EUROPEAN
COMMISSION

Brussels, 6.2.2019
COM(2019) 52 final

2019/0025 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the ninth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants as regards the proposals for amendments of Annexes A and B

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the Conference of the Parties to the Stockholm Convention in connection with the envisaged adoption of decisions to amend Annexes A and B by listing further chemicals and amending existing entries.

2. CONTEXT OF THE PROPOSAL

2.1. The Stockholm Convention

The Stockholm Convention on Persistent Organic Pollutants ('the Convention') aims to protect human health and the environment from persistent organic pollutants (POPs). The Convention creates legally binding obligations for Parties to take measures in order to eliminate or restrict the production and use, and the import and export of POPs. Parties are also obliged to take measures to reduce or eliminate releases from unintentional production of POPs and releases from stockpiles and waste.

The Agreement entered into force on 24 February 2004.

The European Union and 27 Member States are parties to the Convention[1].

2.2. The Conference of the Parties to the Stockholm Convention

Established pursuant to Article 19 of the Convention, the Conference of the Parties is the governing body of the Stockholm Convention. This body normally meets every two years to monitor the implementation of the Convention. It also reviews chemicals brought forward for its consideration by the POPs Review Committee.

In accordance with Article 23 of the Convention, each party has one vote. However, regional economic integration organisations such as the EU exercise their right to vote with a number of votes equal to the number of their Member States that are parties to the Convention.

2.3. The envisaged act of the Conference of the Parties

At the ninth ordinary meeting, which takes place from 29 April to 10 May 2019, the Conference of the Parties will consider the adoption of decisions to list further chemicals or to modify existing entries in Annexes A, B and/or C to the Convention.

The purpose of the envisaged acts is to list further chemicals or to amend existing entries in Annexes A, B and/or C to the Convention. The listing in Annexes A, B and/or C has the effect that the chemicals will be subject to measures aiming at eliminating or restricting their production and use, including the reduction or elimination of unintentional releases. The amendment of existing entries aims at reducing the number of exemptions from control measures.

The envisaged acts will become binding on the parties in accordance with Article 22(4) of the Convention, which provides: 'The proposal, adoption and entry into force of amendments to Annex A, B or C shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to this Convention, except that an amendment to Annex A, B or C shall not enter into force with respect to any Party that has made a declaration with respect to amendment to those Annexes in accordance with paragraph 4 of Article 25, in

[1] OJ L 209, 31.7.2006, p. 1.

which case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment.'

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Commission is proposing to the Council a decision to support, on behalf of the Union, the decisions to amend Annexes A and B to the Convention at the ninth meeting of the Conference of the Parties. Those decisions will add further chemicals to Annex A, making them subject to the obligations under the Convention, in particular the reduction or elimination of releases from intentional production and use. In addition, the Conference of the Parties is expected to adopt a decision that will remove or amend certain exemptions for the use of a chemical already listed in Annex B to the Convention.

The decisions that are presented to the Conference of the Parties for adoption are based on recommendations from the Persistent Organic Pollutants Review Committee (POP-RC), a subsidiary body under the authority of the Conference of the Parties. Chemicals recommended by the POP-RC for listing in Annex A were found to meet the criteria of Annex D to the Convention. Recommendations by the POP-RC to remove or amend exemptions granted for the use of chemicals listed in the Convention are based on an assessment of available alternatives.

As a leader in environmental policy-making, it is crucial for the Union to reaffirm its global commitment to promote better implementation of multilateral environmental agreements and standards. This includes the support and implementation of the recommendations adopted by scientific subsidiary bodies of those agreements and the adherence to the criteria set out in the agreements on which such recommendations are based.

In addition, this initiative is in line with the Juncker priority to become a stronger global actor, with the sustainable development goals, in particular good health (3) and responsible consumption and production (12), and with the 7th Environment Action Programme.

The Union should therefore support the proposed decisions to list dicofol and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Annex A. These chemicals are already subject to restrictions under Union law that are similar to those under the Convention. The use of dicofol has been prohibited in the Union by Commission Regulation (EC) No 2032/2003[2] and Commission Decision 2008/764/EC[3]. The use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds has been restricted by Commission Regulation (EU) 2017/1000[4].

Decision POPRC-14/2 of the POP-RC recommends the listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds with certain specific exemptions. That

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2 Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 (OJ L 307, 24.11.2003, p.1).

3 Commission Decision 2008/764/EC of 30 September 2008 concerning the non-inclusion of dicofol in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 262, 1.10.2008, p. 40).

4 Commission Regulation (EU) 2017/1000 of 13 June 2017 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards perfluorooctanoic acid (PFOA), its salts and PFOA-related substances (OJ L 150, 14.6.2017, p. 14).

recommendation is based on the review of information submitted by Parties and stakeholders, including information originating from the Union, and reflects the need for continued use of PFOA for certain specific uses. Some of the specific exemptions would be needed by the Union, as demonstrated by Commission Regulation (EU) 2017/1000, which includes provisions allowing the continued use of PFOA for certain specific uses in the Union.

The Union should also support the removal or amendment of acceptable purposes and specific exemptions for the use of perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF) in Annex B. All acceptable purposes and specific exemptions that are recommended for deletion are no longer used in the Union.

The position to be taken on the Union's behalf at the Conference of the Parties needs to be established, since the amendments of Annexes A and B will be legally binding on the Union and will have to be reflected in Regulation (EC) No 850/2004, which implements the Stockholm Convention in the Union.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[5].

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Stockholm Convention on Persistent Organic Pollutants.

The act that the Conference of the Parties is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 22(4) of the Stockholm Convention and will have to be reflected in 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[6]. This is because Article 14(1) of that Regulation requires the amendment of its Annexes I, II and III whenever a substance is listed in the Convention.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

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5 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

6 OJ L 158, 30.4.2004, p. 7.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the area of 'environment'.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1), in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Stockholm Convention on Persistent Organic Pollutants ('the Convention') entered into force on 17 May 2004 and was concluded on behalf of the Union by Council Decision 2006/507/EC[7].

(2) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 implements the Stockholm Convention in the Union[8].

(3) Pursuant to Article 8 of the Convention, the Conference of the Parties shall decide whether to list a chemical, and specify its related control measures, in Annexes A, B and/or C.

(4) The ninth meeting of the Conference of the Parties to the Stockholm Convention is expected to adopt decisions to list further chemicals in Annex A and to modify an existing entry in Annex B.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the decisions will be binding on the Union.

(6) In order to protect human health and the environment from further releases of dicofol and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, it is necessary to reduce or eliminate the production and use of those chemicals at global level and support their listing in the Convention. In addition, it is necessary to further reduce or eliminate the use of perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF) by deleting or amending the acceptable purposes and specific exemptions in Annex B,

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7 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).

8 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 (OJ L 158, 30.4.2004, p. 7).

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union at the ninth meeting of the Conference of the Parties to the Stockholm Convention shall be, in accordance with the relevant recommendations of the Persistent Organic Pollutants Review Committee, to support the:

   – listing of dicofol in Annex A to the Convention without specific exemptions;

   – listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Annex A with specific exemptions for manufacture of semiconductors or related electronic devices, photographic coatings applied to films, textiles for oil and water repellency for the protection of workers from dangerous liquids that comprise risks to their health and safety, invasive and implantable medical devices, fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires;

   – deletion of the following 'acceptable purposes' from the entry on perfluorooctane sulfonic acid (PFOS) and its derivatives in Annex B to the Convention: photo imaging, aviation hydraulic fluids, certain medical devices (such as ethylene tetrafluoroethylene copolymer (ETFE) layers and radio-opaque ETFE production, in vitro diagnostic medical devices, and CCD colour filters), photo-resist and anti-reflective coatings for semi-conductors, etching agent for compound semi-conductors and ceramic filters;

   – deletion of the following 'specific exemptions' from the entry on perfluorooctane sulfonic acid (PFOS) and its derivatives in Annex B to the Convention: photo masks in the semiconductor and liquid crystal display (LCD) industries, metal plating (hard metal plating) and metal plating (decorative metal plating), electric and electronic parts for some colour printers and colour copy machines, insecticides for control of red imported fire ants and termits, chemically driven oil production;

   – amendment of the 'acceptable purpose' for PFOS and its derivatives for production and use of fire-fighting foam to a 'specific exemption' for the use of fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires;

   – amendment of the 'acceptable purpose' for PFOS and its derivatives for use in insect baits for control of leaf-cutting ants from *Atta* spp. and *Acromyrmex* spp. by including sulfluramid and specifying that the 'acceptable purpose' is for agricultural use only.

2. Refinement of this position, in light of the developments at the ninth meeting of the Conference of the Parties to the Stockholm Convention, may be agreed by representatives of the Union, in consultation with the Member States, through coordination on the spot without further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President