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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 to 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 in the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade in connection with the envisaged adoption of decisions to amend Annex III by adding acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat.

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 certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use. The Convention entered into force on 24 February 2004.

The European Union is a party to the Convention¹.

2.2. The Conference of the Parties

Established pursuant to Article 18 of the Convention, the Conference of the Parties (COP) 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 (CRC).

In accordance with Article 5(1) of the Convention, Parties are required to submit notifications of final regulatory action taken to ban or severely restrict the use of a chemical at national level. After receipt by the Secretariat of two such notifications on the same chemical from two Parties belonging to two different PIC regions, those notifications will be presented to the CRC. The CRC is to review those notifications against the criteria laid down in Annex II to the Convention and to adopt a recommendation as regards the listing of the respective chemical for consideration by the COP.

In addition, any Party that is a developing country or a country with an economy in transition and that is experiencing problems caused by a severely hazardous pesticide formulation (SHPF) under conditions of use in its territory can propose to list that severely hazardous pesticide formulation in Annex III to the Convention in accordance with Article 6(1). The CRC is to review those proposals against the criteria laid down in Annex IV to the Convention and to adopt a recommendation as regards the listing of the respective SHPF for consideration by the COP.

The procedure for adoption of amendments to the Convention is governed by Article 21 of the Convention, and the procedure for adoption and amendment of Annexes by Article 22. In accordance with Article 23 of the Convention, each party has one vote. However, regional

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).

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 twelfth ordinary meeting, the Conference of the Parties will consider the adoption of decisions to list acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat 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 when internationally traded. This will require Parties to submit import responses to the Secretariat so that the Secretariat can make those import responses available to all Parties. Exporting Parties will be required to respect the import responses when exporting those chemicals.

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 position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Rotterdam Convention should be to support the listing of acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat in Annex III in line with the relevant recommendations of the Chemical Review Committee (CRC).

In accordance with Article 5(1) of the Convention, Parties had submitted notifications of final regulatory action taken to ban or severely restrict the use of acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, iprodione, mercury, methyl bromide and paraquat at national level.

In addition, Parties had submitted proposals to list fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L) 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, in Annex III to the Convention in accordance with Article 6(1).

The CRC reviewed the notifications against the criteria laid down in Annex II and the proposals against the criteria laid down in Annex IV to the Convention and concluded that all relevant criteria are met.

The listing in Annex III has the effect that the chemicals will be subject to the Prior Informed Consent Procedure when internationally traded. This will require Parties to submit import responses to the Secretariat so that the Secretariat can make those import responses available to all Parties. Exporting Parties will be required to respect the import responses when exporting those chemicals.

The proposal is coherent with and complements Regulation (EU) No 649/2012, which implements the Rotterdam Convention in the Union. It is fully in line with the objective of the Convention to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use.

The proposal is coherent with Regulation (EC) No 1107/2009, Regulation (EU) No 528/2012 and Regulation (EC) No 1907/2006 since it does not interfere with any decisions on the placing on the market of chemicals in the European 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 acts, which the Conference of the Parties is called upon to adopt, constitute acts having legal effects. The envisaged acts to amend Annex III will be binding under international law in accordance with Article 22 of the Rotterdam Convention and will need to be implemented in Regulation (EU) No 649/2012.

The envisaged acts do 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

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.

other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

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

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

4.3. Conclusion

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) and Article 207(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') was concluded by the Union by Council Decision (2006/730/EC)³ and entered into force on 24 February 2004.
- (2) Pursuant to Article 7 of the Convention, the Conference of the Parties may adopt decisions to list chemicals in Annex III to the Convention.
- (3) At its twelfth meeting, the Conference of the Parties is expected to adopt decisions to list acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat in Annex III to the Convention.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the decisions will be binding on the Union.
- (5) To promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, it is necessary to list further chemicals that were found to meet all relevant criteria in Annex III to the Convention. It is therefore appropriate to support the listing of acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat in Annex III to the Convention,

³ 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Convention and any subsequent Conference of the Parties where the point is on the agenda shall be that the Union shall support the adoption of the amendments to Annex III to the Convention as regards the inclusion of acetochlor, carbosulfan, chlorpyrifos, chrysotile asbestos, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), iprodione, 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, mercury, methyl bromide and paraquat.

Article 2

Refinements of the position referred to in Article 1, in light of the developments at the twelfth meeting of the Conference of the Parties to the Convention and any subsequent Conference of the Parties where the listing in Annex III of the chemicals mentioned in Article 1 is on the agenda, may be agreed upon by representatives of the Union, in consultation with the Member States, during on-the-spot coordination meetings without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*