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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the Conference of the Parties as regards amendments of Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade

Delegations will find attached document COM(2019) 54 final.

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EUROPEAN
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2019/0026 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the Conference of the Parties as regards amendments of Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the Conference of the Parties to the Rotterdam Convention in connection with the envisaged adoption of decisions to list further chemicals in Annex III to the Rotterdam Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Rotterdam Convention

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ('the Convention') aims to promote shared responsibility and cooperative efforts among Parties in the international trade of hazardous chemicals, in order to protect human health and the environment, and contribute to the environmentally sound use of those chemicals. The Convention creates legally binding obligations for the implementation of the Prior Informed Consent (PIC) procedure, and protects countries, particularly developing countries, from unwanted imports of chemicals by imposing export obligations on exporting Parties.

The Agreement entered into force on 24 February 2004.

The European Union and all 28 Member States are a party to the Convention¹.

2.2. The Conference of the Parties to the Rotterdam Convention

Established pursuant to Article 18 of the Convention, the Conference of the Parties is the governing body of the Rotterdam Convention. This body normally meets every two years to monitor the implementation of the Convention. It also reviews chemicals brought forward for its consideration by the Chemical Review Committee.

In accordance with Articles 44 and 45 of the Rules of Procedure for the Conference of the Parties, each party has one vote. However, regional economic integration organisations such as the EU exercise their right to vote with a number of votes equal to the number of their member States that are parties to the Convention.

2.3. The envisaged act of the Conference of the Parties

At the ninth ordinary meeting, which takes place from 29 April to 10 May 2019, the Conference of the Parties will consider the adoption of decisions to list further chemicals in Annex III to the Convention.

The purpose of the envisaged acts is to list further chemicals in Annex III to the Convention. The listing in Annex III has the effect that the chemicals will be subject to the prior informed consent procedure under the Convention when traded internationally.

¹ Council Decision 2006/730/EC of 25 September 2006 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 (OJ L 299, 28.10.2006, p. 23–25).

The envisaged acts will become binding on the parties in accordance with Article 22(5)(c) of the Convention, which provides: ‘A decision to amend Annex III shall forthwith be communicated to the Parties by the Depositary. The amendment shall enter into force for all Parties on a date to be specified in the decision’.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Commission is proposing to the Council a decision to support, on behalf of the Union, the decisions to amend Annex III to the Convention at the ninth meeting of the Conference of the Parties. Those decisions will add further chemicals to Annex III making them subject to the prior informed consent procedure under the Convention.

The decisions that are presented to the Conference of the Parties for adoption are based on recommendations from the Chemical Review Committee, a subsidiary body under the authority of the Conference of the Parties. Chemicals recommended by the Chemical Review Committee for listing in Annex III were found to meet the criteria of Annex II to the Convention.

As a leader in environmental policy-making, it is crucial for the Union to reaffirm its global commitment to promote better implementation of multilateral environmental agreements and standards. This includes the support and implementation of the recommendations adopted by scientific subsidiary bodies of those agreements and the adherence to the criteria set out in the agreements on which such recommendations are based.

In addition, this initiative is in line with the Juncker priority to become a stronger global actor, with the sustainable development goals, in particular good health (3) and responsible consumption and production (12), and with the 7th Environment Action Programme.

The Union should therefore support the proposed decisions to list acetochlor, carbosulfan, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), hexabromocyclododecane, liquid formulations (emulsifiable concentrate and soluble concentrate) containing paraquat dichloride at or above 276 g/L, corresponding to paraquat ion at or above 200 g/L, and phorate in Annex III. These chemicals are already subject to restrictions on export pursuant to Regulation (EU) No 649/2012 that are similar to those under the Convention.

The position to be taken on the Union's behalf at the Conference of the Parties needs to be established, since the amendments of Annex III will be legally binding on the Union and will have to be reflected in Regulation (EU) No 649/2012, which implements the Rotterdam Convention in the Union.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by*

an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’².

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

The act that the Conference of the Parties is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 22(5) of the Rotterdam Convention and will have to be reflected in Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals³. This is because Article 23(1) of that Regulation requires the review of the list of chemicals in its Annex I on the basis of developments under the Convention.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

³ OJ L 201, 27.7.2012, p. 60.

4.2.2. Application to the present case

The envisaged act pursues objectives and has components in the area of ‘environment’ and ‘trade’. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 192(1) and 207(3) and (4) first subparagraph.

4.3. Conclusion

The legal basis of the proposed decision should be Articles 192(1) and 207(3) and (4) first subparagraph, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the Conference of the Parties as regards amendments of Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1) and 207(3) and (4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ('the Convention') entered into force on 24 February 2004 and was concluded on behalf of the Union by Council Decision 2006/730/EC⁴.
- (2) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 implements the Rotterdam Convention in the Union⁵.
- (3) Pursuant to Article 7 of the Convention, the Conference of the Parties may adopt amendments to Annex III.
- (4) The ninth meeting of the Conference of the Parties to the Rotterdam Convention is expected to adopt decisions to list further chemicals in Annex III.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the amendments of Annex III will be binding on the Union.
- (6) In order to ensure that importing countries benefit from the protection offered by the Rotterdam Convention and since all relevant criteria under the Convention are met, it is necessary and appropriate to support the recommendation from the Chemical Review Committee, a subsidiary body of the Rotterdam Convention, as regards the

⁴ Council Decision 2006/730/EC of 25 September 2006 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 (OJ L 299, 28.10.2006, p. 23–25).

⁵ Regulation (EU) No 649/2012 of the European Parliament and the Council of 4 July 2012 concerning the export and import of hazardous chemicals, OJ L 201, 27.7.2012, p. 60.

inclusion in Annex III to the Rotterdam Convention of acetochlor, carbosulfan, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), hexabromocyclododecane, phorate and liquid formulations (emulsifiable concentrate and soluble concentrate) containing paraquat dichloride at or above 276 g/L, corresponding to paraquat ion at or above 200 g/L. Those substances are already banned or severely restricted in the Union and are therefore subject to export requirements that go beyond what is required under the Rotterdam Convention pursuant to Regulation (EU) No 649/2012,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union at the ninth meeting of the Conference of the Parties to the Rotterdam Convention is that the Union shall support the adoption of the amendments to Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade as regards the inclusion of acetochlor, carbosulfan, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), hexabromocyclododecane, phorate and liquid formulations (emulsifiable concentrate and soluble concentrate) containing paraquat dichloride at or above 276 g/L, corresponding to paraquat ion at or above 200 g/L.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*