

COMMISSION OF THE EUROPEAN COMMUNITIES

~~COM(74) 1706 final~~

Brussels, 21 October 1974

PROPOSAL FOR A
DECISION OF THE COUNCIL
on the reduction of pollution caused by certain dangerous
substances discharged into the aquatic environment of the Community

(submitted to the Council by the Commission)

BACKGROUND

1. Within the last several months, three important conventions concerning water-pollution have been under discussion within different frameworks. They are :
 - A. 1) The Convention for the prevention of marine pollution from land-based sources, hereafter referred to as the "Paris Convention" ;
 - 2) A draft European Convention for the protection of international freshwaters against pollution, worked out under the auspices of the Council of Europe, hereafter referred to as the "Strasbourg Convention" ;
 - 3) A draft Convention for the protection of the Rhine against chemical pollution, prepared by the International Commission for the protection of the Rhine against pollution, hereafter referred to as the "Rhine Convention".
2. Member States of the Community have participated or are participating in the elaboration of all three Conventions and will be involved, as necessary, in the development of pollution - abatement programmes. (1)

(1) The states participating in drawing up the final text of the Paris Convention were :
Belgium, Denmark, Federal Republic of Germany, France, Ireland, Luxembourg, Netherlands, the United Kingdom, and Italy observers.
The states participating in drawing up the draft text of the Strasbourg Convention are :
Belgium, Federal Republic of Germany, France, Italy and the Netherlands.
In the International Commission for the protection of the Rhine against pollution the participating countries are :
Federal Republic of Germany, France, Luxembourg and the Netherlands.

3. The Paris Convention and the Strasbourg Convention have already been the subject of communications from the Commission to the Council (Ref. COM (74) 502 final and SEC (74) 1564 final). In both cases the Council has been asked to :
- (i) authorize the Community as such to adhere to the Conventions in question,
 - (ii) to decide that the Commission will participate in bodies which may be set up, either on a temporary or a permanent basis, to administer the said Conventions and to propose the necessary pollution-abatement programmes.
4. As the two Communications from the Commission to the Council make clear, one fundamental reason for the Community as such to adhere to the Paris and the Strasbourg Conventions is the need for all Member states who are, or who may be, signatories to one or other of the Conventions to approach their obligations in the same way. Within the framework of each Convention, Member states will need to adopt pollution-abatement measures, which in order to be self-consistent should be broadly similar both as far as timing is concerned as well as the severity of the measures adopted. The adhesion of the Community to these Conventions and the presence of the Commission of the European Communities on the managing bodies of the Conventions will facilitate to a considerable extent the existence of such consistency. As far as the draft Convention on the prevention of the Rhine against chemical pollution is concerned, though this has not yet been the subject of a communication from the Commission to the Council, here too there will clearly be a need for Member states who sign this Convention to follow a common line in its eventual execution.
5. Among the reasons which justify the necessity of harmonizing the approach of Member states to their obligations in one or other framework, is the need to ensure that the actual pollution-abatement programmes that are proposed are consistent with each other.

Each convention proposes a list of substances, whose discharge is to be controlled. Each convention proposes a time-table - some substances are to be brought under control more quickly and more severely than others. Each convention proposes machinery to assist in the implementation of programmes. But the fact is that there are certain inconsistencies (and even contradictions) between the three conventions not only where the list of substances is concerned, but also in respect of the basic constraints and timing of the pollution-abatement programmes, and the modalities of execution.

6. A detailed analysis of the differences between the three Conventions is given in the Annex. If the zones of application of the three Conventions were totally distinct one from the other the existence of such differences and inconsistencies might be less serious than it is. But in fact the subject of the three Conventions overlaps in certain aspects. The Paris Convention, for example, regulates pollution of the sea from land-based sources. The most important type of land-based pollution of the sea is pollution carried by rivers and water courses. Thus, pollution-abatement programmes devised within the framework of the Paris Convention will necessarily apply to all rivers reaching the sea insofar as they carry a significant pollution-load. International rivers, that is to say rivers which cross a frontier, will of course be the subject of pollution-abatement programmes proposed within the framework of the Strasbourg Convention. (The Rhine itself will be subject not only to Strasbourg but also, as far as chemical pollution is concerned, to its own special Convention). Moreover, the pollution-abatement programmes proposed in the framework of the Strasbourg Convention must also apply to wholly national rivers which are the tributaries or affluents of international rivers, since the pollution-load of international rivers will in part arise from the streams which feed them.

7. It can be seen therefore how difficult it will be, in fact, to operate these three Conventions as if they had totally separate zones of application. Even if one such application were in fact possible, it would create difficulties from the Community's point of view. Following the adoption by the Council in November 1973 of the Action Programme on the Environment, the Commission has a mandate itself to propose a pollution-abatement programme in respect of certain toxic or dangerous substances which may be, or which are being, discharged into inland or coastal waters. This Community programme must of necessity be an integral programme concerned with all aspects of the aquatic environment. The Community programme cannot maintain an artificial distinction between national and international rivers or draw a rigid distinction between coastal waters and the rivers which enter these waters.
8. The purpose of this Communication, and the proposal for decision of the Council is therefore two-fold : the pursuit of a coherent approach for member States for all three Conventions and at the same time to fulfil the demand of the Environment Council of November 1973. In adopting the decision which follows member States would, therefore, not only be helping to implement the EEC's Environment programme. They would at the same time be meeting in an orderly and intelligent way the obligations which they have assumed, or which they are about to assume, in the context of the Paris, Strasbourg and Rhine Conventions.
9. The proposal for decision of the Council covers :
- (a) a list of substances whose discharge is to be controlled ;
 - (b) the constraints to be applied with this aim and the timing to be followed ;
 - (c) the modalities of execution, and
 - (d) the obligations of member States.

10. Such action is necessary in order to carry out the Community's action programme on the environment.

Since there is no particular article in the Treaty which gives the necessary basis for action, the decision must be founded on Article 235.

11. According to the provisions of this article, the opinion of the European Parliament is required and the Economic and Social Committee must also be consulted.

ANNEX

Comparative analysis of the Paris and Strasbourg Conventions and the draft Convention for the protection of the Rhine against chemical pollution

1. Prevention of marine pollution from land-based sources

Under this Convention, the contracting parties pledge themselves to take measures individually or jointly to reduce marine pollution from land-based sources and to forestall new pollution. This undertaking will be carried out under programmes drawn up by a central administrative body known as the "Commission". The pollutants covered by the Convention are specified in Annex A and classified in three categories on the basis of their persistence, toxicity and tendency to accumulate in living organisms.

Under Article 4 of the Convention, the contracting parties undertake :

- (a) to eliminate, if necessary by stages, pollution of the maritime area from land-based discharges of substances listed in Part I of the Annex A ;
- (b) to limit strictly pollution of the maritime area from land-based discharges of the substances listed in Part II of Annex A.

2. Protection of international freshwaters against pollution

In this draft convention, the Member States of the Council of Europe who sign the convention, will undertake :

- (a) to endeavour to take for the surface waters of their territory every appropriate measure to reduce existing pollution and to prevent new forms of pollution of waters (Article 2);
- (b) to apply to international watercourses either individual standards defined in part in Annex III, or minimum standards defined in Annex I (Article 4).

In addition, the discharging into the waters of international drainage basins of dangerous or noxious substances listed in Annex II to the Convention will be prohibited or limited according to certain conditions.

3. Chemical pollution of the Rhine

A third initiative of the same type to combat chemical pollution of the Rhine has been taken by the signatory States of the Berne Convention on the pollution of the Rhine waters. At the request of the Ministerial Conference of riparian States of the Rhine, which met in The Hague in October 1972, the International Commission was instructed to:

- (a) draw up lists of substances whose discharge must be prohibited, limited or made subject to certain conditions (taking into account the provisions of the Oslo Convention of 15 February 1972);
- (b) investigate the origin of these substances;
- (c) draw up a programme of action to be carried out in stages, providing for monitoring, limitation and, where appropriate, prohibition of discharges of these substances.

The list containing substances whose discharge is to be prohibited, limited or subject to certain conditions, was approved by the Second Ministerial Conference concerning the protection of the Rhine against pollution, which was held in Bonn on the 4th and 5th December 1973.

The results of this work will have to be submitted to the Ministers for approval at the next Ministerial Conference of riparian States of the Rhine, which will be held in Paris in December 1974 ; they are intended to form the basis of a convention between these States.

4. Impact of the measures upon the European Communities' programme

4.1 The objectives

Even though the purpose of the various conventions is similar in that they all aim to reduce existing levels of pollution caused by the presence of dangerous substances in the aquatic environment, it should nevertheless be pointed out that :

- (1) the Paris Convention applies to the maritime area of the North Sea and the North-East Atlantic. It takes account only indirectly of pollution reduction in inland watercourses ;
- (2) the Strasbourg Convention applies only to international watercourses and their estuaries. It lays down minimum (immission) standards (Annex 1), individual (immission) standards (Annex 3) and prohibits or limits discharges of dangerous or noxious substances (Annex 2) ;
- (3) the Convention on chemical pollution of the Rhine is concerned exclusively with the river and its tributaries and will also prohibit or limit discharges of certain chemical substances according to a selective inventory of discharges containing these substances.

4.2 Constraints

As regards precise and operational commitments, it should be pointed out that the Paris Convention provides for specific actions "for the reduction or, as appropriate, elimination of pollution of the maritime area from land-based sources by substances listed in Part II of Annex A". "These substances shall be discharged only after approval has been granted by the appropriate authorities" (Article 4(2)(b)).

The text of the Paris Convention remains rather vague however, on the subject of the substances listed in Part I of Annex A, although these substances are considered to be the most dangerous and for this reason to merit priority action.

The strict application and rigid interpretation of the commitments resulting from Article 4(1)(a) would necessitate a detailed study for each maritime area to establish the effect of pollution discharged into inland waters upon the pollution of that zone.

This study would have to take into account particularly :

- hydraulic data and seasonal variations in the waters of the basin flowing into the maritime area ;
- the volume of pollutants discharged into inland waters and the discharge points in relation to their distance from the maritime area ;
- the regime of winds and tides.

Article 5(2) of the Strasbourg Convention states, on the subject of the noxious or dangerous substances listed in Annex 2, that where a contracting party is not able to give immediate effect to the provisions of the preceding paragraph (prohibition or limitation of discharges), it must take steps to do so within a reasonable period.

Since the text on chemical pollution of the Rhine has not yet been finalized, it is not possible to specify what restrictions this Convention will impose.

4.3 Implementing procedures

To ensure that the obligations arising from the Paris Convention are carried out properly, a single and permanent Commission will be set up, but no equivalent body is provided for by the Strasbourg Convention, Article 14 of which states that the contracting parties will decide to set up an International Commission for each hydrological basin, if such a body does not already exist. These commissions will be empowered to take for their particular hydrological basin all the measures provided for in Article 15 of the Convention.

In the case of the Convention on Chemical Pollution of the Rhine the executive body will be the International Commission for the Protection of the Rhine against Pollution. It should be noted that this body will have the same executive task under the Strasbourg Convention.

4.4 Time scales

Non-coordinated application of the Conventions considered could lead to differing time-tables for the attainment of their objectives.

In the Strasbourg Convention, the timing is left to the judgment of each signatory State (Article 2), whereas in the Convention on pollution from land-based sources, the time-limit is to be fixed by the "Commission" (Article 16).

According to the draft convention to prevent chemical pollution of the Rhine, two periods may be laid down : a relatively short one for drawing up the inventory of discharges, and a longer one for completion of the installations necessary for the reduction of discharges.

4.5 Lists of substances covered by these conventions

The lists in the three conventions are compared in Tables 1 and 2. The first table compares the different lists, while the second table lists all the substances mentioned in each convention and shows the lists in which they appear, arranged in decreasing order of severity.

Table 1: Comparative table of the European Conventions on the protection of waters against pollution

Category of substances	Strasbourg Convention	Paris Convention	Rhine Commission
List A or Part I or List I	Persistent organohalogen compounds and substances which may form such compounds in the aquatic environment	Organohalogen compounds and substances which may form such compounds in the marine environment, excluding those which are biologically harmless or which are rapidly converted in the sea into substances which are biologically harmless	Organohalogen compounds and compounds liable to form such substances in waters
	Organophosphorus compounds ¹ Organotin compounds ¹ ¹ With the exception of those compounds which are rapidly converted in water into biologically harmless substances		Organophosphorus pesticides ¹ Organotin pesticides ¹ ¹ With the exception of those compounds which are rapidly converted in water into biologically harmless substances
	Persistent toxic organosilicon compounds		Organosilicon compounds and compounds likely to form such substances in waters
	Substances whose carcinogenic activity is exhibited in or by the intervention of the aquatic environment		Substances whose carcinogenic activity is recognized scientifically
	Mercury and its compounds Cadmium and its compounds	Mercury and mercury compounds Cadmium and cadmium compounds	Mercury and compounds Cadmium and compounds

Category of substances	Strasbourg Convention	Paris Convention	Rhine Commission
List A or Part I or List I		Persistent synthetic materials which may float, remain in suspension or sink and which may seriously interfere with any legitimate use of the sea	
		Persistent oils and hydrocarbons originating from petroleum	
List B or Part II or List II	The following metalloid and metals and their compounds: zinc, lead, copper, nickel, chromium, selenium, arsenic, antimony, molybdenum, tin, barium, titanium, vanadium, beryllium, uranium	The following elements and their compounds: arsenic, lead, nickel, zinc, chromium, copper	Metals, metalloids and their compounds such as zinc, copper, nickel, chromium, lead, selenium, arsenic, antimony, molybdenum, barium, beryllium, boron, uranium, vanadium
	Biocides and their derivatives which do not appear in List A		Biocides and their derivatives not mentioned in the provisions of List I
	Substances which have a deleterious effect on taste and smell	Substances which have been agreed by the Commission as having a deleterious effect on the taste and/or smell of products derived from the marine environment for human consumption	Substances which may impart an unpleasant taste or smell and compounds likely to form such substances in waters

Category of substances	Strasbourg Convention	Paris Convention	Rhine Commission
List B or Part II or List II	Substances which, by reason of new, more extensive or as yet unknown uses, would be liable to exert an adverse effect upon the quality of surface waters and new substances which might be developed and used in a manner which could seriously threaten the quality of surface waters		
		Organic compounds of phosphorus, silicon and tin and substances which may form such compounds in the marine environment, excluding those which are biologically harmless or which are rapidly converted in the sea into harmless substances	
		Elemental phosphorus	
		Non-persistent oils and hydrocarbons of petroleum origin	Mineral oils
			Cyanides and fluorides
Part III or		Radioactive substances, including wastes	
List III (beige)			Substances having an adverse effect on the oxygen balance, ammonia, nitrites
			Nitrates
			Substances which by intensive use are liable to be serious threat to the quality and use of waters in which they appear. Calcium and magnesium sulphates and chlorides, phosphates

Table 2

Substances (following the order of the Strasbourg Convention)	Strasbourg Convention	Paris Convention	Rhine Commission
Persistent organohalogen compounds and substances which may form such compounds in the aquatic environment	A	I	I
Persistent toxic organosilicon compounds	A	n.i. ¹	I
Organophosphorus compounds	A	n.i. ¹	I
Organotin compounds	A	n.i. ¹	I
Substances whose carcinogenic activity is exhibited in or by the intervention of the aquatic medium	A	n.i. ¹	I
Mercury and its compounds	A	I	I
Cadmium and its compounds	A	I	I
Metals and metalloids			
zinc	B	II	II
copper	B	II	II
nickel	B	II	II
chromium	B	II	II
lead	B	II	II
selenium	B	n.i. ¹	II
arsenic	B	II	II
antimony	B	n.i. ¹	II
molybdenum	B	n.i. ¹	II
tin	B	n.i. ¹	II
barium	B	n.i. ¹	II
titanium	B	n.i. ¹	II
vanadium	B	n.i. ¹	II
beryllium	B	n.i. ¹	II
uranium	B	n.i. ¹	II
Biocides and their derivatives which do not appear in List A	B	n.i. ¹	II
Substances which have an adverse effect on taste or smell	B	II	II
Substances which, by reason of new, more extensive or as yet unknown uses would be liable to have an adverse effect upon the quality of surface waters, and new substances which might be developed and used in a manner which could seriously threaten the quality of surface waters	B	n.i. ¹	n.i. ¹

Substances (following the order of the Strasbourg Convention)	Strasbourg Convention	Paris Convention	Rhine Commission
Persistent synthetic substances which may float, remain in suspension or sink and may seriously interfere with any legitimate uses of the sea	n.i. ¹	I	n.i. ¹
Persistent oils and hydrocarbons of petroleum origin	n.i. ¹	I	II
Cyanides and fluorides	n.i. ¹	n.i. ¹	II
Radioactive substances including wastes	n.i. ¹	III	n.i. ¹
Substances having an adverse effect on the oxygen balance ammonia, nitrites	n.i. ¹	n.i. ¹	III
Nitrates	n.i. ¹	n.i. ¹	III
Substances which by intensive use are liable to be a serious threat to the quality and use of waters in which they appear; calcium and magnesium sulphates and chlorides, phosphates	n.i. ¹	n.i. ¹	III
Organic compounds of phosphorus, silicon and tin and substances which may form such compounds in the marine environment with the exception of those which are biologically harmless or which are rapidly converted in the sea into harmless substances	n.i. ¹	II	n.i. ¹
Elemental phosphorus	n.i. ¹	II	n.i. ¹
Non-persistent oils and hydrocarbons of petroleum origin	n.i. ¹	II	n.i. ¹
Boron	n.i. ¹	n.i. ¹	II

¹Not included in the Convention.

PROPOSAL FOR DECISION OF THE COUNCIL
ON THE REDUCTION OF POLLUTION CAUSED
BY CERTAIN DANGEROUS SUBSTANCES DISCHARGED
INTO THE AQUATIC ENVIRONMENT OF THE COMMUNITY

1

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular Article 235 thereof ;

Having regard to the proposal from the Commission ;

Having regard to the Opinion of the European Parliament ;

Having regard to the Opinion of the Economic and Social Committee ;

Whereas there is an urgent need for general and simultaneous action by the Member States to protect the aquatic environment of the Community from pollution, particularly pollution by certain persistent, toxic or bioaccumulable substances ;

Whereas a number of conventions, and in particular the Convention for the prevention of marine pollution from land-based sources and the proposed European Convention for the protection of international freshwaters against pollution are designed to protect international watercourses and the marine environment from pollution and that it is important to assure that actions taken within the framework of these conventions are coordinated ;

Whereas Community action to reduce the discharge of certain dangerous substances into the aquatic environment, as well as to coordinate the actions of Member States in this matter is necessary in order to achieve, in the context of the functioning of the common market, the objectives of the Community regarding the constant improvement of living conditions and the harmonious development of economic activities throughout the Community, and that the powers of action required in this matter were not foreseen by the Treaty ;

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Whereas the European Communities' programme of action on the environment (1) provides for priority to be given to controlling discharges of certain pollutants into fresh water ;

Whereas an inventory of dangerous substances discharged into the Communitys' aquatic environment requires knowledge of their origin ;

Whereas in order to ensure an effective protection of the environment it is necessary to establish a list of dangerous substances whose discharge into the Communitys' aquatic environment should be controlled or regulated ;

Whereas in order to allow complete application of the present decision, the Council should, within precise time limits adopt certain thresholds, time limits, and limiting values.

HAS ADOPTED THIS DECISION

Article 1 : Definition and field of application

For the purposes of the present Decision, the following is understood :

- 1) by "aquatic environment of the Community", all running or static fresh waters which flow through the territories of one or more Member States, including canals and lakes, as well as underwater pipelines and other pipelines, zones within freshwater limits and the seas of the Community coasts.
- 2) by "freshwater limit" the place in the watercourse where, at low tide and in a period of low fresh water flow, the salinity is appreciably increased by the presence of sea water.

Article 2 : Inventory

1. The Member States shall draw up an inventory of discharges into the aquatic environment of the Community which contain the substances in Lists II and III of the Annex, which forms an integral part of this Decision.
2. This inventory shall be drawn up by member States within a period of one year from the establishment of threshold levels and shall include all discharges which exceed these levels.

Article 3 : Constraints

The Member States take all the measures needed to forestall or reduce pollution of the aquatic environment of the Community by the substances listed in Annex, under the following conditions :

A. 1) All discharges into the aquatic environment of the Community that are liable to contain a substance appearing in List I of the Annex and are included in the inventory provided for in Article 2 shall require prior administrative authorization by the competent authority in the Member State concerned.

This authorization may be granted only if the discharges of these substances are reduced to the limiting values to be fixed.

2) The installations to obtain the necessary reductions shall be completed within a period to be fixed for each substance in the Annex on the basis of the best technical facilities in existence.

3) If the best technical facilities do not enable the discharges to be reduced to a non-dangerous level or if the limiting values referred to in paragraph 1 of the present article cannot be adhered to, the discharge is prohibited.

B. 1) All discharges into the aquatic environment of the Community which contain substances appearing in List II of the Annex and are included in the inventory provided for in Article 2 shall be reduced to limiting values to be fixed for substances of natural and artificial origin.

2) The installations necessary to achieve the required reductions shall be completed within period to be fixed.

Article 4

The following will be adopted by the Council by qualified majority, on the Commission's

- within a period of 18 months after the adoption of the present decision;
the threshold values foreseen by Article 2.2, the limiting values foreseen by Article 3 A.1 and the time-scale foreseen by Article 3 A.2.

- within a period of 30 months after the adoption of the present decision ;
the limiting values foreseen by Article 3 B.1 and the time-scale foreseen by Article 3 B.2

List I

Organohalogen compounds and substances which may form such compounds in the aquatic environment, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.

Organophosphorus compounds¹

Organotin compounds¹

Toxic, persistent organosilicon compounds and compounds liable to form such substances in fresh water and in sea water.

Substances whose carcinogenic activity is exhibited in or by the intervention of the aquatic environment.

Mercury and its compounds

Cadmium and its compounds

Persistent synthetic substances which may float, remain in suspension or sink and which may interfere with any use of the waters.

Persistent oils and hydrocarbons of petroleum origin.

¹With the exception of those which are rapidly converted in the aquatic environment into substances which are biologically harmless.

ANNEX

List II

The following metalloids and metals and their compounds

zinc	selenium	tin	vanadium
copper	arsenic	barium	tellurium
nickel	antimony	beryllium	thallium
chromium	molybdenum	boron	cobalt
lead	titanium	uranium	

Biocides and their derivatives not appearing in List I

Substances which have a deleterious effect on the taste and/or smell of products for human consumption derived from the aquatic environment, and compounds liable to give rise to such substances in waters.

Organic compounds of phosphorus, and silicon and substances which may give rise to such compounds in waters, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.

Elemental phosphorus

Non-persistent oils and hydrocarbons of petroleum origin

Cyanides and fluorides

ANNEX

Substances which have an adverse effect on the oxygen balance :

Ammonia, nitrites

Nitrates

Substances which by intensive use are liable to be a serious threat to the quality and use of waters in which they appear : sulphates, and chlorides of calcium of magnesium, phosphates.

Substances which, by reason of new, more extensive or as yet unknown uses, would be liable to have an adverse effect on the quality of waters, and new substances which might be developed and used in a manner which could seriously threaten the quality of waters.

