article 18, paragraph 1 a (new)

The Commission shall make all information regarding penalties available upon request.

Justification

Trade in chemicals that are banned or severely restricted should only take place under transparent circumstances. As such, information on penalties should be made publicly available.

Amendment 9
Article 19, paragraph 3, introductory part

3. As regards the transmission of information under this Regulation, and without prejudice to Council Directive 90/313/EEC, the following shall not be regarded as confidential:

3. As regards the transmission of information under this Regulation, and without prejudice to Council Directive 90/313/EEC, ***at least*** the following shall not be regarded as confidential:

Justification

Information other than that listed in Article 19(3) could also be regarded as non-confidential. In order to avoid this misunderstanding, it is proposed to make explicitly clear that the text of this paragraph is not a limitative list

Amendment 10
Article 19, paragraph 3, point (f a) (new)

(fa) information on dealing with the packaging after the chemicals have been removed.

Justification

On account of the direct hazard to health and the environment, information on how packaging should be handled after the chemicals have been removed is extremely important for users.

Amendment 11
Article 22, paragraph 4, subparagraph 3

All other amendments to Annex I, including modifications to existing entries, and amendments to Annexes II, III, IV and VI, and modifications to existing entries in Annex V, shall be adopted in accordance with the **advisory** procedure referred to in **Article 24(2)**.

All other amendments to Annex I, including modifications to existing entries, and amendments to Annexes II, III, IV and VI, and modifications to existing entries in Annex V, shall be adopted in accordance with the **regulatory** procedure **with scrutiny** referred to in **Article 24(3)**.

Justification

The change gives the EP and Council the right of scrutiny, which is important for future proposals to modify the essential Annexes.

Amendment 12
Article 24, paragraph 1

1. The Commission shall be assisted by the committee established by **Article 29 of Directive 67/548/EEC**.

1. The Commission shall be assisted by the committee established by **Article 133 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency¹**.

¹ OJ L 396, 30.12.2006, p. 1. Corrected in OJ L 136, 29.5.2007, p. 3.

Justification

In Article 24, it is proposed to maintain the committee established by Article 29 of Directive 67/548/EEC. However, in line with the proposal on the regulation on the Globally Harmonised System (COM(2007)355 of 27 June 2007) this committee will end in 2010. In the meantime there is already a committee established under Article 133 of REACH Regulation (EC) No 1907/2006. In order to anticipate the future, it is better to use the same committee as in the REACH Regulation.

Amendment 13
Annex I, part 1, table, new entries

<i>Alachlor</i> +	15972-60-8	240-110-8	2924 29 95	<i>p(1)</i>	<i>b</i>	
<i>Azinphos-methyl</i>	86-50-0	201-676-1	2933 99 90	<i>p(1)</i>	<i>b</i>	
<i>Cadusafos</i> +	95465-99-9	<i>n.a.</i>	2930 90 85	<i>p(1)</i>	<i>b</i>	
<i>Carbaryl</i> +*	63-25-2	200-555-0	2924 29 95	<i>p(1)- p(2)</i>	<i>b-b</i>	
<i>Carbofuran</i> +	1563-66-2	216-353-0	2932 99 85	<i>p(1)</i>	<i>b</i>	
<i>Carbosulfan</i> +	55285-14-8	259-565-9	2932 99 85	<i>p(1)</i>	<i>b</i>	
<i>Diazinon</i> *	333-41-5	206-373-8	2933 59 10	<i>p(1)</i>	<i>b</i>	
<i>Dichlorvos</i> *	62-73-7	200-547-7	2919 90 90	<i>p(1)</i>	<i>b</i>	
<i>Dimethenamid</i> +	87674-68-8	<i>n.a.</i>	2934 99 90	<i>p(1)</i>	<i>b</i>	
<i>Diuron</i>	330-54-1	006-015-00	2924 21 90	<i>p(1)</i>	<i>b</i>	
<i>Fenitrothion</i> *	122-14-5	204-524-2	2920 19 00	<i>p(1)</i>	<i>b</i>	
<i>Haloxypop-R</i> + * (<i>Haloxypop-P-methyl ester</i>)	95977-29-0 (72619-32-0)	<i>n.a.</i> (406-250-0)	2933 39 99 (2933 39 99)	<i>p(1)</i>	<i>b</i>	
<i>Malathion</i> *	121-75-5	204-497-7	2930 90 85	<i>p(1)</i>	<i>b</i>	
<i>Oxydemeton-methyl</i> +	301-12-2	206-110-7	2930 90 85	<i>p(1)</i>	<i>b</i>	
<i>Perfluorooctane sulfonates (PFOS) C8F17SO2X (X = OH, Metal salt (O-M+), halide, amide, and other derivatives</i>	1763-23-1 2795-39-3 and others	<i>n.a.</i>	2904 90 20 2904 90 20 and others	<i>i(1)</i>	<i>sr</i>	

<i>including polymers)**</i>						
<i>Phosalone +</i>	<i>2310-17-0</i>	<i>218-996-2</i>	<i>2934 99 90</i>	<i>p(1)</i>	<i>b</i>	
<i>Thiodicarb +*</i>	<i>59669-26-0</i>	<i>261-848-7</i>	<i>2930 90 85</i>	<i>p(1)</i>	<i>b</i>	
<i>Trichlorfon +*</i>	<i>52-68-6</i>	<i>200-149-3</i>	<i>2931 00 95</i>	<i>p(1)- p(2)</i>	<i>b-b</i>	
<i>Vinclozolin</i>	<i>50471-44-8</i>	<i>256-599-6</i>	<i>2934 99 90</i>	<i>p(1)</i>	<i>b</i>	

**The entry shall apply from 19 December 2007.*

***The entry shall apply from 27 June 2008.*

Justification

Annex I of this Regulation should be amended to take into account regulatory action in respect of certain chemicals taken pursuant to Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations, Directive 91/414/EEC concerning the placing of plant protection products on the market, Directive 98/8/EC concerning the placing of biocidal products on the market and of other Community legislation. These chemicals are to be added in the existing Regulation 304/2003 through a comitology-decision (due to be taken this year).

Amendment 14

Annex I, part 1, table, row 15

Text proposed by the Commission

Arsenic compounds				p(2)	sr	
-------------------	--	--	--	------	----	--

Amendment by Parliament

<i>Arsenic and</i> arsenic compounds				p(2)	sr	
--------------------------------------	--	--	--	------	----	--

Justification

Also the metal arsenic itself has to be mentioned in this Annex.

Amendment 15

Annex I, part 1, table, row 28 a (new)

Amendment by Parliament

Chlordecone	143-50-0	205-601-3				
--------------------	-----------------	------------------	--	--	--	--

Justification

The chemical chlordecone is mentioned in Annex IV of the POP Regulation (EC) No 850/2004 and should therefore at least be added to Annex I, part 1 of this Regulation. Because there is no impact assessment of chlordecone, the chemical cannot be added to Annex I, part 2 (list that comprises chemicals qualifying for PIC notification).

Amendment 16
Annex I, part 1, table, row 68

Text proposed by the Commission

Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds#	10112-91-1, 21908-53-2 and others	233-307-5, 244-654-7 and others	2827 39 80, 2825 90 50 and others	p(1)- p(2)	b - sr	Please refer to PIC circular at www.pic.int/
---	-----------------------------------	---------------------------------	-----------------------------------	------------	--------	--

Amendment by Parliament

Mercury and mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds#	10112-91-1, 21908-53-2 and others	233-307-5, 244-654-7 and others	2827 39 80, 2825 90 50 and others	p(1)- p(2)	b - sr	Please refer to PIC circular at www.pic.int/
--	-----------------------------------	---------------------------------	-----------------------------------	------------	--------	--

Justification

Also the metal mercury itself has to be mentioned in this Annex.

Amendment 17
Annex I, part 2, table, new entries

<i>Alachlor</i>	<i>15972-60-8</i>	<i>240-110-8</i>	<i>2924 29 95</i>	<i>p</i>	<i>b</i>
<i>Cadusafos</i>	<i>95465-99-9</i>	<i>n.a.</i>	<i>2930 90 85</i>	<i>p</i>	<i>b</i>
<i>Carbaryl</i>	<i>63-25-2</i>	<i>200-555-0</i>	<i>2924 29 95</i>	<i>p</i>	<i>b</i>
<i>Carbofuran</i>	<i>1563-66-2</i>	<i>216-353-0</i>	<i>2932 99 85</i>	<i>p</i>	<i>b</i>
<i>Carbosulfan</i>	<i>55285-14-8</i>	<i>259-565-9</i>	<i>2932 99 85</i>	<i>p</i>	<i>b</i>
<i>Dimethenamid</i>	<i>87674-68-8</i>	<i>n.a.</i>	<i>2934 99 90</i>	<i>p</i>	<i>b</i>
<i>Haloxypop-R (Haloxypop-P- methyl ester)</i>	<i>95977-29-0 (72619-32-0)</i>	<i>n.a. (406-250-0)</i>	<i>2933 39 99 (2933 39 99)</i>	<i>p</i>	<i>b</i>
<i>Oxydemethon- methyl</i>	<i>301-12-2</i>	<i>206-110-7</i>	<i>2930 90 85</i>	<i>p</i>	<i>b</i>
<i>Perfluorooctan e sulfonates (PFOS) C8F17SO2X (X = OH, Metal salt (O-M+), halide, amide, and other derivatives including polymers)</i>	<i>1763-23-1 2795-39-3 and others</i>	<i>n.a.</i>	<i>2904 90 20 2904 90 20 and others</i>	<i>i</i>	<i>sr</i>
<i>Phosalone</i>	<i>2310-17-0</i>	<i>218-996-2</i>	<i>2934 99 90</i>	<i>p</i>	<i>b</i>
<i>Thiodicarb</i>	<i>59669-26-0</i>	<i>261-848-7</i>	<i>2930 90 85</i>	<i>p</i>	<i>b</i>
<i>Trichlorfon</i>	<i>52-68-6</i>	<i>200-149-3</i>	<i>2931 00 95</i>	<i>p</i>	<i>b</i>

Justification

Annex I of this Regulation should be amended to take into account regulatory action in respect of certain chemicals taken pursuant to Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations, Directive 91/414/EEC concerning the placing of plant protection products on the market, Directive 98/8/EC concerning the placing of biocidal products on the market and of other Community legislation. These

chemicals are to be added in the existing Regulation 304/2003 through a comitology-decision (due to be taken this year).

Amendment 18
Annex I, part 3, table, row 20

Text proposed by the Commission

Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds		Pesticide
--	--	-----------

Amendment by Parliament

Mercury and mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds		Pesticide
---	--	-----------

Justification

Also the metal mercury itself has to be mentioned in this Annex.

Amendment 19
Annex III, point 2 a (new)

- 2a. Identity of the article to be exported:**
- (a) trade name and designation of the article;**
 - (b) for each substance listed in Annex I, percentage and details as specified under item 1.**

Justification

'Articles' containing substances listed in parts 2 and 3 of Annex I require an export notification pursuant to Article 14(1), just as it is required for substances and preparations. In order to enable fulfilment of the requirements of article 14 (export notification for certain articles),

articles need to be included in the export notification form.

Amendment 20
Annex IV, point 1

1. Summary of quantities of chemicals (in the form of substances **and** preparations) subject to Annex I exported during the previous year.

(a) Year in which exports took place

(b) Table summarising quantities of exported chemicals (in the form of substances and preparations) as outlined below.

1. Summary of quantities of chemicals (in the form of substances, preparations **and articles**) subject to Annex I exported during the previous year.

(a) Year in which exports took place

(b) Table summarising quantities of exported chemicals (in the form of substances, preparations **and articles**) as outlined below.

Justification

'Articles' containing substances listed in parts 2 and 3 of Annex I require an export notification pursuant to Article 14(1), just as it is required for substances and preparations. To be coherent, the designated national authority should therefore also provide the information about the export of such articles to the Commission.

Amendment 21
Annex V, row - 1 (new)

Amendment by Parliament

Mercury	EC No 231-106-7, CAS No 7439-97-6, CN code 280540
----------------	--

Justification

This list needs to be completed and updated. This means adding chemicals which will be subject to an EU-export ban at a known date in the future, for example mercury. It is now already clear that the export of mercury will be banned in the near future (almost certainly before this Regulation enters into force).

EXPLANATORY STATEMENT

1. Background

The Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain hazardous chemicals and pesticides in international trade was adopted in September 1998 and entered into force on 24 February 2004. Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals¹ implemented the Convention.

The Commission felt compelled to bring an action against the Council and the European Parliament before the Court of Justice because it did not agree with the change in the legal basis (from the common commercial policy to environmental policy). In its judgment of 10 January 2006, the Court of Justice annulled the Regulation because it ought to have been based both on Article 133 and on Article 175(1) of the Treaty². At the same time, the Court maintained the effects of the Regulation until the adoption, within a reasonable period, of a new regulation founded on the appropriate legal bases. The Commission therefore submitted a fresh proposal for a new regulation based on the two above-mentioned legal bases. It simultaneously proposed making certain technical changes to the proposal in the light of a report on experience of the procedures to date.

2. Substance of the Commission proposal

In substance, the text is virtually identical to Regulation (EC) No 304/2003, with the exception of the new twofold legal basis and a few technical changes of substance in the light of an implementation report (COM(2006)747).

The Regulation implements the Rotterdam Convention for the European Community. It is intended to promote joint responsibility between parties with regard to international trade in chemicals which elsewhere are strictly controlled or banned. By means of exchanges of information between the parties, and by means of compulsory national decision-making on the acceptability of imports and exports of these chemicals, the awareness of the countries concerned is to be increased. The Regulation includes annexes listing hazardous substances, exports of which must be reported annually to importing countries. For some substances, explicit authorisation must be obtained from the importing country before the substance may be exported. This is called the prior informed consent (PIC) procedure.

In order to give a clear picture of the regulation, it is important to note that four categories of substances exist:

¹ OJ L 67, 6.3.2003, p. 1.

² Case C-178/03.

1. 'chemical subject to export notification': any chemical that is banned or severely restricted within the Community within one or more categories or sub-categories, and any chemical that is subject to the PIC procedure listed in Part 1 of Annex I;
2. 'chemical qualifying for PIC notification': any chemical that is banned or severely restricted within the Community or a Member State within one or more categories, listed in Part 2 of Annex I;
3. 'chemical subject to the PIC procedure': any chemical listed in Part 3 of Annex I to the Regulation (and Annex III to the Rotterdam Convention) to which the PIC procedure applies pursuant to the Rotterdam Convention;
4. chemicals and articles whose export is banned and which are listed in Annex V to the Regulation.

Only Category 3 is directly taken from the Rotterdam Convention. The other categories are derived from other EU legislation or from attempts to anticipate possible extensions of the Rotterdam Convention. In addition, it may be said that Categories 1 to 4 correspond to increasingly strict rules.

It is logical that the EU should adopt more far-reaching measures in this connection than provided for in the Rotterdam Convention. At present, 39 substances are listed in Annex III to the Rotterdam Convention, to which the PIC procedure applies. This means, therefore, that countries may refuse to allow the importation of these substances. Since 2004, no more substances have been added to this list. Next year, the pesticide endosulfan and the biocide tributyl tin (TBT) will probably be added to the list. In two years' time, four other chemicals may follow: benzidin and its salts, endrin, methamidofos and mirex. In addition, there is a list of 160 chemicals which are awaiting decisions. However, decision-making is very laborious and slow. Despite repeated attempts, it has not yet proved possible to add white asbestos (chrysotile) to the list of substances subject to the PIC procedure.

The principal changes which the Commission proposal makes to the existing Regulation are as follows:

1. Change of legal basis: Article 175(1) of the EC Treaty (environment) replaced by a twofold legal basis: Article 133 of the EC Treaty (common commercial policy) and Article 175(1) of the EC Treaty (environment);
2. Amendment of the definition of 'exporter' to include exporters not based in the EU who export from the EU;
3. Amendment of the provisions on explicit consent to make exports possible if requests for explicit authorisation to import a substance do not receive a sufficiently prompt response;
4. Reassignment from Member States to the Commission of responsibility for obtaining import decisions from third countries;

5. Introduction of instruments to make it easier for customs services to enforce the provisions of the Regulation with regard to exports. This includes the introduction of unique Harmonised Nomenclature (GN) codes, scope for mention in the integrated tariff of the European Communities (Taric), which contains all the Community measures relating to customs tariffs, trade measures and agriculture that are applicable in trade, and a customs module on the website of the European Chemicals Agency enabling customs officers to check information on compliance with the Regulation.

Point 1 is an inevitable consequence of the Court's judgment; the other points are mainly technical changes arising from the aforementioned evaluation report.

3. Comments on the Commission proposal

It is important that adequate rules should be adopted worldwide and at European level to provide a high level of protection of the environment and public health. The problems involved in international trade in hazardous substances necessitate this. The Commission proposal makes a contribution to the development of the policy infrastructure in less developed countries. This could combat irresponsible use of chemicals which would otherwise damage ecology, the economy and working conditions.

Your rapporteur can accept most of the changes. Only the amendment of the provisions on explicit authorisation to permit exports meets with objections. The proposal also does not entirely correspond to the REACH Regulation.

3.1 Permitting transport without explicit authorisation

From the economic point of view, the existing situation is unsatisfactory for European exporters if they do not receive any response from importing countries about substances listed in Part 2 of Annex I. These are substances to which the PIC procedure applies under European law but which are not yet covered by the Rotterdam Convention. The EU so far (i.e. under the Regulation as it currently stands) unilaterally requires explicit authorisation from importing countries for these substances. Exporters from non-EU countries can supply these substances without obtaining prior authorisation from the importing country.

The Commission proposal allows exports to proceed temporarily if no explicit authorisation is received. Consequently, European exporters of chemicals which are severely restricted in Europe can export these substances more easily. If an importing country is unable to give an export response within 90 days, exports may proceed for 12 months. After this, authorisation must again be sought. The disadvantage of this more flexible approach is that a country which is unable to respond within 90 days will no longer enjoy any protection against imports of the substance in question, which is strictly regulated in the EU. From the environmental point of view, this is undesirable and is not the intended outcome. However, the point of departure should be that account is to be taken of protection of the least developed countries. Two criteria on the basis of which the competent authorities in the Member States can decide after a non-response period to allow exports are defensible: the existence of an assessment and authorisation of the substance in the importing country or the fact that the importing country is an OECD country. However, the

argument that substances can be exported if the same substances have previously been imported into the country in question without that country's having taken any regulatory action is not one which your rapporteur can accept. The aim of the legislation is after all to encourage administrative measures in less developed countries.

3.2 Connection with other legislation

It is important to adequately incorporate into this Regulation prohibitions of or restrictions on the use of chemicals arising from new or amended directives and regulations. The lists of chemicals must be complete. In the case of the following EU legislation, in particular, it is important to ascertain whether relevant chemicals should be added to the annexes to this Regulation:

- POP Regulation (EC) No 850/2004, Annex IV
- REACH Regulation (EC) No 1907/2006, Annex XVII
- Directive 67/548/EEC, Annex I.

2.10.2007

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals
(COM(2006)0745 – C6-0439/2006 – 2006/0246(COD))

Draftswoman: Erika Mann

SHORT JUSTIFICATION

Introduction

This legislative proposal under consideration seeks to replace Reg. 304/2003 on the same subject because of a Ruling by the Court of Justice, which annulled it on legal grounds.³ The Court was of the view that there should have been a *dual legal basis*, not simply one (i.e. Article 175 (1)), as adopted by the Council and the EP for Reg. 304/2003. Hence, the proposal under consideration proposes a *dual legal basis*: Articles 133 and 175(1), as suggested by the Court.

In addition, it includes a number of technical adjustments considered as necessary, while retaining the substance of the annulled regulation; therefore it seeks to:

- (a) Implement the Rotterdam Convention on the Prior Informed Consent Procedure (PIC);
- (b) Establish the procedure for export notification for those chemicals which do not fall under the Rotterdam Convention and the PIC but which are forbidden or restricted within the EU;
- (c) Promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals;

³ It should be noted that "in a parallel judgment, the Court annulled for the same reasons Council Decision 2003/106/EC of 19 December 2002 on the approval, on behalf of the European Community, of the Convention. The Commission recently put forward a separate proposal to that end, which was adopted by the Council on 25 September 2006 (Decision 2006/730/EC)" (COM(2006)0745, p.3).

(d) Contribute to their environmentally sound use;

(e) Apply the Community provisions concerning classification, packaging and labelling of chemicals dangerous to man or to the environment to all such chemicals when they are exported from the Member States to other parties or other countries.

The Rotterdam Convention

The proposal under consideration implements the Rotterdam Convention on the *Prior Informed Consent (PIC)* Procedure for certain hazardous chemicals and pesticides in international trade. The Rotterdam Convention was adopted in September 1998. It entered into force on 24 February 2004, having as objective the promotion of shared responsibility and cooperative efforts among parties in the international trade in hazardous chemicals. The goal is to reduce the risk to human health and the environment from hazardous chemicals.

The underlying logic of the Rotterdam Convention is simple: 'help participating countries learn more about the characteristics of potentially hazardous chemicals and pesticide formulations'. It provides countries with the information and the means to stop the unwanted imports of toxic chemicals. The Convention puts the requirement on the exporter to advise of an export of hazardous substances and an onus on the exporting country to comply with the decisions of importing countries and those transit countries through whose territory the waste will pass. The proposal in question goes beyond the requirements of the Convention. The Commission memorandum summarised the differences:

- "- The rules apply to exports to all countries, whether or not they are Parties to the Convention;*
- A wider range of chemicals are subject to annual export notification.*
- PIC chemicals and chemicals that are banned or severely restricted in the Community in a Convention use category cannot be exported without the explicit consent of importing countries;*
- Certain articles and chemicals (such those chemicals that are subject also to the Stockholm Convention on Persistent Organic Pollutants) are banned for export;*
- All dangerous chemicals exported to third countries have to be labelled and packaged in the same way as they must be within the Community"* (COM (2006) 745, page 3).

Technical adjustments proposed by this new regulation

Those adjustments are based on the experience in implementing the annulled Reg. 304/2003 and are meant to improve the functioning of the proposed proposal. Your Draftswoman has the following comments to make:

1. The definition of the *exporter* is correct and takes account of the EP concerns that the natural or legal person on whose behalf an export declaration is made and is required to notify the

Designated National Authority of a Member State should be established in the said Member State (Article 3(15)).

2. The definition of the *preparation* (i.e. a mixture or a solution composed of two or more substances) is acceptable and means compulsory labelling if required by Directive 1999/45/EC on classification, packaging and labelling (Articles 3(2) and 1(2)).

3. The explicit *consent procedure* under Article 13.6 of the proposal is welcomed but has caused anxiety to the EU traders. The logic of Article 13 is correct because it says that chemicals listed in part 3 of Annex I of the said proposal should not be exported without the explicit consent of the importing country. The same approach is applied to any chemical that is banned or restricted within the Community and qualifies for PIC notification.

However, "*In around half of the cases to date, despite the efforts made by the DNAs of the exporting Member States to obtain explicit consent, no response is forthcoming from the importing country, in some cases for many months or even years*" (COM (2006) 745 page 5). The newly proposed regulation seeks to remedy this situation via time limits imposed and temporary measures or a more flexible interpretation.

4. The strengthening of *customs controls* of exported and imported chemicals has been a constant concern in both the EU and its Member States. The role of the customs authorities of Member States is important because they are responsible for ensuring compliance with regulations of this type. The proposed regulation entails in Article 17 several actions, such as classification of chemicals carrying a "code number" in their export declarations and development of the Commission's EDEXIM database. Both measures will help to bring light into the additional requirements foreseen by the EU for the PIC. But a question remains still on the table: unclear is whether this proposed regulation would reduce the administrative burden both for customs and exporters.

Logic of amendments proposed

The logic for amendments is very simple: the proposed legal framework should be supported; both principles of subsidiarity and of proportionality are respected; the *administrative cost should be kept to a minimum*; the level of protection for Health and Environment must be in line with existing EU legislation.

AMENDMENTS

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

Amendment 1

Article 13, paragraph 7, introductory part

7. The Designated National Authority of the exporter may, in consultation with the Commission, decide that the export may proceed if, ***after all reasonable efforts***, no response to a request for explicit consent pursuant to paragraph 6(a) has been received within either of the following time-limits:

7. The Designated National Authority of the exporter may, in consultation with the Commission, decide that the export may proceed if no response to a request for explicit consent pursuant to paragraph 6(a) has been received within either of the following time-limits:

Justification

The original wording is too vague since the interpretation of 'reasonable efforts' can vary.

Amendment 2

Article 13, paragraph 7, points (a) and (b)

(a) ***60 days***, where there is evidence from official sources in the importing Party or importing other country that the chemical, at the time of importation, is licensed, registered or authorised or that it has recently been used in, or imported into, the importing Party or importing other country and no regulatory action has been taken to prohibit its use;

(a) ***30 days after the date of the original request***, where there is evidence from official sources in the importing Party or importing other country that the chemical, at the time of importation, is licensed, registered or authorised or that it has recently been used in, or imported into, the importing Party or importing other country and no regulatory action has been taken to prohibit its use;

(b) ***90 days***, in all other cases.

(b) ***60 days after the date of the original request***, in all other cases.

Justification

It is unclear with which action the time-limit is launched. Shorter time-limits facilitate trade and will help prevent European companies being put at a competitive disadvantage compared to non-European industry.

Amendment 3

Article 13, paragraph 8, subparagraph 1, points (a), (b) and (c)

(a) for each explicit consent obtained pursuant to paragraph 6(a) a new explicit consent shall be required by the end of the **third calendar year** after the consent was given, unless the terms of that consent require otherwise;

(b) unless a response to a request has been received in the meantime, each waiver granted pursuant to paragraph 7(a) shall be for a maximum period of **two calendar years**, upon expiry of which explicit consent shall be required;

(c) unless a response to a request has been received in the meantime, each waiver granted pursuant to paragraph 7(b) shall be for a maximum period of **12 months**, upon expiry of which explicit consent shall be required.

(a) for each explicit consent obtained pursuant to paragraph 6(a) a new explicit consent shall be required by the end of the **fifth calendar year** after the consent was given, unless the terms of that consent require otherwise;

(b) unless a response to a request has been received in the meantime, each waiver granted pursuant to paragraph 7(a) shall be for a maximum period of **four calendar years**, upon expiry of which explicit consent shall be required;

(c) unless a response to a request has been received in the meantime, each waiver granted pursuant to paragraph 7(b) shall be for a maximum period of **2 years**, upon expiry of which explicit consent shall be required.

Justification

The introduction of a periodical review leads to legal uncertainty and administrative burden. Once an explicit consent has been obtained, its validity should not expire too quickly.

Amendment 4

Article 13, paragraph 8, subparagraph 3

In the case referred to in point (c), exports may not continue beyond the expiry of the relevant period unless explicit consent is obtained or the conditions **of** paragraph 7(a) **are** met following a new request for explicit consent.

In the case referred to in point (c), exports may not continue beyond the expiry of the relevant period unless explicit consent is obtained or **any of** the conditions **referred to in** paragraph 7(a) **is** met following a new request for explicit consent **or the importing Party has not responded within 30 days to a new request for explicit consent.**

Justification

Pending a response to a request, exports should be allowed to continue. Otherwise European exporters are penalised for the non-action of certain countries.

PROCEDURE

Title	Export and import of dangerous chemicals
References	COM(2006)0745 - C6-0439/2006 - 2006/0246(COD)
Committee responsible	ENVI
Opinion by Date announced in plenary	ITRE 12.12.2006
Drafts(wo)man Date appointed	Erika Mann 12.4.2007
Discussed in committee	7.6.2007 17.7.2007
Date adopted	2.10.2007
Result of final vote	+: 40 -: 3 0: 2
Members present for the final vote	Renato Brunetta, Philippe Busquin, Jerzy Buzek, Jorgo Chatzimarkakis, Silvia Ciornei, Pilar del Castillo Vera, Lena Ek, Nicole Fontaine, Adam Gierek, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein, Rebecca Harms, Mary Honeyball, Ján Hudacký, Romana Jordan Cizelj, Anne Laperrouze, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Miloslav Ransdorf, Vladimír Remek, Mechtild Rothe, Paul Rübig, Andres Tarand, Radu Țîrle, Patrizia Toia, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras, Dominique Vlasto
Substitute(s) present for the final vote	Alexander Alvaro, Pilar Ayuso, Ivo Belet, Manuel António dos Santos, Avril Doyle, Robert Goebbels, Françoise Grossetête, Erika Mann, John Purvis, Bernhard Rapkay, Silvia-Adriana Țicău, Vladimir Urutchev, Lambert van Nistelrooij

PROCEDURE

Title	Export and import of dangerous chemicals			
References	COM(2006)0745 - C6-0439/2006 - 2006/0246(COD)			
Date submitted to Parliament	30.11.2006			
Committee responsible Date announced in plenary	ENVI 12.12.2006			
Committee(s) asked for opinion(s) Date announced in plenary	INTA 12.12.2006	EMPL 12.12.2006	ITRE 12.12.2006	IMCO 12.12.2006
Not delivering opinions Date of decision	INTA 21.3.2007	EMPL 13.12.2006	IMCO 1.3.2007	
Rapporteur(s) Date appointed	Johannes Blokland 27.2.2007			
Date adopted	8.10.2007			
Result of final vote	+: 26 -: 3 0: 0			
Members present for the final vote	Margrete Auken, Pilar Ayuso, Irena Belohorská, Johannes Blokland, John Bowis, Frieda Brepoels, Martin Callanan, Dorette Corbey, Edite Estrela, Jill Evans, Karl-Heinz Florenz, Satu Hassi, Marie Anne Isler Béguin, Dan Jørgensen, Christa Kläß, Aldis Kušķis, Jules Maaten, Miroslav Ouzký, Vittorio Prodi, Dagmar Roth-Behrendt, Kathy Sinnott, María Sornosa Martínez, Antonios Trakatellis, Thomas Ulmer, Anja Weisgerber, Glenis Willmott			
Substitute(s) present for the final vote	Iles Braghetto, Christofer Fjellner, Radu Țirle			