

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2006/0246(COD) Procedure completed
Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure Repealed by <a href="#">2011/0105(COD)</a>	
Subject 3.70.13 Dangerous substances, toxic and radioactive wastes (storage, transport) 3.70.20 Sustainable development	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ENVI</b> Environment, Public Health and Food Safety		27/02/2007
		IND/DEM <a href="#">BLOKLAND Johannes</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>INTA</b> International Trade	The committee decided not to give an opinion.	
	<b>EMPL</b> Employment and Social Affairs	The committee decided not to give an opinion.	
	<b>ITRE</b> Industry, Research and Energy		12/04/2007
	<b>IMCO</b> Internal Market and Consumer Protection	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Environment</a>	<a href="#">2784</a>	05/06/2008
European Commission	Commission DG <a href="#">Environment</a>	Commissioner DIMAS Stavros	

Key events			
30/11/2006	Legislative proposal published	<a href="#">COM(2006)0745</a>	Summary
12/12/2006	Committee referral announced in Parliament, 1st reading		
08/10/2007	Vote in committee, 1st reading		Summary
24/10/2007	Committee report tabled for plenary, 1st reading	<a href="#">A6-0406/2007</a>	

14/01/2008	Debate in Parliament		
15/01/2008	Results of vote in Parliament		
15/01/2008	Decision by Parliament, 1st reading	<a href="#">T6-0005/2008</a>	Summary
05/06/2008	Act adopted by Council after Parliament's 1st reading		
17/06/2008	Final act signed		
17/06/2008	End of procedure in Parliament		
31/07/2008	Final act published in Official Journal		

### Technical information

Procedure reference	2006/0246(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealed by <a href="#">2011/0105(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 133; EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/6/43480

### Documentation gateway

Legislative proposal		<a href="#">COM(2006)0745</a>	30/11/2006	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0799/2007</a>	30/05/2007	ESC	
Committee draft report		<a href="#">PE392.247</a>	24/07/2007	EP	
Amendments tabled in committee		<a href="#">PE394.050</a>	21/09/2007	EP	
Committee opinion	<b>ITRE</b>	<a href="#">PE391.967</a>	02/10/2007	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0406/2007</a>	24/10/2007	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0005/2008</a>	15/01/2008	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2008)1176</a>	27/02/2008	EC	
Draft final act		<a href="#">03604/2008/LEX</a>	17/06/2008	CSL	

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

### Final act

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## Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure

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**PURPOSE:** to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**CONTENT:** Regulation 304/2003/EC of the European Parliament and of the Council concerning the export and import of dangerous chemicals Community implements the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain hazardous chemicals and pesticides in international trade.

On 10 January 2006, in its judgment in case Commission v. Parliament and Council (C-178/03), the Court of Justice annulled the Regulation, ruling that there should have been a dual legal basis including both Articles 133 and 175 first paragraph of the Treaty. The Court however maintained the effects of the Regulation until the adoption, within a reasonable period of time, of a new regulation founded on appropriate legal bases.

The purpose of this proposal is therefore a new Regulation, based on the above-mentioned dual legal basis. At the same time, it is proposed to include certain technical amendments to the operative provisions in the light of a Commission report in accordance with Article 21 of the Regulation on the experience of the procedures to date. That report is being submitted in parallel to this proposal.

The main amendments are as follows:

Changes and clarifications as regards certain definitions: it is proposed to amend the term 'exporter' since sometimes the exporter can be a trader not established in the Community who has obtained the chemicals from an EC chemical manufacturer or distributor. It is therefore proposed to adapt the definition to cover this situation. It is therefore proposed to revise the definition of 'preparation' and to make it clearer in those operative provisions that preparations are only subject to the requirements when they contain a chemical(s) listed in the relevant part(s) of Annex I of the Regulation to the extent that its presence is such that it could trigger labelling, irrespective of the presence of any other substances in the preparation.

Changes and clarifications to the so-called 'explicit consent' procedure: 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. As a result, exports cannot proceed, despite the fact that often the substances are not banned or severely restricted in the importing countries. The current system thus causes difficulties for exporters and exporting DNAs without necessarily affording greater protection to importing countries. Against this background, certain limited possibilities for exports to proceed on a temporary basis, while further efforts are made to obtain explicit consent, seem appropriate. It is proposed that, if, despite all reasonable efforts by the exporter's DNA and the Commission, there is no response within 2 months, available documentary evidence from official sources that the chemical is registered, authorised or otherwise allowed for use in the importing country can be regarded as sufficient indication of consent for exports to proceed ad interim pending a response. The rules as regards the period of validity of explicit consents obtained would also be clarified. The current provisions imply that consents obtained (unless otherwise qualified by the importing country) are potentially open-ended. However it is proposed that consents obtained, as well as cases where alternative evidence is accepted, should be periodically reviewed. To further improve and strengthen the functioning of the system, it is also proposed that requests for consent and renewals should be channelled through the Commission (subject to the necessary resources being made available).

Changes to reinforce and strengthen customs control of exported chemicals while at the same time facilitating trade: in most Member States the customs authorities play a key role in ensuring compliance with the Regulation, in particular as regards controlling exports. In order to meet their specific needs in this regard, several actions are already in hand, as follows:

? classifying chemicals subject to Regulation 304/2003 within the Combined Nomenclature (CN) so that 'warning flags' could be included in the Integrated Tariff of the European Communities (TARIC) against the relevant CN codes that would alert customs officers to the fact that the chemicals concerned are or could be subject to special rules;

? developing a version of the Commission's EDEXIM database (which includes data on export notifications made, explicit consents obtained etc) specifically for customs authorities. This would help them to check whether or not a particular export shipment can be allowed to proceed. To facilitate this, it is planned that there should be unique reference or code numbers generated by the system that would be quoted by exporters in their export declarations. It is proposed to make the use of the codes by exporters a requirement in the new Regulation. However there would be a short grace period of three months following entry into force to enable all concerned to become familiarised with the system.

## Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure

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The Committee on the Environment, Public Health and Food Safety adopted - at 1<sup>st</sup> reading under the codecision procedure - the report by Johannes BLOKLAND (IND/DEM, NL) on the proposal for a regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals.

The report makes the following amendments:

- it specifies that 'Articles' containing substances listed in parts 2 and 3 of Annex I require an export notification, just as it is required for substances and preparations;

- 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. The report states that 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;

- the report specifies that 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 should be treated in a more flexible way. 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;

- the validity of each explicit consent obtained or waiver granted shall be subject to periodic review by the Commission in consultation with the Member States concerned as follows:

(a) for each explicit consent obtained 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 shall be for a maximum period of twelve months, upon expiry of which explicit consent shall be required;

- the Commission shall make all information regarding penalties available upon request;

- 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;

- the Commission shall be assisted by the same committee as established by REACH Regulation in order to anticipate the future.

- 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).

- metal arsenic itself and metal mercury itself have been mentioned in this Annex as well as metal mercury.

## Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure

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The European Parliament adopted a legislative resolution based on the report drawn up by Johannes BLOKLAND (IND/DEM, NL) and made some amendments to the proposal for a regulation concerning the export and import of dangerous chemicals. The resolution was adopted by 679 votes for, 9 against, and 8 abstentions.

The main amendments were as follows :

-the definitions of 'export' and 'import' have been modified ;

-each export notification shall be registered and assigned an export reference identification number in a database at the Commission ;

-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;.

-in the case of chemicals listed in part 2 of Annex I that are for export to OECD countries, the Designated National Authority of the exporter may, in consultation with the Commission and on a case by case basis, decide that no explicit consent is required if the chemical, at the time of importation into the OECD country concerned, is licensed, registered or authorised in that OECD country;

-in the case of chemicals listed in Parts 2 or 3 of Annex I, the Designated National Authority of the exporter may, in consultation with the Commission and on a case by case basis, decide that the export may proceed if, after all reasonable efforts, no response to a request for explicit consent has been received within 60 days and there is evidence from official sources in the importing Party or importing other country that the chemical has been licensed, registered or authorised;

-when deciding on the export of chemicals listed in Part 3 of Annex I, the Designated National Authority in consultation with the Commission shall consider the possible impact on human health and the environment of the use of the chemical in the importing Party or other importing country.

-for each explicit consent obtained 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. Exports may however continue beyond the expiry of the relevant period, pending a response to a new request for explicit consent, for an additional period of 12 months. Unless a response to a request has been received in the meantime, each waiver granted shall be for a maximum period of 12 months, upon expiry of which explicit consent shall be required.

-Member States shall make all information regarding penalties available upon request ;

-information on handling the packaging after the chemicals have been removed, is added to the list of matters not regarded as confidential ;

-certain measures must be adopted in accordance with the regulatory procedure with scrutiny. These include measures to include a chemical in Parts 1 or 2 of Annex I following regulatory action at Community level, measures to include a chemical that is subject to Regulation (EC) No 850/2004 on persistent organic pollutants in Part 1 of Annex V, measures to amend Annex I, including modifications to existing entries, measures to include a chemical already subject to an export ban at Community level in Part 2 of Annex V, measures to amend Annexes II, III, IV and VI, and measures to modify existing entries in Annex V.

Lastly, the Annexes have been amended, and a Commission Declaration concerning the status of mercury and arsenic under the PIC Regulation is attached to the text.

# Dangerous chemicals: export and import, implementation of the Rotterdam Convention on the Prior Informed Consent Procedure

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**PURPOSE:** to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

**LEGISLATIVE ACT:** Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals.

**CONTENT :** the objectives of this Regulation are the following:

(a) to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, ("the Convention");

(b) to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm;

(c) to contribute to the environmentally sound use of hazardous chemicals.

These objectives will be achieved by facilitating the exchange of information concerning the characteristics of such chemicals, by providing for a decision-making process within the Community on their import and export and by disseminating decisions to Parties and other countries as appropriate.

In addition, the Regulation will ensure that the provisions of Council Directive 67/548/EEC and of Directive 1999/45/EC regarding the classification, packaging and labelling of chemicals dangerous to man or to the environment when they are placed on the market in the Community also apply to all such chemicals when they are exported from the Member States to other Parties or other countries, unless those provisions would conflict with any specific requirements of those Parties or other countries.

The Regulation provides for three different procedures that exporters and national authorities have to apply, depending on the status of the respective chemical:

i) the export notification procedure has to be applied for hazardous chemicals that are banned

or severely restricted in the EU but do not qualify for notification to the Convention;

ii) the requirement for explicit consent of the importing country prior to any export applies to

hazardous chemicals that qualify for notification but are not yet subject to the Convention

and

ii) the full Convention prior informed consent procedure has to be applied for hazardous chemicals subject to the Convention. So far, 39 chemicals are covered but the number is expected to increase.

The regulation was adopted at first-reading under the co-decision procedure.

**ENTRY INTO FORCE:** 01/08/2008.