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Proposal for a

**COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union, at the Seventh  
Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants  
regarding the proposals for amendments of Annexes A, B and C**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

The Stockholm Convention on Persistent Organic Pollutants (POPs)<sup>1</sup> was adopted in May 2001 in the framework of the United Nations Environment Programme (UNEP). The European Union and its Member States<sup>2</sup> are parties to the Convention<sup>3</sup> and the provisions of the Convention have been implemented in EU law by Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC<sup>4</sup> (the POPs Regulation).

The overall objective of the Stockholm Convention is to protect human health and the environment from POPs. Specific reference is made to the precautionary approach as set out in Principle 15 of the 1992 Rio Declaration on Environment and Development. The principle is made operational in Article 8 of the Convention, which lays down the rules for including additional chemicals in the Annexes to the Convention.

At the seventh Conference of the Parties (COP7) in May 2015, three decisions should be taken to add polychlorinated naphthalenes (PCN) and hexachlorobutadiene (HCBD) to Annexes A (elimination) and C (unintentional production) and pentachlorophenol (PCP) to Annex A. All three substances were nominated by the EU in 2011. Furthermore the continued need for specific exemptions and acceptable purposes for perfluorooctane sulfonic acid and its derivatives (PFOS) shall be assessed by COP7.

As regards the three new substances, the production, placing on the market, use and unintentional emission have already ceased or have been severely reduced in the Union, whereas it cannot be excluded that they are still produced, placed on the market, used and/or significantly unintentionally emitted in other countries. Due to the potential for long-range environmental transport of these chemicals, the measures taken nationally or at the Union level are not sufficient to safeguard the high level of protection of the environment and human health but wider international action is necessary.

### **THE POP RC RECOMMENDATIONS**

At its ninth meeting, the Persistent Organic Pollutants Review Committee (POPRC) adopted the risk management evaluation on hexachlorobutadiene (HCBD). The risk management evaluation concluded *inter alia* that:

- HCBD is not known to be currently intentionally produced or used, therefore it is important to prevent its re-introduction and manage the risks associated with its unintentional release.
- HCBD is generated as an unintentional by-product from industrial manufacturing processes (particularly the production of other chlorinated hydrocarbons and the production of magnesium). Measures to minimise releases during production are known and already applied in countries that are parties to the Stockholm Convention.
- HCBD is unintentionally generated during combustion and other thermal processes and industrial processes. Measures to reduce unintentional releases of POPs from

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<sup>1</sup> [http://www.pops.int/documents/convtext/convtext\\_en.pdf](http://www.pops.int/documents/convtext/convtext_en.pdf).

<sup>2</sup> Two EU Member States have not yet ratified (Italy and Malta).

<sup>3</sup> OJ L 209, 31.7.2006, p. 1.

<sup>4</sup> OJ L 158, 30.4.2004, p. 7.

such processes will lead to a further reduction of HCBd releases. Monitoring of HCBd may induce additional costs.

HCBd is released to an unknown extent from former waste disposal sites. Control measures to minimise such releases are available. The POPRC at its 9th meeting in October 2013 recommended the listing of HCBd in Annex A and Annex C to the Convention without exemption.

As regards polychlorinated naphthalenes (PCN) the risk management evaluation concluded *inter alia* that:

- PCN are not known to be currently intentionally produced or used, however it is important to limit possible remaining uses and to prevent the re-introduction of PCN.
- PCN are unintentionally generated during high-temperature industrial processes (particularly waste incineration, but also in other processes known to generate Polychlorinated dibenzo-p-dioxins/Polychlorinated dibenzofurans (PCDD/PCDF). Measures that reduce the release of PCDD/PCDF will also reduce PCN releases. Monitoring of PCN may induce additional costs.
- PCN are released to an unknown extent from waste disposal sites and stocks of old appliances. Measures that are in place with respect to PCB stockpiles will also efficiently reduce releases of PCN from stockpiles.

The POPRC at its 9th meeting in October 2013 recommended the listing of PCN in Annex A and Annex C to the Convention without exemption.

At its tenth meeting in October 2014, the POPRC adopted a risk management evaluation on pentachlorophenol its salts and esters (PCP). The risk management evaluation concluded *inter alia* that:

- Production of PCP shall be restricted, with the only exemption for uses of industrial wood preservation purposes for the treatment of utility poles and cross-arms.

The POPRC at its 10th meeting in October 2014 decided to recommend the listing of PCP in Annex A to the Convention with a specific exemption for the production and use of PCP for utility poles and cross-arms.

In accordance with Article 8 (9) of the Convention, the POPRC has submitted these recommendations to the COP for its consideration at the meeting in May 2015.

The POPRC also adopted recommendations on alternatives to the use of PFOS in open applications. Information on the commercial availability and effectiveness of safer alternatives to PFOS for the following applications has become available: carpets, leather and apparel, textiles and upholstery, coating and coating additives, insecticides for the control of red imported fire ants and termites, and insect bait for the control of leaf cutting ants from *Atta* spp. and *Acromyrmex* spp. Furthermore, POP RC also encourages Parties to restrict the use of PFOS in hard metal plating, (allowed as a 'specific exemption' under the Convention), to closed-loop systems only. The latter has been allowed as an 'acceptable purpose' under the Convention.

## **HCBD AND EU LAW**

HCBD is a priority hazardous substance under the Water Framework Directive (2000/60/EC)<sup>5</sup>. Furthermore, HCBD is listed in the Protocol on POPs of the UNECE Convention on Long-Range Transboundary Air Pollution (CLRTAP) and, therefore, Parties are requested to eliminate its production and use. Commission Regulation (EU) No 519/2012 of 19 June 2012 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I<sup>6</sup> implements the ban in EU law. However, wastes and contaminated land issues remain, as well as consideration of measures to prevent re-introduction.

Whilst the production of HCBD in Europe has ceased, it still may be produced unintentionally in some industrial activities. Such activities, when meeting the thresholds in the Directive on industrial emissions (the IED; 2010/75/EU<sup>7</sup>), are required to apply the best available techniques (BAT) to prevent and reduce emissions and the impact on the environment as a whole. In order to operate, an industrial installation must obtain a permit from a Member State competent authority. These permits must contain emission limit values for the polluting substances listed in Annex II of the IED, as well as other substances, likely to be emitted in significant quantities having regard to their nature and their potential for cross-media pollutant transfer.

## **PCN AND EU LAW**

PCN is listed in the Protocol on POPs of the CLRTAP and, therefore, Parties are requested to eliminate its production and use. By virtue of Commission Regulation (EU) No 519/2012, production and use of PCN is prohibited in the EU. Unintentional production via combustion (primarily waste incineration) is considered the most significant current source.

Whilst the production of PCN in Europe has ceased, it still may be produced unintentionally in some industrial activities. Such activities, when meeting the thresholds in the Directive on industrial emissions (the IED; 2010/75/EU), require mandatory application of the best available techniques (BAT) to prevent and reduce emissions and the impact on the environment as a whole. In order to operate, an industrial installation must obtain a permit from a Member State competent authority. These permits must contain emission limit values for the polluting substances listed in Annex II of the IED, as well as other substances, likely to be emitted in significant quantities having regard to their nature and their potential for cross-media pollutant transfer.

## **PCP AND EU LAW**

Placing on the market or use of pentachlorophenol as a substance, as a constituent in other substances or in mixtures in a concentration equal to or greater than 0.1% by weight is restricted pursuant to entry 22 in Annex XVII to Regulation (EC) No 1907/2006 (REACH)<sup>8</sup>. In addition, placing on the market and use of PCP as a plant protection product and as a

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<sup>5</sup> OJ L 327, 22.12.2000, p.1.

<sup>6</sup> OJ L 159, 20.06.2012, p.1.

<sup>7</sup> OJ L 334, 17.12.2010, p. 17.

<sup>8</sup> OJ L 396, 30.12.2006, p.1.

biocidal product is prohibited pursuant to Regulation (EC) No 1107/2009<sup>9</sup> and Regulation (EU) No 528/2012<sup>10</sup>, respectively.

#### **ACTIONS SUBSEQUENT TO THE COP7 DECISIONS**

Substances listed in Annexes A, B and/or C to the Stockholm Convention will need to be included in the POPs Regulation in order to ensure that the EU implementation corresponds to the international commitments<sup>11</sup>.

HCBD and PCN have been added to Annex I to the POPs Regulation in 2012. Listing in Annex C of the Stockholm Convention will require the listing in Annex III in addition.

After the listing in Annex A to the Stockholm Convention, PCP will have to be added to Annex I of the POPs Regulation. Since this will render the current listing in Annex XVII to the REACH Regulation obsolete, removal from that Annex will be initiated.

#### **PFOS AND EU LAW**

At the fourth meeting of the Conference of the Parties to the Stockholm Convention in May 2009, it was agreed to list PFOS and its derivatives in Annex B to the Convention, with a number of specific exemptions and acceptable purposes. The implementing EU legislation is more restrictive than the Stockholm Convention as it does not include the exemptions and the acceptable purposes that were already banned in the EU pursuant to REACH. This was done in order to comply with the over-arching principle of not lowering the level of environmental protection in the EU.

#### **PROCEDURE FOR ADDING NEW POP SUBSTANCES AND AMENDING THE ANNEXES OF THE CONVENTION**

According to Article 8 of the Convention, Parties may submit proposals to the Secretariat for listing a chemical in Annexes A, B and/or C. The Persistent Organic Pollutants Review Committee (POP RC) shall examine the proposal.

If this review concludes that the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal shall proceed and a risk management evaluation that includes an analysis of possible control measures shall be drawn up. On this basis, the POP RC recommends whether the chemical should be considered by the Conference of Parties (COP) for listing in Annexes A, B and/or C. The final decision is taken by the COP.

For the EU, amendments to the Annexes A, B and/or C enter into force one year from the date of the communication by the depositary of their adoption by the COP.

#### **THE POP RC RECOMMENDATIONS AND EU LAW**

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<sup>9</sup> OJ L 309, 24.11.2009, p.1.

<sup>10</sup> OJ L 167, 27.06.2012, p.1.

<sup>11</sup> The same applies to substances added to Annexes I, II and/or III of the UN-ECE Protocol on POPs.

The POP RC recommendation, if followed by the COP in May 2015, will result in international bans on manufacturing, placing on the market, import / export and use of PCN, HCBd and PCP, excluding PCP production and use for utility poles and cross-arms.

The listing of HCBd and PCN in Annex A and Annex C and of PCP in Annex A to the Convention will require amendments to the POPs Regulation. According to Article 14(1) of the Regulation, when substances are added to the Convention, changes to the Annexes of the Regulation can be made in accordance with the committee procedures established in Articles 5a of Decision 1999/468/EC<sup>12</sup>, having regard to Articles 10 and 11 of Regulation (EU) No 182/2011<sup>13</sup>.

With regards to PFOS and its derivatives, a deletion of the specific exemptions listed in the report of the POPRC will have no impact on the EU law as the relevant exemptions were either not implemented in the POPs Regulations or have already expired. The only exception to this is the exemption for the use of PFOS in hard metal plating in open systems, currently exempted under the POPs Regulation for the use as wetting agents in controlled electroplating systems. This exemption under the POPs Regulation is however only allowed until 26 August 2015.

### **The EU position**

In view of the above, at the seventh COP to the Stockholm Convention, the European Union should support the adding of PCN and HCBd to Annexes A and C to the Convention, and PCP to Annex A. As PCP is already restricted in the EU a specific exemption for the production and use of PCP for utility poles and cross-arms is not needed, but can be accepted as part of an overall compromise. Furthermore, the European Union should support the deletion of the relevant specific exemptions and acceptable purposes for PFOS and its derivatives, including the exemption for the use as wetting agents in controlled electroplating systems, since that the deletion of the exemption will only enter into force after expiry of the exemption in the EU in August 2015.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

As PCN and HCBd are already listed in the POPs Regulation (EC) No 850/2004 no further consultation is considered warranted. As PCP is already banned for placing on the market and use in the EU pursuant to the listing in Annex XVII to Regulation (EC) No 1907/2006 (REACH) and the non-approval under Regulation (EC) No 1107/2009 and Regulation (EU) No 528/2012, no further consultation was deemed necessary either. All substances have been subjected to open consultations with stakeholders world-wide during the POPRC assessment and stakeholders have also been admitted to the deliberations of POPRC.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

The proposal consists in a Council Decision, based on Articles 192(1) and 218(9) of the TFEU, establishing the position to be adopted, on behalf of the EU, at COP7 of the Stockholm

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<sup>12</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

<sup>13</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

Convention on Persistent Organic Pollutants with regards to proposals for amendments of Annexes A, B and C.

Article 218(9) TFEU is the appropriate legal basis as the act that COP7 is called upon to adopt is a decision amending an annex to the Stockholm Convention which has legal effects.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, at the Seventh Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants regarding the proposals for amendments of Annexes A, B and C**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 191(1), in conjunction with Article 218(9) thereof,

Whereas:

- (1) On 14 October 2004, the Stockholm Convention on Persistent Organic Pollutants ("the Convention") was approved, on behalf of the European Community, by Council Decision 2006/507/EC<sup>14</sup>.
- (2) The Union has implemented the obligations of the Convention in Union law by way of Regulation (EC) No 850/2004 of the European Parliament and the Council<sup>15</sup>.
- (3) The Union places strong emphasis on the need for the gradual expansion of Annexes A, B and/or C to the Convention with new substances which fulfil the criteria for persistent organic pollutants (POPs), taking into account the precautionary principle, with a view to meeting the objective of the Convention and the commitment of governments made at the World Summit on Sustainable Development held in Johannesburg in 2002 to minimise the adverse effects of chemicals by 2020.
- (4) Pursuant to Article 22 of the Convention, the Conference of the Parties ("COP") may adopt decisions amending Annexes A, B and/or C to the Convention. Those decisions enter into force one year from the date of communication by the depositary of an amendment, save for those parties to the Convention ("the Parties") that have opted out.
- (5) Following a nomination of pentachlorophenol (PCP)<sup>16</sup> received from the Union in 2011, the Persistent Organic Pollutants Review Committee ("POPRC") established under the Convention has concluded its work on PCP. POPRC has found that PCP meets the criteria of the Convention for a listing in Annex A. At its seventh meeting, the COP is expected to decide on the inclusion of PCP in Annex A to the Convention.
- (6) The placing on the market and use of PCP is prohibited by entry 22 of Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council

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<sup>14</sup> Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants (OJ L 209, 31.7.2006, p. 1).

<sup>15</sup> Regulation (EC) No 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organics pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).

<sup>16</sup> Nomination UNEP/POPS/POPRC-7/4

(REACH)<sup>17</sup>. Placing on the market and use of PCP as a plant protection product and as a biocidal product is prohibited pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>18</sup> and Regulation (EU) No 528/2012 of the European Parliament and of the Council<sup>19</sup>, respectively. Since PCP is capable of long-range environmental transport, a global phase-out of the use of this substance would be more beneficial to the EU citizen than the prohibition in the Union.

- (7) POPRC recommends the listing of PCP under the Convention with a specific exemption for the production and use of PCP for utility poles and cross-arms. The Union does not need the specific exemption but should accept the exemption in COP7, if that is required to ensure the listing of PCP.
- (8) Following a nomination of chlorinated naphthalenes received from the Union in 2011, POPRC has found that polychlorinated naphthalenes (PCN) meet the criteria of the Convention for a listing in Annexes A and C. At its seventh meeting, the COP is expected to decide on the inclusion of PCN in Annexes A and C to the Convention.
- (9) There is no production of PCN in the Union but it may be produced unintentionally, most significantly via combustion (primarily waste incineration). Such activities are covered under Directive 2010/75/EU of the European Parliament and of the Council<sup>20</sup>, and require the application of certain emission management measures.
- (10) The placing on the market and use of PCN is prohibited in the Union pursuant to Regulation (EC) No 850/2004, as amended by Commission Regulation (EU) No 519/2012<sup>21</sup>. Since PCN is capable of long-range environmental transport, a global phase-out of the use of this substance would be more beneficial to the EU citizen than the prohibition under Regulation (EC) No 850/2004 in the Union.
- (11) Following a nomination of hexachlorobutadiene (HCBd) received from the Union in 2011, POPRC has found that HCBd meets the criteria of the Convention for a listing in Annexes A and C. At its seventh meeting, the COP is expected to decide on the inclusion of HCBd in Annexes A and C to the Convention.
- (12) The production of HCBd has ceased in the Union but it may be produced unintentionally in some industrial activities. Such activities are covered under Directive 2010/75/EU and require the application of certain emission management measures.

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<sup>17</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p.1).

<sup>18</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p.1).

<sup>19</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.06.2012, p. 1).

<sup>20</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>21</sup> Commission Regulation (EU) No 519/2012 of 19 June 2012 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 159, 20.06.2012, p.1).

- (13) The placing on the market and use of HCBd is prohibited in the Union pursuant to Regulation (EC) No 850/2004, as amended by Commission Regulation (EU) No 519/2012. Since HCBd is capable of long-range environmental transport, a global phase-out of the use of this substance would be more beneficial to the EU citizen than the prohibition under Regulation (EC) No 850/2004 in the Union.
- (14) Perfluorooctane sulfonic acid and its derivatives (PFOS) are already listed in Annex A to the Convention with a number of specific exemptions. Following a review of those exemptions, POPRC encourages parties to stop using PFOS in carpets, leather and apparel, textiles and upholstery, coating and coating additives and insecticides for the control of red imported fire ants and termites. POPRC also encourages Parties to restrict the use of PFOS in hard metal plating, which is allowed as a 'specific exemption', by only keeping the use in hard metal plating only in closed-loop systems, which is allowed as an 'acceptable purpose' under the Convention. Moreover, POPRC encourages parties to stop using PFOS in insect baits for control of leaf cutting ants from *Atta* spp. and *Acromyrmex* spp., which is currently allowed as an 'acceptable purpose'.
- (15) The Union should support the deletion of the 'specific exemptions' and 'acceptable purposes' for PFOS and its derivatives in line with the proposal made by POPRC, including the exemption for use as wetting agents in controlled electroplating systems, which has been implemented in the Union by Regulation (EC) No 850/2004 as amended by Regulation (EU) No 757/2010<sup>22</sup> with the expiry date of 26 August 2015,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken by the Union at the seventh Conference of the Parties to the Stockholm Convention shall be, in line with the recommendations of the Persistent Organic Pollutants Review Committee<sup>23</sup>, to support:

- the listing of pentachlorophenol (PCP)<sup>24</sup> in Annex A to the Convention. If required, the Union can accept a 'specific exemption' for the production and use of PCP for utility poles and cross-arms;
- the listing of polychlorinated naphthalenes (PCN)<sup>25</sup> in Annexes A and C to the Convention without exemption;
- the listing of hexachlorobutadiene (HCBd) in Annexes A and C to the Convention without exemption;
- the deletion of the following exemptions and acceptable purposes from the entry on perfluorooctane sulfonic acid (PFOS) and its derivatives in Annex B to the Convention: carpets; leather and apparel; textiles and upholstery; coating and coating additives; insecticides for the control of red imported fire ants and

<sup>22</sup> Commission Regulation (EU) No 757/2010, OJ L 223/29 of 25. 8. 2010 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annexes I and III

<sup>23</sup> Decision POPRC-10/1, POPRC-9/1, POPRC-9/2,

<sup>24</sup> Pentachlorophenol, its salts and esters.

<sup>25</sup> dichlorinated naphthalenes, trichlorinated naphthalenes, tetrachlorinated naphthalenes, pentachlorinated naphthalenes, hexachlorinated naphthalenes, heptachlorinated naphthalenes and octachlorinated naphthalene, individually or as components of chlorinated naphthalenes.

termites; and insect bait for the control of leaf cutting ants from *Atta* spp. and *Acromyrmex* spp.;

- the deletion of the specific exemption for PFOS in metal plating, save for hard metal plating only in closed-loop systems, listed as an 'acceptable purpose' in the Convention.

Refinement of this position, in light of developments at the seventh meeting of the Conference of the Parties to the Stockholm Convention, may be agreed to by the representatives of the Union in the meeting, following coordination on the spot, without further decision of the Council.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*