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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 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. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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. It was approved by the Council Decision concerning 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 (2006/730/EC with retroactive effect from 19 December 2002)¹ and entered into force for the European Community on 24 February 2004. The aim of the Convention is 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 provides a framework for information exchange about the characteristics of certain chemicals, for a national decision-making process on their import and export and for disseminating those decisions to Parties.

Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012² implements in Union law the commitments set out in the 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 (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. Based on the outcome of that review, the CRC recommended the listing of acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Annex III to the Convention since all criteria were found to be met. The procedure for adoption of amendments to Annexes is governed by Article 22 of the Convention.

In accordance with Article 23 of the Convention, 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.

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).

² Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60).

At the tenth ordinary meeting, the Conference of the Parties will consider the adoption of decisions to list acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds 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 act 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.’

The use of acetochlor, carbosulfan, chrysotile asbestos, 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, is prohibited in the Union by the respective legislation. The use of decabromodiphenyl ether and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds is restricted by Regulation (EU) 2019/1021 on persistent organic pollutants³, since both chemicals are subject to the Stockholm Convention on persistent organic pollutants.

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 amend Annex III by listing acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds.

- **Consistency with existing policy provisions in the policy area**

The proposal is coherent with and complements the implementation of 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.

³ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

- **Consistency with other Union policies**

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.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The procedural legal basis for the proposed Council Decision is Article 218(9) TFEU, which is the appropriate basis for an act defining the position of the European Union in relation to an international agreement, in this case the Rotterdam Convention.

The substantive legal basis is Article 192 of the TFEU, paragraph 1, given that the measures agreed under the Rotterdam Convention predominantly pursue an environmental objective (i.e. the protection of human health and the environment through the control of the international trade in certain hazardous chemicals and pesticides).

Consequently, the legal basis of the proposed decision should be Article 192(1), in conjunction with Article 218(9) TFEU.

- **Subsidiarity (for non-exclusive competence)**

Protecting human health and the environment from potential harm of certain hazardous chemicals and contributing to their environmentally sound use is a global concern and the Rotterdam Convention is implemented in the Union by Regulation (EU) No 649/2012. Since the Union is a Party to the Convention, it is appropriate that the Union participates in the decision-making at the Conference of the Parties.

- **Proportionality**

Protecting human health and the environment from potential harm of certain hazardous chemicals and contributing to their environmentally sound use is a global concern and requires a global effort. The listing of acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Annex III has been recommended by the Chemical Review Committee of the Convention since the chemicals were found to meet the criteria in accordance with Annex II to the Convention. Therefore, it is proportionate to support the listing of those chemicals in Annex III to the Convention to ensure that appropriate action is taken at global level.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

A systematic stakeholder consultation has not been carried out since there will be no consequences for stakeholders in the European Union, except that certain rules have to be followed when exporting those chemicals. However, stakeholders were consulted throughout the review of the notifications on those chemicals carried out by the Chemical Review Committee of the Convention and their comments were addressed.

- **Impact assessment**

An impact assessment has not been carried out since the decisions that may be adopted under the Convention will not have any impact on the use of those chemicals in the European Union.

- **Regulatory fitness and simplification**

The proposal may have a minor impact on commercial activity since the chemicals are not in commercial use in the Union but may be produced for export and, therefore, does not exempt micro-enterprises and does not include special rules for SMEs. The proposal may have a minor impact on sectorial EU competitiveness or on trade between the Union and third countries since certain rules would have to be followed when trading those chemicals internationally.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An implementation plan, monitoring, evaluation and reporting are not deemed necessary.

- **Detailed explanation of the specific provisions of the proposal**

The proposal gives the Commission the mandate to support the listing of acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds at the Conference of the Parties to the Rotterdam Convention on behalf of the European Union.

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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) 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/EC)¹.
- (2) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 implements the Rotterdam Convention in the Union².
- (3) Pursuant to Article 7 of the Convention, the Conference of the Parties shall decide whether to list chemicals in Annex III.
- (4) The tenth 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 decisions 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 inclusion in Annex III to the Rotterdam Convention of acetochlor, carbosulfan, chrysotile asbestos, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds. The use of those substances is already banned or severely restricted in the Union and most of them are subject to export

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).

² Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60).

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 tenth 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, decabromodiphenyl ether, fenthion (ultra low volume (ULV) formulations at or above 640 g active ingredient/L), 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 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*