



# Assessment for the continued effectiveness of the Rotterdam Convention

Final Report (Contract No:  
ENV/07.0201/512.723161/ETU/A.3



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2	Final report	19/12/2016
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## Executive summary

The Rotterdam Convention was created in response to growing concerns around the use of specific named chemicals, and the potential risks to human health and the environment. The aims of the Convention centre around shared responsibility for the use of such chemicals, and a need for information exchange on the safe use and management between ratified Parties for chemicals within the scope of the Convention. Additionally the Convention also gives Parties additional controls over the use of named chemicals (within Annex III of the Convention) within their nation. This is the 'prior informed consent' (PIC) procedure, which requires an exporter of a chemical named within the Rotterdam Convention to seek permission from the competent authority of the receiving country prior to export of goods.

The Rotterdam Convention also includes a process for addition of new chemicals into Annex III. Article 5 states that the Secretariat to the Convention receives notifications by Parties to the Convention of final regulatory actions adopted by a Party to ban or severely restrict a chemical. Where two or more notifications on a chemical from Parties in different Prior Informed Consent regions are received fulfilling the information requirements of Annex I, the notifications are put forward for review by the Chemical Review Committee (CRC). Those notifications sent for review by the CRC are evaluated against the criteria listed in Annex II of the Convention. If the CRC concludes that the Annex II criteria are met, it makes a recommendation for listing of the respective chemical and a decision guidance document (DGD) is drafted which is forwarded to the Conference of Parties (COP) containing supporting information on the inclusion of the chemical in Annex III. The COP meets every two years and decides by consensus whether to include the new chemical into Annex III of the Convention. If the chemical is included then the DGD is finalised and communicated to all Parties.

Concerns have been raised by the Parties to the Convention that some chemicals have been discussed at multiple COP meetings without resolution. This is an issue which hampers the effectiveness of the Convention in its objective of ensuring that all those chemicals that meet the requirements and should be further controlled in the international trade are added to the Convention. The main objections to listing have been around socio-economic effects of listing a chemical. The Rotterdam Convention's ultimate aim is not the phase-out of named chemicals, but rather enhanced information sharing on understanding of the risks and suitable control measures for all Parties. However, a small number of Parties are concerned that listing may detrimentally affect general levels of supply and have specific impacts on costs for end users such as farmers. The objections raised at successive COP meetings are preventing chemicals which fulfil the requirements for listing to be listed in Annex III. This creates a risk that the overall aims and effectiveness of the Rotterdam Convention are compromised. This risk applies particularly to less industrialised nations which may have less adequate governance procedures for imports.

At COP-7 (2015), the COP created an intersessional working group specifically to look at the effectiveness of the listing process for Annex III of the Convention and issues hindering the addition of new chemicals to the Convention. This working group developed (mainly by the lead country) what was termed a 'thought starter' paper to look at the main issues around why resolution had not been reached for those chemicals that had been discussed, and the potential options that could be implemented to help improve the effectiveness of the Convention.

This study has built upon the documents developed by the working group, as well as related documents from previous COPs and the wording of the Convention. It identifies six options for improved effectiveness. These largely relate to either amending the procedural elements of the Convention and requirements for voting, or new information requirements that could help bring discussions to a clearer conclusion. For each option the possible positive and negative effects of implementation have been considered, including discussion of any unforeseen issues which could have impacts.



The options assessed for their potential to help improve the effectiveness of the Convention are:

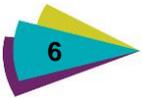
Option	Title
1	Amendment of Convention voting rules from consensus voting to majority rule.
2	Creation of a new Annex listing chemicals for which consensus could not be reached so as to promote information exchange.
3	More focus on the issue of alternatives and data requirements for information on alternatives as part of implementing the requirements of Annex I and IV of the Convention.
4	Adoption of a standalone process to be voluntarily used by a group of Parties each acting unilaterally when a consensus on Annex III listing could not be reached.
5	Improved awareness building amongst Parties to the Convention including improved information exchange and knowledge transfer.
6	More informed Parties to provide technical assistance to other Parties, such as developing nations, to enhance their capacity in using DGDs for national decision making.



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# 1. Introduction

## 1.1 Background

At several COP meetings (e.g. COP-3<sup>1</sup>), many representatives expressed their concerns about the effectiveness of the Convention, due to the fact that some chemicals have been discussed for a protracted amount of time for inclusion in Annex III (e.g. for chrysotile asbestos during the third, fourth, fifth and sixth Convention meetings) and no consensus has been reached. Two papers were produced on the matter by the Secretariat<sup>2</sup> prior to the 2008 COP-4 meeting to aid a debate on what could be done to ensure the effectiveness of the Convention. The first paper outlined options that could be made to improve the decision-making process under the Convention. The second explained which options for improving the exchange of information between Parties exist under the Convention. Additional proposals for addressing the delays in Annex III inclusions and improving information exchange were also discussed more widely in COP-4<sup>3</sup>. All these proposals were then further discussed during COP-5. However, no consensus could be reached on which solution to implement.

At the latest COP to the Rotterdam Convention (COP-7) in May 2015<sup>4</sup>, Parties again failed to reach consensus on the listing of four chemicals, which have been discussed for a protracted amount of time for inclusion in the Convention. For this reason, at the 7<sup>th</sup> COP meeting an intersessional working group was established<sup>5</sup> to review the cases in which the COP had been unable to reach consensus on the listing of chemicals. This chapter further explores the options suggested for improving the effectiveness of the chemical listing process in the PIC procedure in the Rotterdam Convention and information flows in cases where PIC is not applied. An assessment of applicable options can be found in Section 3. The analysis is intended to provide a logical assessment of the pros, cons and potential side effects of each option.

## 1.2 Aims and Objectives

The aim of this chapter is to develop a list of suitable options for improving the effectiveness of the Rotterdam Convention based on the previous work of the COP and intersessional working group, and assess the impacts of those options. The aims of this study can be broken down into four objectives:

- To review the text of the Convention in order to understand the processes and issues which are preventing progress;
- To collate all previously suggested options and proposals for improving effectiveness to date;
- To assess the impacts of these options; and
- To refine and adapt the options based on the impact assessment and to develop any new options (if feasible), in order to produce a short-list of suitable options for improving the effectiveness of the Convention.

## 1.3 Methodology

In order to fulfil the aim of this part of the study, four tasks were defined, one for each objective.

The first task was to review the Convention, in order to draw out its provisions and processes, and identify where problems are arising. The text of the Convention was analysed and an overview of its key aims and scope was extracted. The processes of adding chemicals to the Convention, making amendments and information exchanges on chemicals were then examined in detail. Finally, the areas causing issues in these

<sup>1</sup> UNEP/FAO/RC/COP.3/26, paragraph 75

<sup>2</sup> UNEP/FAO/RC/COP.4/12 and Annex, UNEP/FAO/RC/COP.4/13

<sup>3</sup> UNEP/FAO/RC/COP.4/12

<sup>4</sup> <http://www.pic.int/TheConvention/ConferenceoftheParties/Meetings/COP7/Overview/tabid/4252/language/en-US/Default.aspx>

<sup>5</sup> Decision RC-7/5

processes were identified based on a review of proposed options for improving the Convention in secondary sources (e.g. Convention documents and notes from the PIC intersessional working group).

The second task was to identify a provisional list of further options for improving the Convention. This involved reviewing secondary sources such as related Conventions (Basel, Stockholm), Convention documents (e.g. COP-4 documents<sup>6</sup>) and notes from the PIC intersessional working group. Where these documents suggested options for improving the Rotterdam Convention, these were extracted directly into the list. Where documents described procedures similar to those in the Convention (e.g. procedures in related Conventions), these were screened for relevance and if found to be potentially applicable, they were added to the list.

The third task was to assess the impacts of each previously identified option through a feasibility assessment. The options were structured into three different categories. The first category contained options that require changes to the main body of text in the Convention, the second was dedicated to amendments or changes related to the Annexes of the Convention and the last category contained options that do not require any changes to the Convention or its Annexes. First, an assessment was conducted on each of the three categories of options, to identify general pros (advantages) and cons (drawbacks) that would apply to all options in those categories. Next, each individual options was assessed in more detail under four criteria: legal implications, implementation process, practicalities (timing, costs etc.) and potential political implications. A brief synopsis of advantages and drawbacks for each option was composed under the four criteria.

The fourth and final task was to examine the advantages and drawbacks of each proposed option in turn and use expert judgement to refine and improve them. Some options were also discarded, based on the results of the feasibility assessment. The remaining, refined options were then compiled to form a proposal of recommendations for improving the effectiveness of the Rotterdam Convention.

## 1.4 Overview of the Rotterdam Convention

### General overview of the Convention

The Rotterdam Convention entered into force in 2004 and is related to the Stockholm and Basel Conventions. It aims 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
- Contribute to the environmentally sound use of those hazardous chemicals, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

The Rotterdam Convention fulfils its aims by creating legally binding obligations for the implementation of the Prior Informed Consent (PIC) procedure by its constituent Parties and other duties such as export notifications. Under the PIC procedure, Parties are required to decide whether they will allow future import of each chemical covered by the Convention. These decisions, known as import responses, are published and made available to all Parties every six months. In this way, Parties are informed prior to an export as to whether or not there is consent to import.

As of 2016, the Convention is made up of 154 Parties (Parties generally represent a country or state) and covers 46 industrial chemicals and pesticides. The Parties meet biennially at the Conference of Parties (COP) to review and evaluate the implementation of the Convention. They are responsible for deciding whether a new chemical should be added to the Convention. The COP is organised by the Secretariat, the administrative body to the Convention.

At the first COP, the Parties established a subsidiary body, the Chemical Review Committee (CRC). Its members are government-designated experts in chemicals management. The CRC meets annually and its responsibilities include reviewing notifications and proposals from Parties, and making recommendations to the COP on the addition of chemicals to the Convention.

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<sup>6</sup> UNEP/FAO/RC/COP.4/13 and UNEP/FAO/RC/COP.4/12

## The process for amending Annex III to the Convention

The Convention has six Annexes:

- Annex I states the information that is required in a notification of final regulatory action;
- Annex II specifies the criteria for listing banned or severely restricted chemicals in Annex III;
- Annex III lists the chemicals that are subject to the PIC procedure;
- Annex IV establishes the information and criteria for listing severely hazardous pesticide formulations (SHPF) in Annex III;
- Annex V states the information requirements for export notification; and
- Annex VI details the rules on the settlement of disputes.

The procedure for listing a new chemical under Annex III is as follows:

1. One notification from a Party in each of two PIC regions<sup>7</sup> of a final regulatory action that bans or severely restricts a chemical and that meets the requirements of Annex I triggers consideration of those notifications by the CRC in view of the possible addition of the chemical to Annex III of the Convention. SHPFs that present a risk in developing or transitional countries may be proposed for inclusion directly by the relevant Party.
2. The notifications and proposals are reviewed by the CRC according to the criteria set out in Annex II and Annex IV, respectively. The Committee then decides whether or not the relevant criteria are met and, if appropriate, recommends the chemical or SHPF for inclusion in Annex III.
3. For a chemical that the CRC has decided to recommend for inclusion, the CRC draft a decision guidance document (DGD). The document contains the information specified in Annex I or IV that originates from the notifications or proposals, and information on uses of the chemical in any categories other than the category for which the final regulatory action applies. The DGD is completed with information on the chemical originating from international sources.
4. The recommendation and draft DGD are forwarded to the COP. The CRC meets annually (generally in October), while the COP meets biennially (generally in May).
5. The COP decides whether to adopt the new chemical into the Convention by consensus. When a decision has been taken and the draft DGD has been approved by the COP, the Secretariat communicates this information to all Parties.
6. Parties have 9 months from the circulation of the DGD to transmit to the Secretariat a response concerning the future import of the chemical concerned.

## The process for amending the Convention

The procedure for amending the Convention is as follows:

1. Amendments to the Convention may be proposed by any Party.
2. Amendments to the Convention are adopted at a meeting of the Conference of the Parties. The text of any proposed amendment should be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat will also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.
3. The Parties aim to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, as a last resort the agreement can be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

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<sup>7</sup> PIC regions are geographical groupings of Parties that were established at the first COP.

4. The amendments are communicated by the Depository to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment is notified to the Depository in writing by each Party. An amendment adopted in accordance with paragraph 3 enters into force for the Parties having accepted it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three fourths of the Parties. Thereafter, the amendment enters into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

## Exchange of information on chemicals within the Convention

The Convention facilitates information exchange through:

- The obligation of each Party to inform other Parties of each national ban or severe restriction of a chemical;
- The possibility for a Party which is a developing country or a country in transition to inform other Parties that it is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory;
- The requirement for a Party that plans to export a chemical that is banned or severely restricted for use within its territory, to inform the importing Party that such export will take place, before the first shipment and annually thereafter;
- The requirement for an exporting Party, when exporting chemicals that are to be used for occupational purposes, to ensure that an up-to-date safety data sheet is sent to the importer;
- Labelling requirements for exports of chemicals included in the PIC procedure, as well as for other chemicals that are banned or severely restricted in the exporting country; and
- The dissemination of a decision guidance document to all Parties, following any amendments to Annex III.

## Identification of the key issues faced by the Rotterdam Convention

Based on a review of the Convention and relevant literature, in particular the arguments raised within the information documents at COP 4 and COP 5 as well as the 'thought-starter' paper produced by the intersessional working group, the following issues were identified as delaying the inclusion of chemicals in Annex III.

1. The CRC is required to review the notifications of final regulatory action on chemicals against the criteria in Annex II of the Convention. It is possible for the notifications provided to be incomplete and thus information gaps make the evaluation difficult<sup>8</sup>. This in turn has resulted in prolonged discussions at the CRC and in diverging views on certain technical matters at the COP.
2. Related to point one, there is also an issue with insufficient information exchange between Parties on substances where it has been difficult to reach a consensus for inclusion in Annex III. Parties are not making use of all information available, and are not sufficiently assisting each other in making informed decisions regarding their import or management.
3. Listing of chemicals in Annex III requires a consensus; therefore, a single Party can prevent a chemical from being listed under the Convention. A minority of Parties that have a vested interest in preventing certain chemicals from being included in the Convention can therefore block progress.

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<sup>8</sup> Thought starter paper, March 2016, developed by the intersessional working group  
<http://www.pic.int/Portals/5/download.aspx?d=UNEP-FAO-RC-Workshop-Latvia-05-ThoughtStarterPaper-20160703.En.docx>.

## 2. Identification of options for continued effectiveness of the Rotterdam Convention

### 2.1 Identification and categorisation of options

In order to identify the possible options in a structured way, three different overall categories, to which all proposed options can be allocated, have been considered. The first overall category is related to options that requires changes in the Convention itself; this means to Articles 1-30. The second category is dedicated to amendments or changes related to the Annexes of the Convention. The last category is related to additional possibilities that do not require any changes to the Convention or its Annexes. At this stage, it already seems obvious that the three different categories have specific advantages but also some general drawbacks as shown in Table 2.1 (below):

Table 2.1: General advantages and drawbacks

Categories			
	1 - Options that require changes to Article 1-30	2 - Options that require changes to both the Convention text (Article 1-30) and Annexes	3 - Options that do not require any changes to the Convention
<b>Advantages</b>	Changes are precisely fixed and legally binding, assuming acceptance and ratification	Changes are precisely fixed and legally binding, assuming acceptance by three quarters of the Parties	Can be applied without significant effort
<b>Drawbacks</b>	<ol style="list-style-type: none"> <li>1) Long term ratification process and long period for the amendment to enter into force as well as the possibility that the number of ratifications needed to the amendment is not achieved.</li> <li>2) The creation of a dual or parallel system involving, <ul style="list-style-type: none"> <li>• Those Parties that had ratified the amendment, to which the amended Convention would apply,</li> <li>• And those parties that had not ratified the amendment, to which the original Convention would apply.</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1) Introduction of a new Annex to the Convention would also require amendment of the Convention text itself to introduce the Annex and how it would be intended to be used. In practice however the additional of a new article to introduce an Annex would like be tied into the overall discussions on the Annex itself.</li> <li>2) Any party can opt-out of the changes to the Convention text or Annexes; therefore, changes do not apply for this Party: this could create a dual or parallel system between: <ul style="list-style-type: none"> <li>• Those Parties that adopted the revised/new Annex, and</li> <li>• Those parties that had opted-out of the revised Annex.</li> </ul> </li> </ol>	Options might be weak as no binding mechanism is in place

The options identified within the COP-4 working documents, thought paper and responses to thought paper produced by the intersessional working group, and review of the Convention text for the Rotterdam Convention, Basel Convention and Stockholm Convention have been grouped into these three categories for further analysis. Based on a review of the available literature and Convention text six possible options have been identified to address the key issues stated under section 1.4. These are detailed below in Table 2.2.

Table 2.2: Table of options identified

Option Number	Category	Description	Key issue addressed
1	1	Amendment of Convention voting rules from consensus voting to majority rule	2 – Consensus voting has hindered addition of chemicals to Annex III
2	2	Create new Annex for chemicals where consensus could not be reached to promote information exchange	2 – Consensus voting has hindered addition of chemicals to Annex III
3	3	More focus on the issue of alternatives and data requirements for information on alternatives as part of the requirements of implementing Annex I and IV of the Convention.	3 – Insufficient information exchange between Parties hinders adoption of Convention and Convention aims
4	3	Creation of a standalone process in circumstances where consensus is not reached on listing additional substances in Annex III.	2 – Consensus voting has hindered addition of chemicals to Annex III
5	3	Improved awareness building amongst Parties to the Convention including improved information exchange and knowledge transfer.	3 – Insufficient information exchange between Parties hinders adoption of Convention and Convention aims
6	3	Developed Parties to provide technical assistance to developing parties to enhance their capacity in using DGDs for national decision making within available resources	3 – Insufficient information exchange between Parties hinders adoption of Convention and Convention aims

The following text provides more detailed discussion regarding each option based on the categories that have been assigned.

## 2.2 Proposals already made related to category 1 (Options that require amendment of the Convention Articles 1 – 30)

This category contains those options which would require amendment of the Convention text itself. Amending the Convention text to alter how the Convention works would provide an advantage in that the instructions would be clear and legally binding. However a negative aspect would be that some parties would choose not to ratify changes creating a two tier membership that could undermine the effectiveness of the Convention. Furthermore the process for amendment and ratification could take an extended period of time which would also have negative impact upon the forward momentum of the Convention.

Each option is detailed in the tables below with further discussion on how these advantages and drawbacks relate directly to each given option.

Table 2.3: Options for category 1

Source	Option 1	Framework
UNEP/FAO/RC/CO P.4/13	<b>Amendment of Annex III listing rule from consensus voting to majority rule</b>	<b>Article 22 paragraph 5 states that the decisions to amend Annex III must be taken by consensus</b>  <b>Article 21 establishes the process for amending the Convention</b>

### Legal implications:

The most important effect would be that individual Parties could no longer block Annex III amendments.

The proposed minimum of Parties necessary for a decision on the amendment (e.g. similar to the process for amending the Convention – at least three-fourths) will influence the level of effectiveness of the Convention but certainly also the level of collectivity. This means the lower the number of the Parties needed for taking decisions related to amendment of Annex III, the lower the level of collectivity. This might be seen as in conflict with the objective of the Convention that states “shared responsibility and cooperative efforts”.

Therefore, it seems reasonable to amend the decision making process in a way that still the majority of Parties needs to agree, but to avoid overall ineffectiveness due to the actions of a minority of Parties.

However, amending the voting rules in this way would likely lead to additional complexity in terms of ratified / non-ratified parties and increasing levels of stratification for substances adopted by Parties in the future. For example, in order to amend the voting rules from a consensus to a majority would require three-fourths (75%) of all Parties. It is foreseeable that a number of Parties would be concerned that the proposed change would limit their freedom and voice within the Convention. Assuming the three-fourths majority was achieved needed to amend the voting rules, this could still result in a number of Parties (up to 25% of the total Parties to the Convention) simply not ratifying the change and dropping out. This means that this non-ratified group would not be bound by any future decisions made to add substances to Annex III. For those that did ratify the amendment of the voting rules, it would mean for each subsequent substance there would be a majority vote. Again this would mean that for each subsequent substance there would be a proportion of the Parties that could opt out. This could vary on a substance by substance basis, with Parties accepting some substances and opting out for others.

The result would therefore mean that for the agreed list of substances on Annex III, the number of Parties that adopted the obligations of Annex III would vary per substance. This would also mean for companies trading substances internationally there would be an increasing administrative burden and complexity to identify what obligations existed with which nations for which substances. This could even go as far as neighbouring countries having different requirements and obligations under the Rotterdam Convention, highlighting the potential complexity that the amended voting rules may create. One final point for consideration with the move to majority voting is the potential political effects of such a system. Under the current system a consensus voting for listing in Annex III means that the Parties need to review the data presented, take part in discussions and then based on their own interpretation agree by consensus. Under a majority voting system there is a need for the majority to agree that a listing is appropriate by placing a vote. This could allow for the process to become more political with negotiations between Parties to support one another during voting either for or against listing. This would take away some of the scientific basis currently used to review substances based solely on Annex II criteria listed within the DGD.

#### **Process of implementation (Article 21) :**

- Any Party would need to propose such an amendment;
- Secretariat needs to communicate proposal at least six months before a COP meeting;
- Amendment needs to be adopted at a COP meeting (→ time aspect next COP meeting in 2019 every second year);
- Proposed amendments need to be communicated by the Secretariat to the signatories of the Convention;
- Parties shall make efforts to reach agreement by consensus but require at least a three-fourths majority;
- The amendment shall be communicated for ratification, acceptance or approval to all Parties;
- If no consensus can be reached (all efforts have been exhausted → time aspect) shall be adopted by a three-fourths majority vote of the Parties present and voting at a COP meeting;
- Communication by the Depository to all Parties for ratification, acceptance or approval;
- Every Party shall start with ratification and shall notify the Depository in writing;
- On the 90<sup>th</sup> day after ratification, approval and acceptance of at least three fourth of the Parties the Amendment enters into force for all Parties having accepted the amendment; and
- Afterwards the amendment enters into force for any other Party 90<sup>th</sup> day after ratification, acceptance and approval.

#### **Practicalities of the implementation once adopted:**

The practicalities of a changed voting procedure would remain unchanged, just the procedure would need to be adapted in line with the newly foreseen minimum acceptance level. However as per the description given in the legal implications (above), for those parties that chose not to ratify the change in voting rules, there is potential for them to simply not adopt decisions made on new substances recommended for inclusion at a later date. It is possible that for each new substance the number and combination of Parties that accept the listing in Annex III would be different. This would make the practicality of implementing and managing the PIC procedure at national level more difficult and would require greater co-operation between nations to fully understand each and every individual nation's position. Additionally where a majority voting system was installed it is also possible for the process of voting to become more political moving away from a scientific basis against the criteria of Annex II. While the listing requirements for inclusion in Annex III would be unchanged, it is possible that Parties may choose to support one another during voting for non-scientific reasons.

#### **Potential political implications with respect to the objectives:**

As already considered above, it should be taken care, that changing the voting procedure is still in line with promoting of shared responsibility and cooperative efforts among Parties. In, the minimum of Parties necessary for a decision will be defined quite low (e.g. below three-fourth) the continuation of the first objective of the Convention might be questioned.

In contrast, changing the voting procedure will contribute to the second objective as it contributes to the environmentally sound use of hazardous chemicals.

## 2.3 Proposals already made related to category 2 (Options that require changes to both the Convention text (Article 1-30) and Annexes)

This category includes options where an amendment would be made to one of the Annexes of the Convention, thus affecting the overall mechanisms of the Convention. It also covers amendments where a new Annex has been added, noting that this would also require amendment to the Convention text to introduce the Annex and how it is intended to be used. In practice it is likely that the discussion on any new Annex and article to the convention (needed to introduce the new Annex) would be carried out together.

As with category 1 any such amendment of the Convention annexes would require a three-fourths majority vote, but in the case of new Annexes, Parties could opt out (i.e. chose to not accept the new annex and it will not apply to them). Therefore as with category 1 there is the potential drawback that Parties may opt out of any new Annex which would create a two tier membership that could undermine the Convention.

Each option is detailed in the tables below with further discussion on how these advantages and drawbacks relate directly to each given option.

Table 2.4: Options for category 2

Source	Option 2	Framework
UNEP/FAO/RC/COP.4/13	The possible creation of a new annex for those chemicals on which the Conference of the Parties cannot reach consensus for listing in Annex III.	<p><b>Article 22</b> paragraph 3 determines adoption of additional annexes to the Convention</p> <p><b>Article 21</b>, paragraph 1-3, new annexes should be adopted by a three-fourths majority vote</p> <p><b>Article 22</b>, subparagraph 3(b), Parties that cannot accept a new annex may opt out of it by so notifying the Depositary within one year of the date on which the annex is adopted. Annexes enter into force one year after adoption for all Parties that have not opted out of them.</p>

### Legal implications:

The adoption of a new annex (and article needed to introduce it) into the Convention could have both positive and negative effects. Under the current system for Annex III, all Parties agree that listing is warranted and that action will be undertaken at both international and national levels. Listing substances where a consensus could not be reached in a new annex could have a positive effect in that the substance is recognised under the Convention as being of concern at international level while Parties can voluntarily adopt to take action at national level, such as actions equivalent to fulfilling the requirements of Annex III. In order to make use of such an Annex, it would also be necessary to create a new article under the Convention text to introduce it. The article would then explain how the Annex should be used, and when it could be triggered. This latter point is likely to create a lengthy discussion around what circumstances the Annex could be used under. Strong agreement would need to be reached in order to gain the three-fourth majority voting needed to see the changes adopted.

A possible negative effect is that the new annex could be used to avoid a listing in Annex III altogether. This would include early moves during the discussion to target a listing within the new annex as a means to avoid the steps required for consensus on listing in Annex III. Furthermore, to introduce the new Annex and text with the Convention needed to explain its function would require an amendment of the Convention text, requiring a three-fourths majority vote. It is possible that this may not be achieved if Parties felt that such a new Annex undermined the existing process for addition of substances to Annex III. This issue is further exacerbated as it would require discussion under what circumstances the new annex should be utilised, and the need for further conditional rules, such as when the new annex could be utilised (for example, if consensus is failed to be reached for Annex III listing at two successive COP meetings).

These issues have the further negative impact of extending the time to achieve a listing in the new annex or in Annex III which in itself would undermine the overall aims of the Convention.

**Process of implementation:**

- Amendment proposed by any Party;
  - All Parties shall make efforts to reach agreement on the proposed amendment by consensus;
  - If no consensus can be reached (all efforts have been exhausted → time aspect) shall be adopted by a three-fourths majority vote of the Parties present and voting at a COP meeting;
  - Any Party not accepting an additional annex shall notify the Depositary in writing;
  - The Depositary shall notify all parties of this notification; and
  - At any time a Party may withdraw a previous notification of non-acceptance in respect of an additional annex.
- On the expiry of 1 year of the date of communication by the Depositary of the adoption of the additional annex, the additional annex shall enter into force for all Parties that have not submitted a notification of non-acceptance or that previously withdrew a notification of non-acceptance.

**Practicalities of the implementation once adopted:**

This could create two systems (one system for Parties that ratify the annex and another system for Parties that chose not to ratify the new annex) with an overall increase in complexity. However unlike Annex III where mandatory actions are required for ratified Parties, the new annex would carry only voluntary actions. This means that for those Parties that chose not to ratify the new annex, the annex and substances listed therein would not be recognised, and thus for those non-ratifying Parties the named substances would fall outside of the Convention scope entirely. There would also be the question of whether a substance added to the new annex could still at a later date be added to Annex III of the Convention and be de-listed in the new annex.

**Potential political implications with respect to the objectives:**

The creation of an additional annex will be in accordance with promoting responsibility and cooperative efforts, and contributing to the environmentally sound use of those hazardous chemicals.

## 2.4 Proposals already made related to category 3 (Options that do not require any changes to the Convention)

This category of options includes those that require no formal amendment of either the Convention text or Annexes, but rather guidance on best practice and improved ways of working. While these options will be straightforward to implement and can be put into place swiftly, the main drawback will be that they are not legally enforced under the Convention. This could mean that their effectiveness is weaker and requires voluntary action by the Parties of the Convention.

Source	Option 3	Framework
<p><b>Intersessional working group – thought starter paper</b></p> <p><b>UNEP/FAO/RC/COP4.12</b></p>	<p>Option 3, aims to encourage Parties to make all available efforts to exchange relevant information between each other, but also to aid the CRC process.</p> <p>Data gathering from Parties to aid the development of the draft DGD for discussion at the CRC is important to allow a fruitful discussion and recommendation to the COP. The Convention states that in developing the DGD the information can include:</p> <ol style="list-style-type: none"> <li>1. notifications of final regulatory action and relevant supporting documentation.</li> <li>2. information on domestic regulatory actions: the Secretariat makes this information available to Parties through section 2.8 of the PIC Circular.</li> </ol> <p>Further action to identify data which is typically missing or of poorer quality could be undertaken by the Secretariat. There could then be further efforts made during the intersessional period to stress the importance of these data needs to the Parties to help further promote provision of such data and allow a more complete draft DGD for discussion at the CRC.</p> <p>This should include more focus on the issue of alternatives and data requirements for information on alternatives as part of the requirements of Annex I and IV of the Convention.</p> <p>One of the main reasons cited for voting against listing within Annex III was the possible socio-economic effects of listing, particularly on end users such as farmers. The concerns relate to market forces which are in part affected by the availability of alternatives at similar price and efficacy.</p> <p>Another reason raised for voting against the listing of substances to Annex III was the lack of safer alternatives which could be used instead.</p> <p>Annex I d(ii) for substances and Annex IV Part 2 (h) for severely hazardous pesticide formulations establish the requirement for information about substances and processes which could be used as alternatives. However it is unclear how much information is provided within notifications and it is clear from concerns raised by Parties that information on available alternatives is not a topic well covered.</p>	<p>Annex I and Annex IV set out the criteria for what should be included in the DGD document for chemicals and SHPF respectively. These annexes currently do have requirements for information on alternatives, however it is unclear what level of information is currently provided in notifications. The DGDs that have been developed include examples where information on alternatives has and has not been included. Ergo more weight could be given to this topic and a mandatory requirement for the DGD to include information on alternatives.</p>

### **Legal implications:**

Annex I and IV of the Rotterdam Convention already require information on alternatives as part of the notifications for regulatory actions on substances and severely hazardous pesticide formulations. However the quantity and quality of information provided by Parties is less clear. In work for this study, it appears that information on alternatives, particularly their availability, efficacy and price, would add

to the discussions of the CRC and ease the concerns that have been raised at past COP meetings. The DGDs include examples where a section on alternatives has and has not been included. Stronger weighting and emphasis on this topic to include the need to discuss alternatives could aid this aspect without needing to alter the Convention text.

However the aims of the Convention are to promote the shared responsibility and cooperation of Parties for the safe management of chemicals to protect human health and the environment, not to ban or phase out targeted substances. Greater onus on the available alternatives could be seen as a move towards phase-out in favour of safer alternatives. The notifications within Annex I and IV do not in themselves include any assessment for whether alternative substances are equally of concern. Therefore there are some contentious legal implications how such an increased emphasis on alternatives could affect the Convention. If these were not handled suitably it could confuse the aims of the Convention and undermine the overall aims.

One possible option to manage this issue of data on alternatives, could be the creation and use of a new section on the Rotterdam Convention website to facilitate information exchange on final regulatory actions for chemicals recommended for listing in Annex III but for which the COP has not yet reached consensus. This information could be made available under the existing information exchange section of the website entitled "Chemicals recommended by the Chemical Review Committee".

**Note: Option 5 deals with the more general issue of information exchange covered under Article 14. Option 3 deals specifically with the data needs for substances recommended to the COP for listing in Annex III in order to assist in developing as complete data-sets as possible and so contributing to the possibility of achieving consensus.**

#### **Process of implementation:**

Annex I and IV of the Convention already include requirements to provide information on alternatives as part of notifications from Parties of where regulatory actions have been taken. However the requirements detailed in the Annexes are quite general, further guidance could be developed to make clear what is required.

Additionally where data on alternatives is scarce, it may be necessary to supplement the information provided through notifications by conducting additional work during intercessional phases. This could in part call upon the FAO regional structure to help gather additional information for use in the CRC discussions and development of the DGD.

#### **Practicalities of the implementation once adopted:**

The CRC have only limited resources and time to review substances against the criteria set out in Annex I and IV respectively for substances and SHPFs. Additionally there are already many substances which require review for Annex III. An argument can be made that requiring additional data on alternatives (including efficacy, availability and price of alternatives) adds further burden to the limited resources available. As the DGD is intended to gather and present information taken on a global basis, the information on alternatives would either have to be at high level (the approach adopted under the Stockholm Convention) or would require more detailed information on regional data. This could be difficult to obtain and require labour intensive efforts unless the Parties could provide such data.

Additionally, even if such information could be obtained and included in the DGD for discussion at the CRC meeting, the CRC itself may not be suitably positioned to assess such information and make authoritative and relevant conclusions. In practice, alternatives may depend on specific features of geographies, climates, and pricing structures and lead to more complex discussions which could actually hinder a consensus resolution.

It should also be noted that where the DGD documents are not updated, the sections on alternatives would become out of date relatively quickly, and care would be needed when making use of such data at a later point.

#### **Potential political implications with respect to the objectives:**

This option has both positive and negative effects. The additional information on alternatives would likely be welcome to the discussions of the COP and could help resolve debates over cost and availability more swiftly, so helping add relevant substances to the Convention. It does however conflict with the overall aims of the Convention, which focus on shared responsibility for trade in hazardous chemicals. Greater onus on safer alternatives could be perceived that there is a change in focus towards phase-out rather than control. This could actually have the opposite effect during discussions with some Parties fighting harder to keep specific chemicals because of vested interests or national security e.g. food security issues for use of specific preferred pesticides. There is also the drawback that while the DGD is intended to be a global document, the use of alternatives can vary according to factors such as regional geography, climate, and socio-economic conditions which could make a consensus resolution more difficult.

Source	Option 4	Framework
<b>Discussions documented in COP-4/24</b>	Creation of a standalone process where consensus on substances for listing in Annex III is not reached.	Article 7 of the Rotterdam Convention details the mechanism for addition of substances to Annex III. Where consensus is not reached on a listing for Annex III, it is possible for Parties to take voluntary action. This could be co-ordinated in a standalone process to aid transparency between Parties without need for amendment of the Convention text.

**Legal implications:**

Currently the addition of new substances to Annex III requires consensus between all Parties. Where a consensus cannot be reached, substances under review at a COP are passed on to subsequent COP meetings for further discussion. This creates a protracted process where resolution is not reached, and further discussion needed over successive COPs. As an alternative way forward there is no restriction upon Parties acting voluntarily to adopt the requirements of Annex III into national legislation. On this basis a standalone process could be developed on a voluntary basis where Parties acting voluntarily notify the Secretariat. It would also require additional work by the Secretariat to collate responses from Parties and circulate them to all Parties.

**Process of implementation:** A proposed process for implementation of a standalone process could work as follows:

- Discussion is held at the COP for inclusion of a nominated substance onto Annex III based on the DGD developed by the CRC, but it is not possible to reach a consensus. The named substance then passes to the next COP meeting with possible intercessional work taking place in between;
- Following the COP meeting where a consensus was failed to be reached, one or more Parties choose to adopt the requirements of Annex III on a voluntary basis and provide notification to the Secretariat of the Convention;
- Periodically, the Secretariat collates all such notifications and distributes a summary to all Parties of voluntary adoptions by Parties of the requirements of Annex III; and
- This information is also made publically available on the Rotterdam Convention website.

**Practicalities of the implementation once adopted:**

The possibility to act voluntarily is not restricted by the Rotterdam Convention meaning that the practicalities of adopting a standalone process are relatively easy. This option would also be possible without the need to amend the text of the Convention or the existing rules on consensus for action. However to make significant impact it would be necessary for multiple Parties to adopt this standalone process. The creation of the Rotterdam Convention was brought about because of the recognition that the issues addressed require global action and that smaller groups of nations are unlikely to solve the issues identified. Therefore this option would likely work best where there was a large majority of Parties wishing to list a given substance but consensus could still not be reached.

One possible negative practical issue created through the use of a standalone process would be the creation of a two tier system, whereby the Annex III listed substances were formally recognised and those on a standalone list were acted upon voluntarily. It is also possible that those countries that are the greatest users of a given substance would choose not to be part of the standalone process for economic reasons, which again would undermine the aims of the Convention.

**Potential political implications with respect to the objectives:**

The creation of a standalone process would mean that action could be taken more swiftly than awaiting final resolution of the COP. However in order to make a significant difference it would need multiple Parties to work voluntarily but in a coordinated way. It should also be recognised that as these substances would not formally be included under the Rotterdam Convention it would be possible for voluntary action by any Party to cease at any time. There are also arguments for and against the use of a standalone process in helping the effectiveness of the Convention. On one side the rationale can be made that if Parties choose to adopt a standalone process the impetus to reach consensus on listing to Annex III is lost because the interested Parties are already acting outside of the Convention. The alternate argument is that if multiple Parties adopt the standalone process voluntarily without negative consequences it can be used to demonstrate to the COP that the objections raised are unfounded and that pressure to complete listing to Annex III can be applied.

Source	Option 5	Framework
<b>A+B+D: COP-4 meeting</b>	Improved awareness building amongst Parties of the Convention including improved information exchange and knowledge transfer.	

**C: RC-7/6** The Core aims of the Rotterdam Convention are the shared responsibility and cooperation on the trade of hazardous chemicals to protect human health and the environment. This includes the prior informed consent (PIC) process, but also additionally the sharing of information on safe use, management and disposal of chemicals (Article 14). The COP identified the exchange of information between Parties as being an issue with the frequency and quality of exchanges lower than expected. This lack of information exchange also hinders the identification and sharing of information in support of the CRC and COP decision-making process for listing in Annex III (see Option 6).

**E:  
UNEP/FAO/CHW/RC/POPS/JWG.3/3**

Therefore, the following actions could be used to improve information exchange:

- a) The Secretariat to impress the need for better information-exchange networks between the Parties to the Convention. As many substances listed on Annex III of the Convention are pesticides, the FAO regional structures could be well placed to support this activity working in combination with Parties.
- b) Pragmatic synergies between the Rotterdam, Basel and Stockholm Conventions could be explored to look information exchange which benefits all three conventions.
- c) Further support for the types of information already available. For example information on alternatives for specific geographic regions and data on local initiatives at national/regional level could be provided to the Secretariat of the Convention for sharing on the Rotterdam Convention website.

#### **Legal implications:**

Article 14 of the Rotterdam Convention already places an obligation on ratified Parties to share information directly between Parties and also through the Secretariat covering a range of details on the safe use, storage and disposal of hazardous chemicals. However it is not clear how well this process has worked in practice as the Article 14 definition is primarily a general process for sharing information with a focus on management of confidentiality issues. A range of actions to further promote the identification and exchange of information between Parties could be done without the need for amendment of the Convention text and so should not be problematic.

#### **Process of implementation:**

As Article 14 already implements a legal obligation to share information, the practical need is for a more nuanced process of information exchange. The type and availability of information will vary greatly amongst the Parties to the Convention, as will the resources to be involved in the facilitation of information. The Secretariat of the Convention could fulfil a role in identifying key Parties who could help improve knowledge sharing networks as well as looking at the role of FAO regional structures and working with the Secretariats of the Basel and Stockholm Convention for synergistic opportunities. It could also include direct contact and engagement with the Parties to look at what Parties can do voluntarily to help facilitate information availability and review and consideration of the Rotterdam Convention website as a tool for sharing information and acting as a repository of key data.

#### **Practicalities of the implementation once adopted:**

It is hard to predict what specific implementation needs might arise from an intention to expand and facilitate information exchange. One likely key component would be the greater management, interaction and collation of feedback from the FAO regional structure. This would require the support and organisation of the Secretariat to help facilitate the initial exchanges between the FAO, Secretariat and Parties.

#### **Potential political implications with respect to the objectives:**

This option would be in line with the first objective of the Rotterdam Convention is promoting shared responsibility and cooperative efforts among Parties as well as with the second objective of contributing to the environmentally sound use of those hazardous chemicals especially by facilitating information exchange about their characteristics.

Source	Option 6	Framework
UNEP/FAO/RC/CO P.4/24	More informed Parties to provide technical assistance to other Parties, such as developing nations, towards implementation of the Rotterdam Convention's aims. Namely to enhance their capacity in using DGDs for national decision making. This could specifically include guidance/training on the management of trade, risk assessments and identification of alternative substances.	Article 16

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**Legal implications:**

**No legal implications are expected.**

**Process of implementation:**

- Enhance collaboration between designated national authorities/official contact points between developed and developing countries
- Encourage developed countries to provide technical assistance to other Parties (developing countries) concerning the development of infrastructure and capacity for managing trade of chemicals, including risk assessment and safe management, alternatives and data on alternatives, and policy infrastructure best practice (e.g. training for agencies on management of chemicals entering the country).

**Practicalities of the implementation once adopted:**

The mechanisms could be the same (e.g. workshops), but the focus could be more on managing chemicals and pesticides as well as best available technologies or mechanisms to substitute hazardous chemicals.

**Potential political implications with respect to the objectives:**

It will be in line with the first objective of promoting shared responsibility and cooperative efforts among Parties as well as with the second objective of contributing to the environmentally sound use of those hazardous chemicals especially by facilitating information exchange about their characteristics.

## 3. Analysis of proposed options for continued effectiveness of the Rotterdam Convention

### 3.1 Analysis of options

The review of the Convention in section 1.4 identified a set of key issues that require addressing in order to help maintain and improve its effectiveness. Central to them are concerns over the protracted discussions on named substances and failure to reach consensus on addition of chemicals to Annex III. This is in part caused by a lack of information exchange, with the data provided through notifications of regulatory action varying in the quality and type of information provided. Annex I (for substances) and Annex IV (for SHPFs) provide details of the information to be included but this has been incomplete for many of the substances recommended for listing.

Furthermore the background document produced by the working group at a workshop held in Riga, Latvia (2016)<sup>9</sup> highlighted one of the causes for inability to reach consensus was a lack of political will. Highlighting a need for further engagement with Parties to promote better information exchange to meet the aims of the Convention.

The options that have been identified within the COP discussions, intersessional working group and review of related conventions (Basel and Stockholm) aim to address these key issues but may also have their own potential unexpected impacts. This section provides a narrative to review each option on its merit and final discussion on which options could work well in combination.

### 3.2 Option 1: Amendment of Convention voting rules from consensus voting to majority rule

#### Rationale

The key concern that has been raised by Parties over successive COPs is the difficulty in reaching agreement on when a chemical should be added to Annex III of the Convention. In 2016, Latvia hosted a workshop targeting the intersessional working group to the Rotterdam Convention to explore the issues for continued effectiveness, and understand the reasons behind why difficulty had been experienced in reaching consensus for adding substances to Annex III. As part of the workshop a background document was drafted for the target audience based upon comments received from the Parties. The background document noted that there was:

*“An absence of political will or momentum, a divide between science-based outcomes of the Chemical Review Committee and policy-based decisions of the COP, the rigid decision-making rules of the COP (by consensus), the lack of information on / awareness of the alternatives and the socio-economic impacts of listing have all been cited as factors”*

On that basis it can be assumed that the combination of these different aspects, partly driven by a lack of the right kind of information for political debate (e.g. economic factors which fall outside the scope of the Convention), and partly by political agendas and motivations have hindered decision making. While getting to grips with these more difficult issues is covered in other options, the simplest step that could be taken to aid the process would be to amend the Convention text from a consensus vote on addition of chemicals to a majority rule, similar to that for amendment of the Annexes, with a three-fourths deciding majority.

#### Potential positive outcomes

On the surface this option represents the most simple and straightforward step to helping improve the effectiveness of the Convention. It can be envisaged that the discussions at the COP will always be rigorous and that reaching a consensus agreement will always be difficult due to the complex subject matter and multiple agendas and facets that arguments will take amongst the Parties. Ensuring a majority rule position

<sup>9</sup> <http://www.pic.int/Implementation/TechnicalAssistance/Workshops/WorkshopRiga,Latvia2016/Overview/tabid/5213/language/en-US/Default.aspx>

would still protect the process as three quarters of the delegates would be required to agree upon a decision. In those cases where only a small number of Parties oppose the addition to the Annex III it would avoid a prolongation of discussions without resolution.

### Potential negative outcomes

The implementation of this process would require amendment of the Convention text, which in turn would require ratification by the Parties. As the Convention places clear onus on the 'shared responsibilities' of Parties, it can be envisaged that there may be resistance to this change, and that a number of Parties may feel that it would equate to them losing their representation at the Convention. There is therefore a possibility that this option would not proceed at all because it did not get the necessary support from the Parties to amend the text of the Convention. The voting rules are of a high sensitivity with many in favour of the consensus approach so as to uphold the theme of shared responsibility. An equal number would likely be in favour of the majority voting approach to reach resolution more swiftly. This makes it hard to predict whether a motion to change the voting rules to majority voting would be passed.

Assuming that the necessary support could be found to change the voting rules from a consensus to a majority, it can still be expected that a number of Parties, particularly developing nations or nations in transition would not ratify the changes. This in turn would create a parallel or two tier system between those that accept the amendment and those that do not. While the majority voting would certainly end difficult discussions more quickly and ensure resolution of substances to Annex III. There is an additional concern that the creation of such a two-tier system of membership could cause the future addition of substances to the Convention to splinter things further creating a highly complex situation. This situation could arise as those parties that had chosen not to ratify the amendment of the voting rules would not be obligated to accept any future additions to Annex III. This would mean that for each additional substance added to the Convention the number of Parties and combination of Parties that uphold the full listing under Annex III would be different each time. This would make the day-to-day management of the Convention at international level complex and in addition reduce clarity over the obligations of those wishing to trade such substances internationally.

### Recommendation

While this option has obvious benefits and would likely help achieve the desired improved effectiveness of the Convention, the negative consequence could be the exclusion of key parties and reduce overall effectiveness of the Convention. On that basis it would not be recommended for implementation.

## 3.3 Option 2: Create a new Annex for chemicals where consensus could not be reached to promote information exchange

### Rationale

As with option 1, the main concern raised by the Parties has been over the protracted discussion period for chemicals and the failure to reach consensus on addition to Annex III. Option 1 looked to improve the effectiveness of this process by replacing the consensus voting by majority voting which would help end any unresolved discussions more swiftly. Option 2 takes an alternate approach to the same issue. Where a resolution could not be agreed during the discussions of the COP, a new Annex could be created to place named chemicals where a satisfactory conclusion could not be reached. This would require the text of the Convention to be amended and the process of adding substances to Annex III to also be amended. The amendment could be included as a new article or a sub-clause to Article 7 of the Convention, stating that where a consensus cannot be reached (after "x" rounds of discussion at COP meetings), the recommended substance will be added to the new annex and that this will place obligations on Parties to provide further information where available to the Secretariat of the Convention.

The key issues identified in section 1.4 highlighted that one of the main issues underlying the problems with reaching consensus was a lack of information exchange. It has been suggested that where this is the case the use of a new Annex could be used to help highlight the named chemical as being of concern and used to promote further information exchange by the Parties. This would include information detailed within the DGD but further expanded to provide an evidence base for Parties to take action within their own nations.

This option was raised in COP.4/13 as a means of promoting additional information exchange. It could also be tailored further. Typically during the discussions where consensus has not been reached, this is due to a small number of single Parties in opposition for particular reasons, which have been socio-economic in the past. It is possible that adding a named chemical to this new Annex could trigger the need for an intersessional working group to look at the specific objection raised, with a response and final resolution at the next COP. This would focus any new round of discussion solely upon the objection, rather than opening the discussion more widely.

### Potential positive outcomes

Option 1 and 2 would aim to address the issue of non-consensus when voting for addition of substances to Annex III. While option 1 takes the direct route through amendment of the voting rules, option 2 aims to raise awareness of the named chemical and promote information exchange. If tailored in the manner suggested it could be an effective tool to help quickly get to the heart of the argument and solve the discussion at the subsequent COP.

### Potential negative outcomes

The use of a new Annex for substances where consensus could not be reached could have several negative effects. Firstly it reduces clarity with multiple chemicals sitting under different Annexes requiring clarity on obligations. Secondly it would mean that the discussion would be put on hold without conclusion, which could protract the process further. This could be particularly an issue if the process was abused and parties moved early on to target addition to the new Annex rather than inclusion in Annex III. Thirdly if tailored as suggested it would create a new administrative burden with the potential for many intersessional working groups looking at different chemicals.

### Recommendation

This particular option, if tailored as suggested, does have merit in that it would maintain the 'shared responsibility' position, and allow the issue of successive COPs discussing the same issues to be curtailed. However, it could be open to abuse if Parties aimed at targeting this outcome early in discussions rather than following the standard process for consideration of inclusion in Annex III. The recommendation is that this option should be explored further but care would be needed in its implementation.

## 3.4 Option 3: More focus on the issue of alternatives and data requirements for information on alternatives as part of the requirements of Annex I and IV of the Convention.

### Rationale

The key objections raised during the discussions of the COP when deciding whether to add a chemical to Annex III of the Convention have largely been socio-economic. While these details are outside of the scope of the qualifying criteria for addition to Annex III, they are nonetheless of serious concern. Parties have in particular raised the question of potential consequences for end users should a given substance be added to Annex III. There have also been arguments raised over the availability of goods and viable safer alternatives which are cost neutral.

As the discussions on the existing nominations and future nominations are likely to continue in a similar manner, the next option would look to provide exactly this kind of information to allow completion of the debate and a resolution on addition to Annex III or otherwise. Annex I d(ii) and Annex IV Part 2 (h) already place requirements for information on alternatives as part of the notification on regulatory action for chemicals and severely hazardous pesticide formulations respectively. However the frequency of how often such data is provided and the quality of that data is questionable. Therefore more could be done to highlight the importance of this information and specifically include it within the discussions as part of the development for the DGD. Specific information on the availability, efficacy and pricing of alternatives could be targeted as part of the work for the draft DGD, based on the notifications provided or supplemented by additional targeted literature searches where such data was not included. The Secretariat of the Convention could also impress upon the Parties the importance of providing such data to encourage contributions.

The Intersessional working group suggested that this would remove the ambiguity during COP discussions, but does raise questions about the focus of the Convention. The addition of alternatives suggested a marked move towards phase-out of named chemicals. The aims of the Rotterdam Convention are rather control and safe management of the named chemicals in Annex III.

### Potential positive outcomes

The lack of robust data during COP discussions has meant that the debate has more of a political angle, with increased difficulty in reaching a consensus. For those Parties that object to the addition of a given chemical to Annex III the concerns raised are genuine and cannot be dismissed easily. The inclusion of this information within the DGD document would remove such ambiguity and allow the Parties to make better-informed decisions which could mean that a conclusion would be reached more swiftly.

### Potential negative outcomes

The initial negative outcome of implementing this option would be the increased data burden upon the CRC, noting that the resources of the CRC are limited and that many nominations have already been made. The other major negative issue is that because the DGD documents are intended to be a global level guidance document the information on alternatives would either have to be very high level, or detailed for regions with the additional burden of obtaining data which may be difficult. The discussions raised during COP meetings have been very specific in nature to a given global region or situation for a particular nation represented by a Party. In these cases it may be difficult for the data provided to overcome these issues easily.

### Recommendation

Robust data is necessary to ensure an informed discussion during the COP meetings. Past objections raised by Parties during the CRC for addition of substances to Annex III has related to potential socio-economic effects of listing. While Annex I d(ii) and Annex IV part 2 (h) respectively cover the collection of data on alternatives which would aid the discussion at the CRC (and in particular objections linked to socio-economic impacts), provision of such data has been limited. To address this issue it would be possible for the Secretariat to gather and make available a compilation of such information on the Convention website. This process could begin as early as immediately after the recommendation for listing was made.

However, also note that the background paper produced by the Intersessional working group highlighted one of the causes for inability to reach consensus was a lack of political will. The active engagement of the Parties is key to ensuring complete and robust evidence bases for the DGD documents. If the intention is for the Secretariat to gather and compile information on alternatives, there is still an onus on Parties and Observers to provide such information. Care is also needed in how such information is used, noting that the aims of the Convention are not to ban named substances in favour of safer alternatives, but 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.

Therefore the recommendations for option 3 would be two-fold:

- A discussion with the Parties (to be held at the CRC) to assess how the existing systems of information exchange could be improved. This would have a particular focus on data relating to alternatives, its role, and how this data could be used productively<sup>10</sup>.
- A recommendation for the Secretariat to gather data on alternatives for substances as part of the preparation for the CRC. This could begin as soon as the recommendation for listing was made.

This option should be considered with care; with an alternate approach detailed under option 2: additional Annex, to explore specific objections as they arise.

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<sup>10</sup> This notes that data on alternatives (availability, price, and efficacy) are strongly related to geographic regions, and that data may be needed on a sub-regional basis for decision making, which does not fit well with a global level document. There is also the issue of data quickly falling 'out of date' and no longer being useful. A decision needs to be reached on whether this information is best placed within the DGD, or another format (e.g. Convention website).

### 3.5 Option 4: Creation of a standalone process in the case where there is no consensus for listing a substance in Annex III.

#### Rationale

Options 1, 2 and 3 addressed the main concern raised by the Parties over the protracted discussion period for chemicals and the failure to reach consensus on addition to Annex III. Option 1 looked at a change to the voting rules, while option 2 and 3 suggested mechanisms to enhance collection and exchange of information to help reach conclusions more resolutely. Option 4 addresses this same issue from a different perspective. To date where there has been a lack of consensus on the addition of substances to Annex III, the move to block the addition has come from a relatively small number of Parties who have cited a range of concerns largely related to socio-economic issues.

In Option 4, one way to solve this issue is developed using the creation of what was termed in the COP-4 discussion a 'standalone list' underpinned by a standalone process. The text of the Rotterdam Convention does not prevent Parties from taking on the obligations of the Convention on a voluntary basis. This means that if a consensus could not be reached on listing a given substance to Annex III it is possible for Parties to voluntarily take on the requirements anyway. However to make significant impact it would be necessary for a reasonable number of Parties to act in this way. Furthermore there would need to be clarity of the actions undertaken to ensure all Parties understood each other's position so that they could work together effectively. In outline, when there was failure to reach a consensus, Parties wishing to act voluntarily would inform the Secretariat of their intentions. The Secretariat in turn would compile this information into a 'standalone list' and circulate it to all Parties of the Convention as well as publishing it on the website.

For all other Parties the substance would remain outside of the scope of the Rotterdam Convention and would not be formerly recognised on Annex III. The use of a standalone process in this fashion would mean that the voting procedure currently used by the Rotterdam Convention would be unaffected. However as has been described already, any option which allows a split from a consensus approach to managing substances under Annex III would have the potential to splinter the situation, meaning that for each future substance a different number of Parties and different combination of Parties would uphold the Annex III obligations either formerly or voluntarily as part of a standalone process. The use of a standalone list would aid clarity and reduce the ambiguity over which countries had chosen to differ in their obligations, however careful management would still be needed, and regular use of a standalone process would be undesirable as it would have a potential to undermine the listing process.

#### Potential positive outcomes

A standalone process could be used effectively to help overcome the current issue faced with consensus voting. This would allow action to be implemented more swiftly and prevent the issues currently seen with protracted discussions over successive COP meeting. It would also mean that the existing voting system is unaffected. Any changes to the voting system have proved contentious with Parties concerned about losing their voice or rights under the existing system. The standalone process could also be used to demonstrate that the economic concerns raised during COP meetings are unfounded and provide evidence that a listing could and should take place. Such voluntary action in a standalone process would not prevent adding the substance to Annex III later.

#### Potential negative outcomes

Care would be needed in how the standalone process is used. The overarching themes of the Convention relate to shared responsibility. If groups of Parties chose to act voluntarily there is the potential to splinter the situation, with different combinations of Parties acting voluntarily on each subsequent occasion. This would reduce clarity and has the potential to undermine Annex III. For example, if such a process is recognised and used on a frequent basis it could be possible for Parties to deliberately aim to stall the discussion and prevent listing in Annex III knowing that other Parties would simply drop out of the discussion and begin to act voluntarily as part of a standalone process. This would prevent a full and fair discussion at the CRC and COP meetings significantly undermining the Convention as a whole. Therefore the aim would need to be that a standalone process was only used as a last resort.

Where a global level solution is implicitly needed to meet the aims set out in Article 1 of the Convention, a single Party or small number of Parties acting voluntarily would likely have limited impact. Ergo even where this would be a voluntary action it would still need co-ordination and agreement from multiple Parties that they intended to follow a standalone process. Such negotiations may need to also involve the Secretariat of the Convention to ensure that Secretariat was able to keep all Parties informed of the actions being taken. Such discussions and negotiations would have the potential to undermine the Convention as effectively they create a new process as a pseudo-Convention involving a more limited number of Parties as a form of break-away from the main Convention.

## Recommendation

The possibility of a standalone process involving Parties acting voluntarily where consensus could not be reached on an Annex III listing does have some merits. It would likely mean that the consensus vote could be retained, and that where consensus could not be reached a way forward existed that allowed immediate action to be taken with the possibility that the addition of substances to Annex III would still happen eventually. This would indeed help benefit the effectiveness of the Convention, but due care would need to be given to how this option might be implemented and what perverse incentives could be generated as a result. Specifically it should be made clear that the listing within Annex III should still be seen as the most desirable option, and that the use of standalone processes should be used in limited cases to avoid undermining this process.

## 3.6 Option 5: Improved awareness building amongst Parties of the Convention including improved information exchange and knowledge transfer.

### Rationale

One of the key issues identified in section 1.4 was the lack of information exchange between Parties. Article 14 of the Convention places an obligation on Parties to exchange information where appropriate covering data on:

- a) *The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;*
- b) *The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention; and*
- c) *The provision of information to other Parties, directly or through the Secretariat, on domestic regulatory actions that substantially restrict one or more uses of the chemical, as appropriate.*

Article 14 also builds upon the overall aims of the Convention for shared responsibility in respect of trade in hazardous chemicals and in the protection of human health and the environment. It is therefore a key interest of the Convention and its Parties to explore this issue and look at where information exchange can be improved. The Rotterdam Convention already makes use of information clearing houses, which provide documentation and tools from web based portals intended to help inform and manage the obligations of the Convention. However additional efforts could be used to help further raise the issue of information. Option 5 includes the use of the Secretariat to impress upon the Parties the needs and benefits of information exchange. It also identifies that where many Annex III substances are pesticides the FAO regional structures could be used in combination with representatives from the Parties to help support the activity of information exchange.

Additionally where there is close synergy between the Rotterdam, Basel and Stockholm Conventions, it is less clear how well co-ordinated the work is between the regional centres and the information clearing houses, with the opportunity for greater co-operation likely bringing significant benefits.

In particular where the PIC procedure has relevance to developing nations and nations in transition the opportunity to build upon synergies with the Stockholm and Basel Conventions could add value to this information exchange such as through shared awareness-raising campaigns.

## Potential positive outcomes

The potential positive outcomes of this option would affect the COP decision making process in a more indirect fashion. The promotion of awareness for the guidance provided by the DGD documents, Rotterdam Convention and PIC procedure would likely elicit improvements to the approach taken by Parties in managing hazardous chemicals and promote knowledge exchange and provision of data that could help the PIC procedure. This option would likely provide further synergistic benefits when used in combination with other options detailed in this chapter.

## Potential negative outcomes

While the obligations of Article 14 were established at the creation of the Convention, the level of effort in information exchange between Parties has been relatively limited. This could be due to limited resources in general, limited availability of information to exchange in the first place or lack of clarity over methods of information transfer. While the promotion of information exchange is important and the benefits of such information exchange appear obvious, increased efforts by the Secretariat to encourage such information exchange could have been foreseen to occur in a more varied fashion with some Parties benefiting / participating more than others. This could lead to results which appear more uneven, with those that are the most limited for resources likely to benefit the least. Therefore consideration needs to be given to available resources open to the Parties and what kind of support could be needed to minimise lost efforts put in by the Secretariat and others.

## Recommendation

Improved information exchange leads to better understanding and control, and safer use of hazardous chemicals. While the Secretariat of the Rotterdam Convention already makes efforts in this area and currently deploys a number of relevant tools, additional efforts could yield further benefits. This option highlights the role of the FAO regional structures as important conduits of information which could help the Parties. There could also be further benefits from the synergies between the Rotterdam, Basel and Stockholm Conventions, particularly regarding the role of regional centres under Stockholm and Basel Conventions. However, in making further efforts, some care is needed that this is done in a thoughtful fashion to assist in particular those Parties that are resource constrained or lack technical support to identify and share the types of information needed. There is an important need for Parties with developing economies to have the right kind of assistance to promote such knowledge exchange.

## 3.7 Option 6: Developed Parties need to provide technical assistance to developing parties to enhance their capacity in using DGDs for national decision making within available resources

### Rationale

The key issues identified within section 1.4 highlighted information exchange between Parties as central to the aims of the Convention. This information exchange covers firstly the notifications of regulatory actions from Parties to the secretariat, and secondly to aid Parties at national level in their own planning and response to chemical risk (see option 5), again this is central to the aims of the Convention under Article 14.

These information exchange practices are interlinked with data needs as the information submitted to the CRC is used to help draft DGD documents, which are in turn used by the Parties in their own policy planning at national level. This includes working with end-users, manufacturers and the extended supply chain to help ensure that safe management of chemicals happens.

The role of the Rotterdam Convention for developing nations is of particular importance as these nations often lack the resources to police the safe use of hazardous chemicals, and to ensure knowledge exchange and awareness within the supply chain. Therefore option 6 would be to look at the role of developed nations in further supporting developing nations through tailored exchange of information. In particular this would include guidance / training on implementation of Annex III for trade of chemicals in the supply chain, safe management options (including risk assessments), and guidance on best practice for managing substances (e.g. training for enforcement agencies) to manage trade in Annex III chemicals.

This process could be implemented on a voluntary basis based on core knowledge areas, such as specific substances, specific management techniques, and training where needed. It could also be developed in a fashion where Parties were paired up to work together of a defined period of time on an ad-hoc basis to support one another with continued development and planning for how hazardous chemicals are managed.

### **Potential positive outcomes**

The main positive outcome of this option is to ensure a good level of understanding on the hazards and safe use of the chemicals listed under annex III of the Rotterdam Convention. In particular improved information exchange for developing nations and nations in transition is likely to have benefits not only for those nations but also for the other Parties to the Convention. This would come about because of improved knowledge transfer and data to help make decisions, but also better understanding of the potential issues that can arise. This would clearly help with the development of DGD documents to ensure that they were as detailed and complete as possible.

### **Potential negative outcomes**

While this kind of capacity building work is laudable and in line with the overall aims of the Convention, it would also require efforts for resources to be made available and management to help ensure that resources were used effectively. These resources would need to be provided on a voluntary basis, and therefore it would require widespread support from many Parties to be successful. If such support could not be achieved it is possible that the results would be ineffective.

### **Recommendation**

This particular option has clear benefits to the Convention as a whole, however in terms of helping ensure the Convention remains effective, particularly for addition of chemicals to Annex III, the benefits are likely to be indirect. This would be through the improved knowledge and information exchange of Parties to the Convention. Additionally, the option would need to be implemented on a voluntary basis, meaning that it would likely need widespread support from multiple Parties in order to be effective. It is unclear whether such support could be secured.

## 4. Summary of options and recommendations for continued effectiveness

Table 4.1 provides a summary overview of the six options that have been assessed with details on which options cannot be used together, and which options can be used in a complementary fashion as part of a package of strategies. Table 4.1 also provides final comment on recommendations with one out of the six options rejected at the conclusion of this analysis and the remaining five requiring further investigation to assess how they might work in practice.

The review of the Convention procedures and processes detailed in section 1.4 highlights that the concerns of Parties for some time over the protracted periods of discussion spanning a number of COPs. In particular, the issue of consensus voting was highlighted as being problematic because, while there is often a majority in favour, a small number of Parties have objected, often on socio-economic grounds, which are outside of the scope for qualifying criteria.

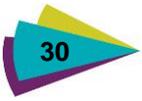
Alongside this issue, the frequency and quality of information exchange is highlighted as an issue, as is the number of nominations received, noting that the CRC has only limited resources to process them. The review of the documents from COP.4, COP.5, COP.7 and the Intersessional working group, along with a review of the Convention text itself, highlights six possible options.

Options 1, 2, and 4 aim to address the issue of consensus voting. This could be tackled in a direct fashion, as per option 1, by amending the voting rules to a majority vote. It could be addressed in a managed fashion as per option 2 and 4. This would see, under option 2, the creation of a new annex in cases where consensus for addition of a substance to Annex III is not reached, and if tailored suitably could allow a targeted approach to address specific objections with the next COP for these targeted elements. Option 4 covers the adoption of a standalone process so that Parties could coordinate to voluntarily adopt the requirements of Annex III at national level even when a consensus was not reached. In order for this option to be successful it would require multiple Parties acting together to voluntarily adopt the requirements as a small number of Parties acting in isolation would be unlikely to meet the aims of the Convention effectively.

From these three options; option 1 is not recommended as the potential negative aspects would harm the Convention itself and undermine the work of the CRC, COP and Secretariat. Options 2 or 4 provide the best chance for success but need further assessment in how they would be tailored and work in practice.

Option 3 provides an alternative approach to help support the discussions at the COP. As many of the objections raised at the COP are based on socio-economic grounds (which are outside the scope for qualifying criteria in Annex I and IV), option 3 suggested that greater onus could be given to the topic of 'alternatives'. Annexes I and IV already specify the need for data on alternatives. However examples of DGDs which both include and do not include sections on alternatives exist. The mandatory inclusion of such a section populated either based on information submitted by the Parties or supplemented through further research could help discussion and possible consensus. However, this option might set a precedent suggesting that phase-out of named chemicals are needed which is not in line with the overall aims of the Convention. Furthermore, as DGD documents are aimed at the global level, they may not include the level of detail on a regional basis needed for discussions at the COP. This option recommends two steps, firstly an open discussion with Parties at the CRC over data on alternatives, the role it should play, and best format for its transmission (DGD or Convention website). The second step then places an obligation on the Secretariat to gather this information from the Parties to be compiled and made available as part of the CRC process. Option 3 has possible merit for resolving the previous cyclic discussions on socio-economic impacts at the CRC, but there needs to be agreement on how data for alternatives should be used. Therefore the first step is recommended for completion, and pending on that discussion, the second step would be utilised.

Options 5, and 6 are aimed at information exchange through capacity building, addressing another key issue identified in section 1.4. While all three options have clear merit and would help the Convention meet its overall aims, care would be needed in how they are implemented to ensure that they are fully effective. This would likely require further discussion with the Parties to better understand their needs and tailor the promotion of information exchange in a fashion that had most benefit.



The conclusions of this analysis are therefore that option 2, 3 and 4 would warrant further investigation with the possibility of options 5, or 6 used in combination to help promote both information exchange but also a more managed way forward for the debate of chemicals at the COP. Care should be taken that, whichever options are implemented, due consideration is given to any possibility of undermining the aims of the Convention through any unintended consequences.

Table 4.1 Summary of options assessed.

Option Number	Description	Cannot be used in combination with option	Could be complementarily used with option	Recommendation (for option on its own)
1	Amendment of Convention voting rules from consensus voting to majority rule	2 or 4	3, 5, or 6	Not recommended for implementation on the grounds that it deviates from 'shared responsibility' and could undermine the Convention due to Parties opting out.
2	Create new Annex for chemicals where consensus couldn't be reached to promote information exchange	1 or 4	3, 5, or 6	This option merits further review and exploration to assess whether it could be used in a tailored fashion.
3	More focus on the issue of alternatives and data requirements for information on alternatives as part of the requirements of Annex I and IV of the Convention.	2	1,5,6	Not recommended for implementation as it sets an undesirable precedent and data may be of too high a level to prove beneficial.
4	Creation of a standalone process in cases where consensus on substances for listing into Annex III is not reached	1 or 2	3, 5, or 6	This option does have clear merit to helping overcome the issues seen with failing to reach consensus, and maintains the existing voting system. Care is needed in implementation and there is a risk of perverse incentives.
5	Improved awareness building amongst Parties of the Convention including improved information exchange and knowledge transfer.	6 <sup>11</sup>	3	FAO regional structure and improved synergy with the Basel and Stockholm Conventions could work well to support Parties in information exchange. Further review is needed to assess this option in order to define a tailored approach.
6	Developed Parties need to provide technical assistance to developing parties to enhance their capacity in using DGDs for national decision making within available resources	5 <sup>12</sup>	3	As with option 5 this option has merit and would benefit the Convention as a whole. However support would need to be provided voluntarily by many Parties. It is unclear whether such support could be attained.

<sup>11</sup> Could be used instead of option 6 or as part of a combined package.

<sup>12</sup> Could be used instead of option 5 or as part of a combined package.

