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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the twelfth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants as regards the requests for extension of specific exemptions and the proposals for amendment of Annex A to that Convention

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 twelfth meeting of the Conference of the Parties (COP) to the Stockholm Convention on Persistent Organic Pollutants in connection with the envisaged adoption of decisions to amend Annex A by adding chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight (medium-chain chlorinated paraffins, MCCP), chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds.

MCCP are used as flame retardants and plasticizers in plastic and as additives in metal-working fluids. The European Chemicals Agency published opinions of its scientific committees on a restriction dossier submitted under REACH. Both committees supported a ban but had diverging views whether to grant a time-limited exemption for use in metalworking fluids. Such exemption for metal working fluids is contained in the recommendation of the POPs Review Committee (POPRC) to the COP. It seems that the EU needs additional exemptions and extended expiry dates for some uses in defence and aerospace applications (coatings, lubricants, and ammunition and its packaging).

Chlorpyrifos is widely used worldwide as an insecticide in agriculture and as a biocide to control non-agricultural pests. In the European Union, its use as active substance in plant protection products and in biocidal products is prohibited.

Long-chain perfluorocarboxylic acids, their salts and related compounds in the EU mainly occur as unavoidable byproducts during the manufacture of per- and polyfluorinated substances (PFAS). Outside of the EU, they are used, or may have been used, in a range of applications, including: industrial uses; electronic articles, and medical and laboratory devices; photo-imaging; inks; food contact materials; paints, coatings and varnishes (including those applied to building and construction materials); fire-fighting foams; textiles and apparel; personal care products; cleaning and washing agents; ski waxes; and in the automotive industry. The chemicals are already restricted under REACH in the EU with a number of exemptions that are amongst the specific exemptions recommended by the POPRC or can be covered by setting an Unintentional Trace Contaminant level in the EU.

In addition, this proposal concerns the decision establishing the position to be taken on the Union's behalf in the Conference of the Parties to the Stockholm Convention in connection with the proposal to amend the entry on UV-328 in Annex A to the Convention submitted by Ethiopia by adding a specific exemption for aviation.

Furthermore, this proposal concerns the decision establishing the position to be taken on the Union's behalf in connection with the envisaged adoption of a decision to extend specific exemptions for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride in fire-fighting foam for liquid fuel vapor suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems, based on requests submitted by the Republic of Korea.

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 entered into force on 17 May 2004. The European Union is a party to the Agreement[1]. The Convention provides a framework, based on the precautionary principle, for elimination of production, use, import and export of POPs, their safe handling and disposal and elimination or reduction of releases of certain unintentionally produced POPs.

2.2. The Conference of the Parties

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 Persistent Organic Pollutants Review Committee (POPRC).

In accordance with Article 8(1) of the Convention, Parties submitted proposals to the Secretariat for listing of chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A to the Convention, which was reviewed by the POPRC following Article 8(3) and (4). The POPRC recommended to the Conference of the Parties the listing of chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A with specific exemptions. The procedure for adoption of amendments to Annexes is governed by Article 22 of the Convention.

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 acts of the Conference of the Parties

At the twelfth ordinary meeting, the Conference of the Parties will consider the adoption of decisions to list chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A (elimination), Annex B (restriction) and/or Annex C (unintentional production) to the Convention.

The purpose of the decisions is the listing in Annexes A, B and/or C, which 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 releases of unintentionally produced POPs.

In addition, the Conference of the Parties will consider a proposal submitted by Ethiopia to amend Annex A to the Convention by adding a specific exemption for certain uses of UV-328 in civilian and military aircraft, including in relevant spare parts. UV-328 had been listed in Annex A to the Stockholm Convention by Decision SC-11/11 without these specific exemptions, since the need for such specific exemptions was not known at that time. Recently, the need for such exemptions has been identified by industry stakeholders and communicated to some Parties.

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*

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

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 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.'

Furthermore, the Conference of the Parties will consider requests submitted by the Republic of Korea to extend the specific exemptions for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride in fire-fighting foam for liquid fuel vapor suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems. The Conference of the Parties will be required to decide on an extension of the expiry date of these specific exemptions for a period of up to five years in accordance with Article 4(7) of the Convention.

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

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants should be to support the listing of chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight(medium-chain chlorinated paraffins, MCCP), chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A in line with the respective recommendations of the POPRC, except in relation to MCCP since it seems that the Union needs additional specific exemptions for use in certain defence and aerospace applications (coatings, lubricants, and ammunition and its packaging) and extended expiry dates for certain uses in defence and aerospace applications. These needs have been communicated by stakeholders from the defence and aerospace sectors and are based on information on current use of MCCP.

In accordance with Article 8(1) of the Convention, Parties submitted proposals to the Secretariat for listing of MCCP, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A to the Convention, which was reviewed by the POPRC following Article 8(3) and (4). The POPRC examined the proposals by applying the screening criteria in accordance with Annex D to the Convention and concluded that the criteria are fulfilled. After having evaluated the risk profiles for MCCP, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds, and having decided that those substances are likely, as a result of their long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the POPRC recommended to the Conference of the Parties to consider the listing of MCCP, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A with specific exemptions.

In order to protect human health and the environment from further releases of MCCP, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds, it is necessary to reduce or eliminate the production and use of those chemicals at global level and to support their listing in the relevant annexes to the Convention. The proposal is coherent with and complements Regulation (EU) 2019/1021, which implements the Stockholm Convention in the Union. It is fully in line with the objective to protect human health and the environment from POPs.

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention as regards the proposal submitted by Ethiopia to amend Annex A to the Convention by adding a specific exemption for certain uses of UV-328 in civilian and military aircraft including in relevant spare parts should be to support the addition of those specific exemptions since the identification of alternatives requires some time and the lifetime of the parts where UV-328 is used is rather long in these applications, subject to the availability of specific information justifying the need for these exemptions. If such specific exemptions are granted, they should be as short as possible to ensure an as fast as possible phase-out of UV-328 in these applications.

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention as regards the request submitted by the Republic of Korea to extend the expiry date of certain specific exemptions for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride should be to support the requests since the Republic of Korea needs more time to completely phase-out the respective uses, including by identifying alternatives.

As regards chlorpyrifos, the proposal is coherent with the general approach of Regulation (EC) No 1107/2009 and Regulation (EU) No 528/2012 vis-à-vis PBT substances since both provide for criteria not allowing, in principle, the placing on the market and use of active substances that are PBT. Regarding MCCP and long-chain perfluorocarboxylic acids, their salts and related compounds, a Common Understanding Paper[2] examines the relationship between the Stockholm Convention, Regulation (EU) 2019/1021 and Regulation (EC) No 1907/2006 with regards to restrictions and authorisation requirements, to ensure coherence.

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*'[3].

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 acts, which the Conference of the Parties is called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 22 of the Stockholm Convention and will need to be implemented in Regulation (EU) 2019/1021.

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2 http://ec.europa.eu/growth/sectors/chemicals/reach/special-cases_en

3 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.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

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

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 act relate to the environment.

Therefore, the substantive legal basis of the proposed decision is Article 192 of the 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') was concluded by the Union by Council Decision 2006/507/EC[4] and entered into force on 17 May 2004.

(2) Pursuant to Article 8 of the Convention, the Conference of the Parties to the Convention may list chemicals in Annexes A, B and/or C to the Convention and specify control measures related to such chemicals.

(3) At its twelfth meeting, the Conference of the Parties to the Convention is expected to adopt decisions to list further chemicals in Annex A to the Convention.

(4) 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.

(5) In order to protect human health and the environment from further releases of chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight, chlorpyrifos and long-chain perfluorocarboxylic acids, their salts and related compounds, it is necessary to reduce or eliminate the production and use of those chemicals at global level and to support their listing in the relevant annexes to the Convention.

(6) Since the Persistent Organic Pollutants (POPs) Review Committee identified the need for certain specific exemptions for all three chemicals to allow for some time to phase-out their use, including by identifying alternatives, certain time-limited specific exemptions should be granted, some of which are needed by the Union.

(7) The scope of the specific exemptions for chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight recommended by the POPs Review Committee does not cover all uses that are needed by the Union before completing the transition to alternatives and therefore the Union should request the addition of specific exemptions for use in

[4] 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).

certain defence and aerospace applications (coatings, lubricants, and ammunition and its packaging) and, where needed, longer time limits to allow identification of alternatives and substitution in these highly regulated sectors.

(8) In order to allow for a reasonable time to identify alternatives and to use certain spare parts in the aviation sector, it is necessary to allow the continued use of UV-328 in civilian and military aircraft including in relevant spare parts, and thus to support the proposal from Ethiopia to add the respective specific exemption to the entry on UV-328 in Annex A to the Convention.

(9) In order to allow the Republic of Korea more time to identify alternatives for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride in fire-fighting foam for liquid fuel vapor suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems, it is appropriate to accept the request submitted by the Republic of Korea to extend the expiry date of these specific exemptions for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and any subsequent Conference of the Parties where the listing of the chemicals mentioned in points (a), (b) and (c) is on the agenda shall be the following, taking due account of the relevant recommendations of the Persistent Organic Pollutants Review Committee (POPRC):

(a) to support the listing of chlorinated paraffins with carbon chain lengths in the range C14–17 and chlorination levels at or exceeding 45 per cent chlorine by weight in Annex A, with the specific exemptions recommended by the POPRC, but with the possibility to request additional specific exemptions for use in certain defence and aerospace applications (coatings, lubricants, and ammunition and its packaging) and extended expiry dates for some exemptions for aerospace and defence applications until 2041, and for spare parts until 2046;

(b) to support the listing of chlorpyrifos in Annex A, with the specific exemptions recommended by the POPRC;

(c) to support the listing of long-chain perfluorocarboxylic acids, their salts and related compounds in Annex A, with the specific exemptions recommended by the POPRC.

Article 2

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and any subsequent Conference of the Parties where the proposal from Ethiopia is on the agenda shall be to support the proposal submitted by Ethiopia to amend Annex A to the Convention by adding a specific exemption for certain uses of UV-328 in civilian and military aircraft including in relevant spare parts.

Article 3

The position to be taken on the Union's behalf at the twelfth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and any subsequent Conference of the Parties where the request of the Republic of Korea is on the agenda shall be to accept the request submitted by the Republic of Korea to extend the expiry date of the specific exemptions for the use of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride in fire-fighting foam for liquid fuel vapor suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems.

Article 4

Refinements of the position referred to in Article 1, in light of the developments at the twelfth meeting of the Conference of the Parties to the Convention and any subsequent Conference of the Parties where the point is on the agenda may be agreed upon by representatives of the Union, in consultation with the Member States, during on-the-spot coordination meetings without a further decision of the Council.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President