

Brussels, 17 July 2002

OPINION
of the
Economic and Social Committee
on the
Proposal for a Council Regulation
concerning the export and import of dangerous chemicals
(COM(2001) 803 final - 2001/0026 (ACC))

On 19 June 2002 the Council decided to consult the Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the

Proposal for a Council Regulation concerning the export and import of dangerous chemicals

COM(2001) 803 final - 2001/0026 (ACC).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 June 2002. The rapporteur was **Mr Sklavounos**.

At its 392nd plenary session on 17 and 18 July 2002 (meeting of 17 July 2002), the Economic and Social Committee adopted the following opinion by 121 votes with four abstentions.

1. Introduction

1.1 The proposed **Council Regulation concerning the export and import of dangerous chemicals** (COM (2001) 803 final) will implement the requirements of the Rotterdam Convention on Prior Informed Consent (PIC) in order for the European Community (EC) to ratify this Convention¹.

1.2 The EESC supports sustainable development strategies and encourages a precautionary approach to chemicals' management in order to prevent harm to health and the environment. By improving access to information and assisting decision-making in developing countries, the Rotterdam Convention on Prior Informed Consent could reduce exposure of human populations and their environment to certain hazardous chemicals. The EESC applauds the leading role played by the European Community in achieving a strong Convention, and its insistence on ensuring that exporting countries recognise their responsibilities to developing countries, in spite of opposition to many of the proposals to achieve this objective from a number of other industrialised countries. The implementing Regulation is in line with the views of Member States that it is appropriate to go beyond the provisions of the Convention in order to fully assist developing countries to become better informed about hazardous chemicals exported from Europe, to increase transparency in decision-making, and to improve governance. The EESC supports these efforts, which will not only assist sustainable development, but also reduce global hazards. The Regulation reaffirms the intention of the European Community to offer technical assistance to developing countries to strengthen their regulatory capacity, and the EESC supports this objective.

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See COM(2001) 802 final.

1.3 The PIC Convention requires 50 ratifications to be legally binding, and as the EC participates as a "Regional Economic integration organisation" the early adoption of the Regulation to allow the Community to ratify the Convention is important. Currently, the Rotterdam Convention is signed by 73 parties including the European Community and all Member States except Ireland. However, it is still not in force as only 21 parties had it ratified at this stage. The EESC urges rapid global ratification expressing though its regret that the European Commission has not acted more quickly.

1.4 The new Regulation [COM(2001) 803 final] will replace the current Regulation 2455/92² regarding the export and import of certain dangerous chemicals. It is stricter than the current Regulation and introduces a number of additional elements in comparison with the Convention with the aim of assisting developing countries to take more informed regulatory decisions.

2. Background

2.1 It is worth considering briefly the history of the PIC Convention. In 1989 the PIC procedure was included in the Food and Agriculture Organisation of the United Nations (FAO) International Code of Conduct on the Distribution and Use of Chemicals and the UN Environment Programme (UNEP) London Guidelines for the Exchange of Information on Chemicals in International Trade. It operated on a voluntary basis from 1991. The initial drive arose from a concern that chemicals which were banned or restricted for use in industrialised countries would be exported and used in developing countries. The issue of banning the export of banned chemicals is raised by some governments and public interest organisations. However PIC was developed because:

- (a) Many developing countries did not want their ability to import and use chemicals restricted by actions of industrialised countries.
- (b) If demand for such chemicals continues to exist, production would shift elsewhere and trade to developing countries would continue.
- (c) This action could only apply to chemicals banned or withdrawn from use, and not to severely restricted chemicals.
- (d) Many pesticides that cause health or environmental problems in developing countries have not been banned or severely restricted in industrialised countries.
- (e) High standards of chemical management in developing countries will benefit consumers in those countries as well as in countries consuming their agricultural exports, including in the European Union, as a result of lower pesticide residues.

² OJ L 251, 29.8.1992, p.13.

2.2 Nevertheless a ban on export of certain chemicals can be considered under some circumstances if developing countries can be assisted in finding alternatives. A second international Convention, the Stockholm Convention on Persistent Organic Pollutants (POPs), aims to fully eliminate the production and use of certain chemicals, initially 12, including nine pesticides³. The Stockholm and Rotterdam Conventions will together improve global safety and management of hazardous chemicals.

2.3 The major strength of PIC lies in its role in exchanging information and helping to strengthen regulatory capacity for chemicals in developing countries, making an important contribution to sustainable development. At the 1992 Earth Summit, governments agreed that PIC should become a legally binding Convention by the year 2000. If hazardous properties of certain chemicals become apparent, governments in industrialised countries have capacity to identify risks and take action to ban or severely restrict such chemicals to protect human health and/or the environment. Most developing countries lack enabling legislation, scientific and technical resources to carry out risk assessments, laboratories for analytical work and other key resources. The PIC Convention provides developing countries with robust information about regulatory actions taken on hazardous chemicals, and it helps them to prevent unwanted imports of these chemicals. It was agreed by governments to be implemented on a voluntary basis from the date of signing on 11 September 1998. The Convention suggests that countries can take stronger measures that remain consistent with its aims.

3. **Key elements of the Rotterdam Convention and the chemicals covered by the new Regulation**

3.1 The adoption of this Regulation will allow the European Union to ratify the Rotterdam Convention, the key elements of which include:

- governments must appoint a Designated National Authority (DNA) to perform administrative functions of the Convention;
- governments must notify the PIC Secretariat⁴ of any bans or severe restrictions within 90 days of taking a final regulatory action against a chemical;
- governments that have banned or severely restricted a chemical must provide an export notification to importing countries at least until the chemical is included on the PIC list, and importing countries have indicated whether they permit or prohibit its import;

³ See Opinion of the Economic and Social Committee on the *Proposal for a Decision of the European Parliament and of the Council laying down the Community Environment Action Programme 2001-2010*, OJ C 221, 7.8.2001, pp. 80-85.

⁴ Governments form the decision-making body (through the International Negotiating Committee (INC) and once ratified through the Conference of the Parties (CoP). The Secretariat carries out procedures laid down in the Convention and implements decisions of the INC/CoP.

- a chemical will qualify for inclusion on the "PIC List" when it has been banned or severely restricted (consistent with the definition of the Convention) by two countries in two regions of the world;
- in addition, severely hazardous pesticide formulations found to be causing acute health or environmental problems in developing countries or countries with economies in transition may be included in PIC by these countries on the basis of specific incidents. While such countries may ban or severely restrict such pesticides when they have enabling legislation in place, this action is not a prerequisite for them;
- a Chemical Review Committee made up of experts appointed by Parties to the Convention scrutinises the control actions validated by the Secretariat, and if these meet the definition of the Convention the Chemical Review Committee will be asked to develop a Decision Guidance Document;
- the Conference of the Parties decides whether to add the chemical to the PIC list; once included in PIC, governments receive the Decision Guidance Document and are required to indicate whether they consent to, or prohibit the import of the chemical;
- countries will ensure that their exporters comply with import decisions.

3.1.1 The new Regulation establishes the infrastructure for participating in the mechanisms of the Convention, including appointing DNAs, participation in the Conference of the Parties and the Chemical Review Committee, and a mechanism for Member States to deal with preparation of technical documentation. The Regulation makes clear that the European Community will take decisions as an importer of chemicals, as well as undertaking its obligations as an exporter of chemicals.

3.2 The Regulation covers chemicals banned (including withdrawn from use) or severely restricted in the EU for health or environmental reasons. In relation to "pesticides", it includes those regulated in the EU as "plant-protection products" and "biocides" and in relation to industrial chemicals it includes those for "professional use" and "use by the general public". Annex 1 sets out the chemicals covered by the Regulation, as follows:

- Part 1: chemicals banned or severely restricted in the Community and therefore subject to export notification because of a ban or severe restriction (the list includes chemicals already in PIC, where export notification obligations may have ceased).
- Part 2: chemicals where the control action to ban or severely restrict it in the Community qualify it for PIC notification (excluding those already included in PIC).
- Part 3: chemicals already subject to the PIC procedure.

3.2.1 The Regulation has a wider scope than the Convention by requiring export notification of certain articles, or products, that contain the unreacted (pure) form of a banned or severely restricted chemical. In addition, articles or products listed in Annex V of this Regulation that are prohibited for use in the Community shall not be exported.

3.2.1.1 Further chemicals will be added to Annex 1 as appropriate final regulatory actions are taken under Community legislation or when chemicals are added to the Convention following notification by other parties.

4. EESC opinion on measures promoted by the Regulation

4.1 In adopting the Regulation for implementing the PIC Convention, and consistent with principles held to be important, including “shared responsibility and cooperative efforts in the international trade of hazardous chemicals in order to protect human health and the environment from potential harm”, this proposal specifies a number of important measures. The EESC wishes to draw attention to the **benefits** of the following measures included in the Regulation, and suggests action to further the objectives:

Export notifications

4.1.1 Export notification of chemicals banned or severely restricted in the EU will continue until the chemical is included in PIC, and in that case export notification can continue if requested by importing countries; chemicals listed in Parts 2 or 3 of Annex 1 will not be exported without the explicit consent of the importing country. By modifying the Convention requirement that the "status quo" will prevail when a party fails to give explicit consent for import, the Convention goals are strengthened. The EESC supports the importance of on-going export notification, and urges that every effort should be taken to ensure that all interested parties in developing countries, including public interest groups, are made aware of continuing imports.

Access to information on exports

4.1.2 Article 9 promotes access to information, by requiring an exporter to notify the DNA of its Member State of quantities of shipments of any chemical banned or severely restricted in the EU or any chemical subject to the Convention, and a summary of non-confidential information will be publicly available. The EESC applauds the initiative of the European Commission and the chemical industry in establishing a voluntary agreement, prior to Community ratification and to the Rotterdam Convention being legally binding, to provide annual information on quantities of exports of chemicals covered by Regulation 2455/92. The goodwill of the chemical industry in participating in this initiative must be fully recognised and appreciated, as industries elsewhere in the world will not yet be subject to this obligation. The EESC also appreciates the initiative of the European Commission to make export information available annually on an aggregated basis, and recognises its commitment to ensuring that importing countries will have full and regular access to all information collected by the European Commission, however it:

- urges the European Commission to make this information available on the basis of exports from Member States, provided that commercial confidentiality is not compromised;
- suggests that the European Commission should collect and make publicly available information on the location of production, and annual production figures of any chemicals covered by this Regulation or other measures reflected in the White Paper – Strategy for a Future Chemicals Policy⁵;

4.1.2.1 The European Commission operates a public database of exports to importing countries. However all exports are listed as coming from the Community. The origin of the exporting Member State is important public information and the EESC believes that this should be routinely available.

Access to information and assistance for importing countries

4.1.3 The European Commission and Member States will facilitate provision of scientific, technical, economic and legal information (noting the need to protect confidential business information) concerning the chemicals covered by the Regulation, including toxicological, ecotoxicological and safety information. In substantially increasing information to developing countries, the EESC believes that the European Community must make funds available to implement the following priorities identified in the Regulation:

4.1.3.1 Support for the information network on capacity-building set up by the Intergovernmental Forum on Chemical Safety.

4.1.3.2 Additional information on a chemical or regulatory action requested by an importing party.

4.1.3.3 Information and relevant details on transit movements to the countries through which PIC chemicals pass en route to their destination, submitted in the appropriate language of those countries.

Obligatory standards when exporting chemicals

4.1.4 The EESC welcomes the Regulation requirement that classification, packaging and labelling standards in the EU shall apply to exports and that safety data should be in the language(s) or a principal language of the country of destination. However additional problems may arise during shipping, some of which are beyond the control of the exporter: shipments of banned and severely restricted chemicals may pass through a number of countries and be handled by many who are unaware of the dangers; unscrupulous shipping companies may conceal the nature of the shipments. The EESC suggests these problems need urgent attention, which may include the need for shipping

⁵ COM(2001) 88 final.

documentation accompanying hazardous chemicals in the language of all countries through which the goods pass before reaching their final destination, and other measures⁶. Under technical assistance, the Community should promote training for customs officers, who will play a key role in the practical aspects of implementing the PIC Convention.

4.1.4.1 Minimum standards on exported chemicals, aim to ensure quality and relevance, requiring compliance with purity specifications, shelf life, and appropriate packaging sizes to avoid obsolete stocks.

4.1.5 The EESC urges the European Commission to ensure developing countries improve their capacity to assess appropriateness of chemical imports, through targeting development aid to improving training and provision of laboratories. The EESC recognises the significant problem of obsolete pesticide stocks which have arisen from oversupply and provision of inappropriate pesticides, as well as from poor stocking conditions in the importing countries. Action must be supported to prevent the build up of future obsolete stocks, as well as the need for funds to dispose safely of existing stocks.

Export ban

4.1.6 The export ban which, at the discretion of the Council of Ministers, may be applied to certain chemicals and articles as listed in Annex V, is an important innovation and the EESC urges the European Commission to work with Member States to ensure that all articles containing hazardous chemicals in a form that will harm those exposed are subject to such a ban. The EESC wishes to consider guidance on the wider application of export bans in the context of World Trade Organisation (WTO) rules.

Technical assistance

4.1.7 The European Commission and Member States are asked to cooperate in promoting technical assistance, including training, to develop infrastructure, capacity and expertise for developing countries to manage chemicals throughout their life cycle, and to implement the Convention. The EESC believes that assistance should be provided to workers' organisations and NGOs concerned with health, the environment, and agricultural systems that reduce reliance on hazardous pesticides.

Listing of chemicals in Annex 1

4.1.8 Plant-protection products on the market in Member States are regulated under Directive 91/414/EEC. A review process is underway whereby a large number of pesticides (plant-protection products) will be taken off the market in 2003 because there is insufficient data to renew the authorisation, or because the market is too small for the manufacturers and distributors to invest in

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Currently, such documents are issued in six languages under United Nations relevant procedures.

generating the data required. In some cases, the removal from the market of these products is purely for commercial reasons, in other cases there is a concern that the chemical may cause an adverse health or environmental impact. The European Commission considers it important that those products not included in the relevant part of the Annex to Directive 91/414/EEC because of health or environmental concerns be identified and notification be submitted under the PIC procedure. This is an important and useful initiative and the EESC offers its support, urging at the same time acceleration of the review foreseen on the basis of new scientific and technical data. Bans or severe restrictions on industrial chemicals because of concerns for human health or the environment are regulated by Directive 76/769/EEC. The EESC welcomes the fact that such measures will also be notified.

5. EESC observations and recommendations on matters not addressed in the Regulation

The EESC wishes to draw further attention to the following elements:

Occupational health and safety

5.1 The EESC places great importance on occupational health and safety. In relation to "industrial chemicals", the Regulation indicates that it covers chemicals for use by professionals and chemicals for use by the public. The EESC wishes to emphasise that the term "professionals" refers to all those using chemicals in the course of their work in order to make clear that the Regulation must cover all those likely to be exposed in the workplace, domestic settings or the wider environment.

Bans in individual Member States

5.2 Article 10.7 of the proposal prohibits Member States from submitting notifications to the secretariat regarding final regulatory actions. This implies that only chemicals banned or severely restricted (under Directives 91/414/EEC, 98/8/EC, 79/117/EEC, 76/769/EEC and/or any other relevant Community legislation) across all Member States shall be notified. The EESC believes that when a Member State has taken a ban or severe restriction this information must be made available to importing countries, and the European Commission must establish procedures to submit a "notification of control action" or at minimum ensure that under information-exchange countries are notified of the action.

Supporting innovation in the chemical industry

5.3 The EESC recognises the important role of an innovative and competitive chemical industry in Europe, and believes that its activities should be fully supported by policies that encourage sustainable development. The EESC invites both industry and the European Commission to promote research in the area of alternatives, including biological controls and other pest-management methodologies, to the production and use of pesticides. The objective of such actions should be to support both, sustainable competitiveness and eco-productivity, and to launch an EU strategy for promoting organic farming and sustainable rural development. The EESC encourages the European

Commission to assist industry in its efforts to contribute to sustainable, ecological innovation through encouraging research and development, training and appropriate scholarships.

5.3.1 The EESC believes that the European chemical industry is a global leader regarding corporate responsibility in environmental and labour issues in developing countries, and encourages it to maintain this leadership role⁷.

5.3.2 The EESC supports the establishment of FAO specifications on products in international trade.

Directive 98/8/EC

5.4 The EESC in the past⁸ in its Opinion concerning the placing of biocidal products in the market, emphasized the need to secure a high level of protection of human and animal health and environment through harmonized national evaluation of dossiers related to such dangerous substances. With regret, it notes that still not all Member States have transposed the Directive into national law.

5.4.1 Only recently, the European Commission launched before the Court of Justice procedures against certain Member States (F, L, D, E, P and IRL) for not transposing the provisions of Directive 98/8/EC; once more the EESC urges further examination of this topic.

Education and Training for developing countries

5.5 Already in 1991 the EESC in its Opinion concerning export and import of certain dangerous chemicals⁹ (point 2.7 + 2.8) "urged the Community and the international organizations to help the less developed nations to set up appropriate instruments enabling them to act swiftly on any information notified, and ... suggested that the Commission should draw up a handbook explaining the relevant procedures to help Community businesses to implement the basic Regulation". Similarly, the EESC had raised the need to develop training and education in such environmental matters. Such a recommendation is also expressed by the United Nations and FAO when they encourage assistance to developing countries and countries with economies in transition in implementing specific projects to identify severely hazardous pesticide formulations causing problems under conditions of use in those countries. This element should be of serious consideration in view of the EU enlargement and projects should be promoted via the TAIEX services of the European Commission.

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See also Opinion of the Economic and Social Committee on *Human Rights in the Workplace*, OJ C 260, 17.9.2001, pp. 79-85, Opinion of the Economic and Social Committee on the *Green Paper: Promoting a European framework for Corporate Social Responsibility*, CES 355/2002,

Opinion of the Economic and Social Committee on the *White Paper – Strategy for a Future Chemicals Policy*, OJ C 36, 8.2.2002, pp. 99-104.

8

Opinion on the *Amended proposal for a European Parliament and Council Directive concerning the placing of biocidal products on the market*, OJ C 174, 17.6.96, p. 32.

9

Opinion on the *Proposal for a Council Regulation (EEC) concerning export and import of certain dangerous chemicals*, OJ C 191, 22.7.1991, p. 17.

5.6 National Member State policies should tackle: enforcement, educational programmes and programmes to raise national awareness, capacity building related to risk reduction/risk management, strengthening institutional mechanisms and programmes as well as information systems, networks and Internet links. Mechanisms of national interministerial coordination should be encouraged and ensured.

A consultative mechanism for workers' organisations and NGOs

5.7 In its Opinion concerning promoting non-governmental organisations in the field of environmental protection¹⁰, the EESC stipulated (point 4) that "it is necessary to encourage and finance the activities and environmental commitment of other NGOs representing European citizens in their capacity as workers, entrepreneurs, farmers or consumers and whose role in carrying through environmental policies is vitally important". Involvement of a broad range of stakeholders should be ensured when strengthening the legislative scheme. The EESC supports the need for consultative mechanisms that enable stakeholders to express their views to the European Commission, and notes with regret that it will not be consulted when the Annexes to the new Regulation will be subject to modifications. Nevertheless, the EESC recognises that the European Commission invites stakeholders to relevant meetings under this Regulation, and urges the European Commission to put in place the broadest possible consultation of all stakeholders to ensure transparency and expression of all views. In this context, the EESC notes its capacity to play an important role as the forum for promoting stakeholder opinions.

Pesticide reduction

5.8 Direct experience with the use of pesticides, and the need for more sustainable agricultural development, have been two of the most important motivating factors for the initiation of activities to reduce risks associated with pesticide use. Such activities include: product registration, eliminating hazardous pesticides, codes of practice, measures to reduce workers' risk (training, education), promoting sustainable farming methods, development of thresholds, research for alternative pest-control practices, identification of pest-resistant crop varieties, integrated pest management (IPM) and green labelling. Sound management of chemicals depends on such activities. EU research funding should be reviewed to tackle the needs of such activities, and development aid funding support should be reviewed to ensure it is well targeted to sustainable agriculture and sound pest-management practices which promote IPM, organic or other ecological practices.

Enforcement

¹⁰ Opinion on the *Proposal for a decision of the European Parliament and of the Council laying down a Community Action Programme promoting non governmental organisations primarily active in the field of environmental protection*, OJ C 36, 8.2.2001, p. 108.

5.9 Issues like dispute settlement, product liability and illicit trafficking of hazardous chemicals require further attention and policy development on a rather harmonised basis in conjunction with the other relevant Conventions.

5.9.1 Control of chemicals should be closely linked to the "precautionary principle" as outlined by the Rio Declaration. Similarly, the principle of "pollution prevention" should be promoted. Both elements should be emphasised in the European Commission's approach.

5.9.2 Regarding the provisions related to penalties (Articles 17 and 21), the EESC notes with regret that the European Commission is still not entitled or in position to monitor the proper implementation of the Community rules on this matter. As the penalties are decided by the Member States individually, trade distortion may occur.

Legal basis

5.10 This proposal targets primarily environmental concerns and not concerns of international trade. The EESC questions the European Commission's choice of legal basis (Article 133). The Court of Justice in its Opinion 2/00 related to the Convention of Biological Diversity and the Cartagena Protocol (relevant Commission proposal of similar nature) concluded that Article 175(1) is the appropriate legal basis for such issues. The EESC welcomes and endorses the recent (30 April 2002) Council of Ministers' decision to modify the legal basis to meet such concerns.

Brussels, 17 July 2002.

The President
of the
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