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2021/0093 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the tenth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants as regards the proposal for amendment of Annex A

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Stockholm Convention on Persistent Organic Pollutants (the Convention) entered into force on 17 May 2004. It was approved by Council Decision of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants (2006/507/EC[1]) and entered into force for the European Community on 14 February 2005. The aim of the Convention is to protect human health and the environment from persistent organic pollutants (POPs). 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.

Regulation (EU) 2019/1021 of the European Parliament and of the Council[2] implements in Union law the commitments set out in the Convention and in the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (the Protocol), approved by Council Decision 259/2004/EC[3].

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, a Party submitted a proposal to the Secretariat for listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-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 perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A without 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.

At the tenth ordinary meeting, the Conference of the Parties will consider the adoption of a decision to list perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A (elimination), Annex B (restriction) and/or Annex C (unintentional production) to the Convention.

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1 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).

2 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

3 Council Decision (2004/259/EC) of 19 February 2004 concerning the conclusion, on behalf of the European Community, of the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (OJ L 81, 19.3.2004, p. 35).

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 releases of unintentionally produced POPs.

The envisaged act 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 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.'

Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds are not intentionally used in the European Union, but the chemicals may be present as an impurity in fluorine-based fire-fighting foams and in perfluorooctane sulfonic acid (PFOS). Concerning the presence of PFHxS in PFOS, it should be noted that PFOS is listed in Annex B to the Stockholm Convention and in Annex I to Regulation (EU) 2019/1021, which prohibits the use of PFOS in the Union with the exception of one remaining use as mist-suppressant in hard-chromium plating until 2025. That use of PFOS has already been phased out in almost all Member States.

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 a decision to amend Annex A by listing perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds. If the Conference of the Parties to the Stockholm Convention decided to list PFHxS in Annex A, Parties to the Convention will be required to take the necessary measures to eliminate or restrict the use of PFHxS in their territory, in line with their obligations under the Convention. In order to implement the decision in the Union, the Commission will propose a delegated act to amend Annex I to the POPs Regulation to include perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds. Production and use of these substances will be forbidden in the Union.

- **Consistency with existing policy provisions in the policy area**

The proposal is coherent with and complements the implementation of 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 persistent organic pollutants.

- **Consistency with other Union policies**

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. A Common Understanding Paper[4] 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] http://ec.europa.eu/growth/sectors/chemicals/reach/special-cases_en

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The procedural legal basis for the proposed Council Decision is Article 218(9) TFEU, which is the appropriate basis for an act defining the position of the European Union in relation to an international agreement, in this case the Stockholm Convention.

The substantive legal basis is Article 192 of the TFEU, paragraph 1, given that the measures agreed under the Stockholm Convention predominantly pursue an environmental objective (i.e. the elimination of persistent organic pollutants).

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

• Subsidiarity (for non-exclusive competence)

Persistent organic pollutants are of global concern and the Stockholm Convention is implemented in the Union by Regulation (EU) 2019/1021. Since the Union is a Party to the Convention, it is appropriate that the Union participates in the decision-making at the Conference of the Parties.

• Proportionality

Persistent organic pollutants are of global concern and the Stockholm Convention aims at eliminating the production and use of those chemicals. The listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A has been recommended by the Persistent Organic Pollutants Review Committee of the Convention since the chemical was found to meet the criteria in accordance with Annex D to the Convention. Therefore, it is proportionate to support the listing of that chemical in Annex A to the Convention to ensure that appropriate action is taken at global level.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

The proposal was discussed with the Member States and other stakeholders in the 23rd meeting of the Commission Expert Group: Competent Authorities for Regulation (EU) 2019/1021. In addition, stakeholders were extensively consulted throughout the assessment of the chemical carried out by the Persistent Organic Pollutants Review Committee of the Convention and their comments were addressed.

• Impact assessment

An impact assessment was not carried out, but a socio-economic assessment and an analysis of alternatives have been done in the context of the REACH restriction dossier on perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds[5]. The ECHA opinion concludes that the socio-economic costs from the proposed restriction should be limited and that it is proportionate to severely restrict the manufacturing, placing on the market and use of PFHxS.

[5] https://echa.europa.eu/registry-of-restriction-intentions/-/dislist/details/0b0236e1827f87da

The Persistent Organic Pollutants Review Committee concluded that the chemical is a persistent organic pollutant and recommended the listing without a specific exemption. This recommendation is based on an assessment of the impact of potential management measures taking into account socio-economic information.

- **Regulatory fitness and simplification**

The proposal has no impact on commercial activity since the chemical is not in commercial use in the Union and, therefore, does not exempt micro-enterprises and does not include special rules for SMEs. The proposal does not have any impact on sectorial EU competitiveness or on trade since the chemical is not traded between the Union and third countries.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An implementation plan, monitoring, evaluation and reporting are not deemed necessary.

- **Detailed explanation of the specific provisions of the proposal**

The proposal gives the Commission the mandate to support the listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A without specific exemptions at the Conference of the Parties to the Stockholm Convention on behalf of the European Union.

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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[1].

(2) Regulation (EU) 2019/1021 of the European Parliament and of the Council[2] implements the Stockholm Convention in the Union.

(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 tenth meeting of the Conference of the Parties to the Stockholm Convention is expected to adopt a decision to list further chemicals in Annex A.

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

(6) In order to protect human health and the environment from further releases of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-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,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union at the tenth 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

[1] 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).

[2] Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

listing of perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds in Annex A to the Convention without specific exemptions.

Refinement of this position, in light of the developments at the tenth 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