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Opinion of the European Economic and Social Committee on: the Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants, Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants, and Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC (COM(2003) 331, 332, 333 final — 2003/0118-0117-0119 (CNS))

Official Journal C 032 , 05/02/2004 P. 0045 - 0048

Opinion of the European Economic and Social Committee on:

- the "Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants",
- the "Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants", and
- the "Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC"

(COM(2003) 331, 332, 333 final - 2003/0118-0117-0119 (CNS))
(2004/C 32/08)

On 10 and 11 July 2003, the Council decided to consult the European Economic and Social Committee, under Articles 95 and 175 of the Treaty establishing the European Community, on the 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 14 October 2003. The rapporteur was Ms Cassina.

At its 403rd plenary session (meeting of 29 October 2003), the European Economic and Social Committee adopted the following opinion by 122 votes to 1, with 5 abstentions.

1. Background and content of the proposal

1.1. Persistent organic pollutants, generally referred to as POPs, are chemical substances that resist degradation under natural conditions and that when released into the environment are transported by the elements (wind, rain, water, etc.) or animals far from their point of emission. Such pollutants bio-accumulate through the food web and present a definite risk to human health and to the environment. Their adverse effects, whether near or far from the point of emission, are now well-demonstrated and universally recognised.

1.2. Arctic ecosystems are particularly vulnerable owing to the phenomenon of biodiffusion, but the risk is present across the planet and the international community embarked some time ago on the task of eliminating such pollutants, by banning their production, marketing and use by given deadlines.

1.3. Two instruments established by the international community now represent the reference point in this campaign:

- The UNECE Protocol, to which any party to the UN Convention on Long Range Transboundary Air Pollution (CLRTAP)(1) that wishes to participate may accede, was adopted during the special session

of the CLRTAP Executive Body held in Aarhus (Denmark) in June 1998. This protocol was signed by the Community and all its Member States on 24 June 1998. It concerns 16 substances comprising eleven pesticides, two industrial chemicals and three unintentional by-products, and has entered into force on 23 October 2003.

- The Stockholm Convention was adopted in May 2001 with active involvement of the European Community and was signed by the EC and all its Member States on 22 May 2001; this convention governs a global programme for 12 substances recognised as POPs, with specific reference to application of the precautionary principle, and fixes rules for gradual extension of the convention to other substances that exhibit the characteristics of persistent organic pollutants and on which global action is needed. Around ten more parties must ratify the Convention before it can come into force.

1.4. In tandem with its proposal for a Regulation on POPs(2), the Commission has proposed that the EU ratify the two above-mentioned agreements, by adopting the following:

- the proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants(3);
- the proposal for a Council Decision concerning the conclusion, on behalf of the European Community(4), of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants.

1.5. The present opinion concerns above all the proposed Regulation, with the two proposals for decisions mentioned only in point 6.

2. Limits of the current Community legislation in force

2.1. Among other legislation, the following restrictions apply in the EU to substances defined as persistent organic pollutants (POPs):

- the restrictions set out in Directive 79/117/EEC(5), which prohibits the placing on the market and use of plant protection products containing certain active substances;
- the provisions concerning the use of PCBs (polychlorinated biphenyls) set out in Directive 76/769/EEC(6) on the restriction of such substances and dangerous preparations.

2.2. The specific exemptions granted in these directives are much broader than those contained in the two conventions: ratification of the conventions by the Community therefore requires a re-alignment of Community legislation in this sphere.

2.3. The other more obvious shortcomings of the present system include:

- the lack of a ban on the production of chemicals with recognised POP characteristics; in effect, most of the provisions concerning such substances only impose a ban (in some cases only partial) on marketing and use;
- the lack of a regime prohibiting the production of new substances recognised as POPs that might in future be added to the lists either of the UNECE Protocol or of the Stockholm Convention.

2.4. Thus an evaluation of the Community legislation currently in effect shows that despite the albeit important commitment that the various legislative instruments represent in the environmental sphere, these are not adequate to fully implement the provisions of the Protocol and the Convention, and so to guarantee the objective of protecting human and animal health and the environment from the effects of products with POP characteristics.

3. Summary of the main proposals contained in the draft Regulation

3.1. The proposal for a regulation on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EEC is intended to implement certain provisions contained in the UNECE Protocol and the Stockholm Convention, while bringing previous Community legislation into line with the Protocol and the Convention by amending Directives 79/117(7) and 96/59(8). This proposal would ban the production, use and placing on the market of substances listed in the two international agreements.

3.2. In addition, the proposal contains some key features that represent an improvement on the international agreements in question, namely:

- the removal of exemptions for "limited use" granted for certain substances in the international agreements;

- more binding rules and/or provisions for the disposal of stockpiles and waste;
- establishment of a procedure involving a regulatory committee, which will allow the Commission to add other chemicals exhibiting POP characteristics to the list of restricted or prohibited substances, within one year at the most of their being entered on the list of controlled or banned substances under the Convention or the Protocol;
- replacing the provisions of Directive 79/117/EEC with respect to restrictions imposed on eight pesticides and amending Directive 96/59/EEC with respect to the disposal of PCBs.

4. General comments

4.1. The EESC welcomes the Commission's initiative to adjust Community legislation with a view to ratification by the Community of international instruments designed to combat persistent organic pollutants. It appreciates the further tightening-up of legislation to reflect the precautionary principle. This is in line with the decisions taken in relation to the VIth Environmental Action Programme and is also consistent with the political declaration made at the World Summit on Sustainable Development in Johannesburg.

4.1.1. The EESC therefore hopes that the proposed regulation and decisions will be adopted as soon as possible, so that the Community can accede to the international agreements in question, perhaps even before they enter into force⁽⁹⁾ and certainly in time for the Community to take part in the first conference of the parties that will be held within one year of the Convention taking effect.

4.2. Two aspects of the proposal for a regulation are of particular importance: the possibility of adding substances that can be identified as exhibiting POP characteristics and the strict limits imposed on the possibility of exemptions.

4.3. The EESC appreciates the use of national plans and a Community plan which will lead the Member States to constantly address the issue and take timely action to combat these dangerous substances and their effects. The coordination and synergies promoted by the Regulation between the efforts of the Member States and the Commission are also to be welcomed, and the Committee is pleased to note that this is not just a possibility or a hope, since positive cooperative efforts are already under way, also in a regional and transboundary framework, based on Community programmes⁽¹⁰⁾. Bringing measures to promote sustainable development within the Community framework, even when they are carried out in a specific region, ensures synergies between the Member States and thus both protection of the environment as a whole and of the single market from distortions.

4.4. It is still very difficult to ascertain infringements by individuals and companies, however, and it would therefore be useful to provide for specific networking of national verification and monitoring instruments, and to promote special training of staff employed to carry out checks, on the basis of trans-national and Community initiatives.

4.5. The penalties imposed for infringements of the rules governing POPs (depending as they do on the investigative and judicial instruments of the Member States, albeit notifiable to the Commission) should also within a relatively short time be subject if not to standardisation then at least to substantial and voluntary convergence.

4.6. The EESC is concerned about the situation in some of the new Member States that still hold very large stocks of products or articles with POP characteristics awaiting disposal. Funding for eliminating stocks has been guaranteed during the pre-accession phase under various programmes, including ISPA. In the future, the resources and technical assistance needed to assist the disposal of such stockpiles in this part of Europe should be provided through the standard instruments, notably the Structural Funds. This will require constant surveillance by Community institutions, but above all conscientious cooperation by the authorities of the new Member States and an ability on their part to involve social interest groups, NGOs and the general public.

4.6.1. Serious problems are also caused by the use and, in some cases, misuse of substances with POP characteristics in non-member Mediterranean countries. The EESC trusts that Euro-Mediterranean and "good neighbour" strategies will give priority to the replacement and disposal of these products.

4.7. The EESC also calls for monitoring of the presence of products with POP characteristics to be stepped up and asks that maximum use be made of existing opportunities to earmark resources

under the VIth Research and Development Framework Programme to enhance monitoring instruments and techniques for identifying the presence and movements of POPs.

4.8. Finally, the EESC notes that the present proposal for a regulation also became necessary because, despite the broad debate that has developed on the White Paper on Chemicals, it has not yet been possible to act on its recommendations. Regardless of the particular tenor of this opinion, the EESC would like to take the opportunity to ask the Commission to produce implementing proposals soon.

5. Specific comments

5.1. The EESC considers that Article 175 of the Treaty (environmental protection) should be cited first in conjunction with Article 95 (internal market) as the legal basis of the proposal, as has rightly been done in the first recital.

5.2. Still with reference to the recitals (number eight), the view that it is "appropriate" to keep using HCH (lindane) in certain Member States is incomprehensible, considering the importance of the precautionary principle in this matter and considering that Decision 2000/801/EC(11) bans its use as a plant protection agent. The EESC asks the Commission to consider very carefully how, where and for what purpose lindane will continue to be used, and thinks that in any case lindane should never be used where an alternative (product or process) exists.

5.3. With regard to Article 5 (stockpiles), the EESC notes that the obligation to notify the authorities only applies to stockpiles over 100 kg. The EESC would prefer this threshold to be reduced (e.g. to 50 kg), but is aware that doing so would produce considerable administrative work for countries and businesses. It therefore calls instead for: a) information campaigns to be mounted to make all holders of such products aware of the risks associated with them; and b) if necessary, provision of technical assistance and advice on safe disposal of waste, even in small quantities.

5.4. Regarding the technical assistance provided by the Commission and the Member States to developing countries (Article 11), the EESC believes that provision should be made to support and involve not just NGOs but also - and explicitly - the social partners.

5.5. Article 13 (penalties) stipulates that penalties should be "effective, proportionate and dissuasive", and gives responsibility to the Member States for administering and deciding the amount of penalties. The EESC believes that penalties should be as uniform as possible within the EU, but above all that they should be defined according to the same criteria; the concepts mentioned as a general criterion - efficiency, proportionality and dissuasiveness - may be interpreted differently by different countries, making responsibilities and even market forces uneven. To avoid this situation, close cooperation between those responsible for policing and those responsible for imposing penalties is crucially important, and this should be explicitly called for in the proposal.

6. Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants(12) - Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants(13)

6.1. The above-mentioned proposals are intended to allow approval of the two international instruments in question by the European Community and to determine the procedures for proposing new substances for inclusion in the agreements.

6.2. On the basis of these decisions, the Council will appoint the person or persons empowered to deposit the instrument of approval of the protocol and the convention with the Secretary-General of the United Nations. It will then fall to the EU institutions alone to propose amendments on behalf of the Community.

6.3. The EESC fully supports these two decisions and hopes that they will be approved without delay.
Brussels, 29 October 2003.

The President

of the European Economic and Social Committee

Roger Briesch

(1) UN Convention on Long Range Transboundary Air Pollution, signed in 1979 in Geneva.

(2) Proposal for a Regulation of the European Parliament and of the Council on persistent organic

pollutants and amending Directives 79/117/EEC and 96/59/EC - COM(2003) 333 final.

(3) COM(2003) 331 final.

(4) COM(2003) 332 final.

(5) OJ L 33, 8.2.1979.

(6) OJ L 262, 27.9.1976.

(7) OJ L 33, 8.2.1979.

(8) OJ L 243, 24.9.1996.

(9) The Protocol has entered into force in October 2003.

(10) E.g. the Monarpop project (Monitoring Network in the Alpine Region for POPs), an Interreg cooperative project between the Alpine countries.

(11) OJ L 324, 21.12.2000.

(12) COM(2003) 332 final.

(13) COM(2003) 331 final.

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