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2021/0026 (NLE)

Proposal for a

# COUNCIL DECISION

**on the submission, on behalf of the European Union, of a proposal for the listing of chlorpyrifos in Annex A to the Stockholm Convention on Persistent Organic Pollutants**

# 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 unintentional 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].

Article 8(1) of the Convention stipulates that any Party may submit a proposal to the Secretariat for listing a chemical in Annexes A, B and/or C to the Convention, which will then be reviewed by the Persistent Organic Pollutants Review Committee (POPRC) following Article 8(3) and (4). The proposal shall contain the information specified in Annex D. Based on the recommendation of the POPRC, the Conference of the Parties decides whether to list a substance in Annex A (elimination), Annex B (restriction) and/or Annex C (unintentional production). The procedure for the adoption of amendments to Annexes is governed by Article 22 of the Convention.

Chlorpyrifos is prohibited to be used as active substance in plant protection products and in biocidal products in the European Union pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council[4] and Regulation (EU) No 528/2012 of the European Parliament and of the Council[5], respectively. In addition, chlorpyrifos is not registered for any other use in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council[6] and, consequently, it is not allowed to be manufactured or placed on the

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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).

4 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).

5 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, 27.6.2012, p. 1).

6 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

market in the Union for such other use in quantities of one tonne or more per year per manufacturer or importer.

According to the available information and data on intrinsic properties of chlorpyrifos, which were assessed against the Annex D criteria of the Convention, it can be concluded that chlorpyrifos is persistent, bio-accumulative and toxic (PBT). In addition, chlorpyrifos is also subject to long-range environmental transport (LRT) and has been found in remote areas such as the Arctic. Given that information regarding the PBT and LRT properties of chlorpyrifos, it is suggested that chlorpyrifos meets the criteria of Annex D to the Convention and therefore should be considered as a POP. The details of the assessment are available in the scientific dossier that will accompany the proposal for listing chlorpyrifos in Annex A to the Stockholm Convention.

Since chlorpyrifos was only recently prohibited to be used as an active substance in plant protection products in the Union, it cannot be excluded that chlorpyrifos is still produced for export. Moreover, it appears that chlorpyrifos is still produced, used and emitted in other countries. Due to the potential for long-range environmental transport of this chemical, 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 and wider international action is necessary.

With a view to the next POPRC meeting in September 2021, it is appropriate that the Commission submits on behalf of the Union a proposal for the listing of chlorpyrifos in Annex A to the Secretariat of the Stockholm Convention. That proposal will be reviewed in accordance with the criteria and procedures under the Convention before a decision on the listing will be taken by the Conference of the Parties.

- **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 substances that are PBT. A Common Understanding Paper[7] 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 coherency.

## 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.

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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).

[7] http://ec.europa.eu/growth/sectors/chemicals/reach/special-cases_en

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).

- **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 nomination of a new chemical is done by the Union.

- **Proportionality**

Persistent organic pollutants are of global concern and the Stockholm Convention aims at eliminating the production and use of those chemicals. Therefore, it is proportionate to propose that chemical 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 22nd meeting of the Competent Authorities for Regulation (EU) 2019/1021 and in addition in a meeting of the PBT expert group of the European Chemicals Agency and the comments received were addressed.

- **Impact assessment**

An impact assessment was not carried out. The nomination of the chemical to the Convention will not have any impact because it does not appear to be used in the EU. In the event that the POPRC concludes that the chemical is a persistent organic pollutant, an assessment of the impact of potential management measures will be done by the POPRC 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 it 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 nominate chlorpyrifos to the Stockholm Convention on behalf of the European Union.

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# COUNCIL DECISION

## on the submission, on behalf of the European Union, of a proposal for the listing of chlorpyrifos in Annex A to the Stockholm Convention on Persistent Organic Pollutants

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) On 14 October 2004, the European Community approved the Stockholm Convention on Persistent Organic Pollutants ('the Convention') by Council Decision 2006/507/EC[8].

(2) As a Party to the Convention, the Union may submit proposals for amendment of the Annexes to the Convention. Annex A to the Convention lists persistent organic pollutants to be eliminated.

(3) According to available scientific information and review reports, and taking due account of the screening criteria set out in Annex D to the Convention, chlorpyrifos exhibits characteristics of a persistent organic pollutant.

(4) Chlorpyrifos is not approved as an active substance pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council[9] and is therefore not allowed to be placed on the market or used in the Union in plant protection products. Chlorpyrifos is also not approved as an active substance pursuant to Regulation (EU) No 528/2012 of the European Parliament and of the Council[10] and is therefore not allowed to be placed on the market or used in the Union in biocidal products. In addition, chlorpyrifos is not registered for any other use in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council[11] and, consequently, it is not allowed to be manufactured or placed on the market in the

[8] 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).

[9] 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).

[10] 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, 27.6.2012, p. 1).

[11] 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).

Union for such other use in quantities of one tonne or more per year per manufacturer or importer.

(5) Although chlorpyrifos has been phased-out in the Union, it appears that it is still used as a pesticide and dispersed in the environment outside the Union. Due to the potential for long-range environmental transport of chlorpyrifos, the measures taken nationally or at Union level are not sufficient to safeguard the high level of protection of the environment and human health and wider international action is necessary.

(6) The Union should therefore submit a proposal to the Secretariat of the Convention for the listing of chlorpyrifos in Annex A to the Convention,

HAS ADOPTED THIS DECISION:

*Article 1*

The Union shall submit a proposal for the listing of chlorpyrifos (CAS No: 2921-88-2, EC No 220-864-4) in Annex A to the Stockholm Convention on Persistent Organic Pollutants ('the Convention').

The Commission shall communicate the proposal on behalf of the Union to the Secretariat of the Convention with all the information required under Annex D to the Convention.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*
*The President*