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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of Regulation (EC) No 850/2004 on persistent organic pollutants in
accordance with Article 12(6) of the Regulation**

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(Text with EEA Relevance)

1. INTRODUCTION

Regulation (EC) 850/2004¹ on persistent organic pollutants (the Regulation) was adopted in April 2004, in order to implement the Stockholm Convention (the Convention) and the POP Protocol under the Convention on Long-Range Transboundary Air Pollution (the Protocol) within the European Union.

The Regulation contains provisions regarding production, placing on the market and use of chemicals, management of stockpiles and wastes and measures to reduce unintentional releases of POPs. Furthermore, Member States must set up emission inventories for unintentionally produced POPs, national implementation plans (NIPs) and monitoring and information exchange mechanisms.

Article 12 of the Regulation requires annual reporting by Member States on the actual production and use of POPs and triennial reporting on the implementation of other provisions of the Regulation (Article 12 reports). The Commission is required to compile the reports and integrate them with the information from the EPER², the E-PRTR³ and the CORINAIR Emission Inventory of EMEP⁴ in a synthesis report.

The first synthesis report was finalised by a contractor on behalf of the Commission in 2009⁵ based on the 2004–2006 triennial reports and the 2006–2008 annual reports. This report discusses the findings of the synthesis report and progress achieved in the implementation of the Community Implementation Plan (CIP)⁶ until the end of 2009. In addition the report recommends further actions to ensure the full implementation of the Regulation.

¹ OJ L 229, 29.6.2004, p. 5

² EPER (European Pollutant Emission Register) established by Commission Decision 2000/479/EC

³ E-PRTR (European Pollutant Release and Transfer Register) established by the Regulation (EC) 166/2006.

⁴ EMEP (Co-operative programme for monitoring and evaluation of the long range transmission of air pollutants in Europe)

⁵ http://ec.europa.eu/environment/pops/index_en.htm. The contractor who wrote this report is responsible for its content.

⁶ SEC (2007) 341

2. CONTROL OF PRODUCTION, PLACING ON THE MARKET AND USE

2.1. Production

No production of intentionally produced POPs has been reported except for Romania producing lindane in 2005 and 2006. This production stopped upon the accession of Romania to the EU and no production has been reported in the EU since 2007. The derogation for DDT production as an intermediate chemical has not been used and is therefore no longer relevant.

2.2. Placing on the market, import and use

Only a few Member States reported placing on the market under the general exemption for POPs used in laboratory-scale research or as a reference standard. The reported amounts vary between several grams to several kilograms per Member States, per year. It is likely that the overall use for this purpose is higher than reported as most Member States carry out laboratory based research.

Substances occurring as unintentional trace contaminants (UTC) in substances, preparations or articles have not been reported. The term UTC is not defined in the Regulation, which may impede uniform enforcement. For example, 1 Member State considered fireworks to be in breach of the provisions only if the concentration of POP exceeded the cut-off value set in Annex IV to the Regulation, which means that the waste related cut-off value was used as a definition of UTC.

Action 1: Commission to clarify term ‘unintentional trace contaminant’.

The Regulation exempts substances occurring as a constituent of articles produced or in use before the date of entry into force of the Regulation. However, immediately upon becoming aware of such articles, Member States shall inform the Commission thereof. The Netherlands identified PCBs in certain hydraulic systems, transformers, switch boxes, and capacitors.

Recommendation 1: Member States to continue identifying articles containing POPs and reporting it to the Commission.

Small amounts of lindane were placed on the market in Austria, Ireland and Germany as an active substance of human pharmaceutical products and veterinary drugs. These uses were phased out during 2007 in order to meet the phase-out deadline set in the Regulation.

Spain imported 7.8 and 12 tonnes of lindane from Romania in 2005 and 2006, respectively. Spain and Finland expressed their consent to import lindane until 31 December 2007 under the Rotterdam Convention. Finland allowed lindane in biocidal products and Spain as topical insecticide for use in public health.

2.3. Infringements

Three cases of infringements were reported. Ireland reported placing on the market of small quantities of lindane in medicinal products at the beginning of 2008. Denmark identified presence of HCB in fireworks in 2008. In 2009, Austria confirmed the presence of HCB in 20% of tested fireworks in quantities of up to 4%. All three Member States took the necessary measures to withdraw the non-compliant products from the market.

Recommendation 2: Member States to intensify compliance controls of products in line with

Regulation (EC) No 765/2008⁷ setting out the requirements for accreditation and market surveillance relating to the marketing of products

2.4. Prevention of the production and use of new chemicals exhibiting characteristics of POPs

Provisions to prevent the production, placing on the market and use of new substances exhibiting POP characteristics were incorporated into the new regulatory framework for chemicals, pesticides and biocides.

Pursuant to REACH, substances which are persistent, bioaccumulative and toxic (PBTs) or very persistent and very bioaccumulative (vPvBs) can be subject to authorisation. For substances manufactured or imported in quantities of 10 tonnes or more, a chemical safety assessment must be performed which includes assessment of PBT and vPvB properties. In quantities higher than 100 tonnes, the registration requires specific tests for PBT assessment.

Pursuant to Regulation (EC) No 1107/2009⁸ concerning the placing of plant protection products on the market, an active substance, safener or synergist can only be approved if it is not a POP, PBT or vPvB substance. A substance must be seen as a candidate for substitution if it meets two of the PBT criteria. The Commission's proposal COM (2009)267 on biocidal products lists PBTs among substances that should be substituted and not be considered low-risk substances.

3. STOCKPILES

Four Member States reported stockpiles of POP pesticides. Spain reported 5 000 tonnes of lindane stored under controlled conditions. Bulgaria, Hungary and Lithuania reported around 15 000 tons of obsolete pesticides with unknown POP content. Export notifications provided by Germany under Regulation (EC) No 689/2008⁹ concerning the export and import of dangerous chemicals and Article 12 reports suggest that Germany has some stocks of lindane.

Ten Member States reported stocks of more than 91 000 tonnes of equipment containing PCBs. The stocks may be greater as some Member States may only report on this issue under Directive 96/59/EC¹⁰ on the disposal of PCBs and PCTs (PCB Directive).

In accordance with the PCB Directive, inventories of equipment with PCB volumes of more than 5 dm³, plans for their disposal and plans for the collection and disposal of smaller equipment were compiled by all Member States. Member States continue in their efforts to eliminate PCBs and equipments contaminated with PCBs, as small equipments must be disposed of as soon as possible and equipment with PCB volumes of more than 5 dm³ must be disposed of no later than 2010.

Action 2: After the expiry of the 2010 deadline, Commission to verify the implementation of this provision and issue a report.

⁷ OJ L 218, 13.8.2008, p. 30

⁸ OJ L 309, 24.11.2009, p. 1

⁹ OJ L 204, 31.7.2008, p. 1

¹⁰ OJ L 243, 24.9.1996, p. 31

Action 3: Commission to clarify reporting obligation as regards PCBs.

4. RELEASE REDUCTION, MINIMISATION, ELIMINATION AND EMISSION INVENTORIES

4.1. Emission inventories (under the Protocol, the Convention and E-PRTR)

The Protocol includes the obligation to maintain emission inventories for PCDD/Fs, PAHs and HCB into air¹¹ and annually report them to the EMEP data centre¹². 24 Member States regularly report their estimates of PCDD/Fs and PAHs emissions, 21 Member States of HCB emissions and 18 Member States voluntarily report estimates of PCBs emissions. The EU total emissions for 2007 are 2.21 kg I-TEQ of PCDD/Fs, 1369 tonnes of PAHs, 657 tonnes of HCB and 2.9 tonnes of PCBs.

Recommendation 3: Member States to report emission data to EMEP regularly and comprehensively.

The Convention follows a more source-based approach than EMEP and includes emissions also to soil and water. The Commission actively contributed to the development of a global standardized toolkit for the identification and quantification of PCDD/Fs releases to help countries establish their release inventories. Some Member States applied this methodology in their action plans.

E-PRTR was established by Regulation (EC) No 166/2006¹³. It contains emission data from approximately 24000 industrial facilities in 65 economic activities for 91 pollutants, including all POPs.

Data from the reference year 2007 and 2008 are publicly available. The 2007 data show, unexpectedly, that releases were reported not only for unintentionally produced POPs but also for intentionally produced POPs, such as aldrin (153 kg), dieldrin (143 kg), endrin (98 kg), heptachlor (2 kg), DDT (3 kg), and hexachlorocyclohexane (263 kg).

Recommendation 4: Member States to investigate the cause of the releases of the banned substances and take appropriate measures.

There are some discrepancies between EMEP and E-PRTR data. The E-PRTR covers only large point sources and reported emissions should not exceed national total emissions reported under EMEP, which include all anthropogenic emissions occurring in the geographical area of the country. Seven Member States have however reported emissions to E-PRTR higher than the national total emissions. Some POPs were reported only to E-PRTR and not to EMEP although the same data could be reported to EMEP.

Recommendation 5: Member States to ensure consistency in and maximise use of emission reporting.

¹¹ following a specific EMEP/CORINAIR guidance document, now updated with the Guidelines for Reporting Emission Data under the Convention on Long-range Transboundary Air Pollution and the joint EMEP/EEA Air Pollutant Emission Inventory Guidebook

¹² <http://www.ceip.at/emission-data-webdab/>

¹³ OJ L 33, 4.2.2006, p. 1

4.2. Emission minimisation

New information related to the prevention and control of the formation and release of POPs into the environment was gathered when revising the Best Available Techniques (BAT) reference documents (BREFs). The revised Cement, Lime and Magnesium Oxide BREF was adopted in the first half of 2010 and contains updated conclusions on BAT to prevent and abate POPs, in particular PCDD/Fs.

Action 4: Commission to finalize the on-going revision of the Iron and Steel BREF and the Non Ferrous Metals BREF.

The impacts of including combustion installations below 50 MW in the scope of a revised Directive 2008/1/EC¹⁴ concerning integrated pollution prevention and control (IPPC Directive) have been studied^{15,16}. Lowering the capacity threshold to 20 MW would affect 3200 installations leading to considerable emission reductions of particulate matter and potentially also POPs. The Commission included these installations in its revision proposal.

The feasibility of applying continuous measurements of PCDD/F and of monitoring of dioxin-like PCBs has been assessed for waste incineration and co-incineration plants¹⁷. Continuous sampling of PCDD/Fs is feasible and is successfully applied in a number of Member States, in particular Belgium. Its mandatory use would improve information about emissions and harmonization of the relevant legislation. The economic impact at the sector level is limited, but could be significant for small plants. The option of setting a date for continuous measurement for PCDD/F releases into air is included in the IPPC revision proposal. The studies on monitoring dioxin-like PCBs were inconclusive.

The Commission has mandated CEN to finalise an analytical standard for measurement of air emissions of dioxin-like PCBs. The field test measurements took place in 2008 and 2009. The standard method is expected in 2011.

In the context of Directive 2009/125/EC on the eco-design requirements for energy-related products, environmental impacts including PCDD/Fs emissions of solid fuel small combustion installations¹⁸ were analysed and ways of improving their environmental performance were recommended.

Action 5: Commission to table an implementing measure to set out minimum eco-design requirements for solid fuel small combustion installations.

The methods and practices to estimate PCDD/Fs emissions from domestic sources, as well as to reduce these emissions were analysed¹⁹. The report also identified obstacles to accurate

¹⁴ OJ L 24, 29.1.2008, p. 8

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http://circa.europa.eu/Public/irc/env/ippc_rev/library?l=/gathering_amendments/final_report/factsheet_combustion/EN_1.0_&a=d

¹⁶ http://circa.europa.eu/Public/irc/env/ippc_rev/library?l=/combustion_20-50/final_report&vm=detailed&sb=Title

¹⁷ http://circa.europa.eu/Public/irc/env/ippc_rev/library?l=/waste_incineration/final_report

¹⁸ <http://www.ecoaircon.eu/>

¹⁹ <http://ec.europa.eu/environment/dioxin/pdf/report09.pdf>

estimation and effective action. The conclusions and recommendations were disseminated to national authorities and decision makers in the form of a brochure²⁰.

5. WASTE MANAGEMENT

The Regulation has been amended four times in relation to waste provisions. The concentration limits in Annex IV and V were established by Regulation (EC) No 1195/2006²¹ and 172/2007²², respectively. Annex V was amended by Regulation (EC) No 323/2007²³ in order to allow pre-treatment operations prior to the permanent storage of wastes containing POPs. Annex IV and V were further amended by Regulation (EC) No 304/2009²⁴ in order to align them with the updated general technical guidelines for management of POP wastes of the Basel Convention leading to the inclusion of operation "R4 Recycling/reclamation of metals and metal compounds" as an acceptable operation in order to destroy or irreversibly transform POPs in waste.

The Regulation allows under certain conditions alternative treatment options than destruction or irreversible transformation of POP waste if it does not exceed the concentration limits of Annex V to the Regulation. In order to facilitate the obligatory submission of the notifications and their justification concerning the use of this derogation, the Commission established a reporting format in Decision 2009/63/EC²⁵.

Two Member States have made use of the derogation clause. In 2008, Germany authorised disposal of 50 tonnes of PCB containing construction and demolition waste at an underground disposal site for hazardous wastes. In 2009, Finland authorised disposal, after a treatment by stabilisation, of 2000 tonnes of soil contaminated with PCDD/Fs at a landfill for hazardous waste.

Denmark, France, the Netherlands and the Slovak Republic indicated in their NIPs that they do not intend to make use of the derogation.

Although only few Member States made use of this derogation, it has to be noted that a relatively short period of time has elapsed since the concentration limits were established and significant amounts of POP stockpiles have still to be disposed of. In addition, further POP substances will be added to the Regulation. It cannot be ruled out that further use of derogations may be needed for these substances. Therefore, no changes to the existing derogation clause are currently foreseen.

6. IMPLEMENTATION PLANS

To date, 24 Member States have ratified the Convention. Ireland, Italy and Malta signed the Convention in May 2001, but have not yet ratified.

Recommendation 6: Member States to finalize ratification process.

²⁰ <http://ec.europa.eu/environment/dioxin/pdf/brochure09.pdf>

²¹ OJ L 217, 8.8.2006, p. 6

²² OJ L 55, 23.2.2007, p. 1

²³ OJ L 85, 27.3.2007, p. 3

²⁴ OJ L 96, 15.4.2009, p. 33

²⁵ OJ L 23, 27.1.2009, p. 30

So far 19 Member States have developed NIPs and provided them to the Convention Secretariat and to the Commission. The 2 years deadline after the Convention entered into force has expired for Portugal and Greece while it is still pending for Estonia, Poland and Hungary.

Public participation in the NIP development was generally assured by means of stakeholder and expert consultations during the process of preparation.

National Action Plans (NAPs) on measures to identify, characterise and minimise releases of unintentionally produced POPs should be prepared as part of the NIPs. All Member States who have completed their NIPs have also made NAPs. In addition, Poland who did not communicate their NIP reported the existence of a NAP.

Identification of emission sources of unintentionally produced POPs is mainly done by checking with the emission categories specified under existing EU legislation (the IPPC Directive, the E-PRTR Regulation, the PCB Directive) or international instruments (EMEP/EEA, and in some cases also the UNEP dioxin toolkit). Several Member States reported on additional activities such as studies to identify new sources of POPs or to identify contaminated sites.

Source characterisations are performed by means of emission measurements or estimation using activity data from statistical offices and emission factors from the EMEP/EEA Guidebook or the UNEP dioxin toolkit.

Measures to minimise releases of POPs are mainly based on achieving compliance with EU legislation. These measures include requirements for environmental permits under the IPPC Directive, identification and destruction of PCB stockpiles under the PCB Directive, control of emissions to water to comply with the Water Framework Directive²⁶ and other water legislation and POP waste destruction in accordance with this Regulation. In addition, there are some measures reported also at national level, such as *e.g.* the introduction of a ban on open burning to minimise emissions, promotional and educational activities on proper combustion of bio-fuels, plans for legal emission requirements on stoves, furnaces and boilers as well as the establishment of legal emission requirements for crematoria.

Recommendation 7: Member States to finalize NIPs including NAPs and consider their updates.

A CIP was developed²⁷ in 2007. It identifies existing measures at EU level related to POPs, assesses their efficiency and sufficiency in meeting the obligations of the Convention, identifies needs for further Union level measures and establishes a plan for implementing further measures.

Out of the 32 actions identified in the CIP, 12 actions are continuous (Actions 1, 7, 9, 11, 23, 25-27, 29-32) and a fixed deadline was set for 20 actions. Of these, 15 actions were finalized while 5 actions (Actions 2, 4, 14, 19 and 22) remain to be done.

Action 6: Commission to continue work on actions with a continuous time line, to finalize the actions not yet finalized and update the CIP as a consequence of technical and legislative

²⁶ OJ L 327, 22.12.2000, p. 1

²⁷ SEC (2007) 341

developments in the field, the listing of 9 new substances in the Convention and findings presented in this report.

7. MONITORING

All Member States except Hungary reported that some environmental monitoring activities of POPs are in place. Substances covered are mainly PCDD/Fs and PCBs, but also POP pesticides or PAHs.

Unfortunately, no time trend analysis, spatial distribution nor baseline determination at EU level and thus no policy effectiveness evaluation could be performed from the data available. The information reported by the Member States for the policy effectiveness evaluation lacks necessary details. The raw data which would be suitable for this purpose are scattered in various databases with different formats. Thus these data can only be analysed with difficulty. Finally, there is a lack of comparability of the data.

Action 7: Commission to consider establishment of a chemical data centre enabling collection, accessibility, sharing and comparability of the chemical monitoring data including data from recently initiated human biomonitoring activities.

8. INFORMATION EXCHANGE

Information exchange between Member States and the Commission is ensured by regular meetings of the Competent Authorities (CAs). 26 Member States nominated their CA. Estonia has not yet done so. A web-based application managed by the Commission is used for sharing information among the CAs and observers to the group. In addition, information exchange is further ensured by meetings of working parties and meetings of CAs established under other legislation. Information exchange with third countries is ensured *i.a.* by participation in international meetings and working groups under the Convention.

Awareness raising, providing information to the public and training activities are consistently reported by Member States. Dedicated websites, brochures, guidance documents, workshops and seminars are typical approaches pursued.

9. TECHNICAL ASSISTANCE

The Commission provided voluntary support to the Secretariat for effectiveness evaluation and the dioxin toolkit. Some Member States reported numerous assistance activities and others were not able to provide support. 17 Member States are donors to the Global Environmental Facility (GEF) which is the Convention's financial mechanism.

The assistance provided includes support for participation at Conferences of the Parties, identification and elimination of stockpiles, waste management, sampling and analytical methods, monitoring and decontamination, development of national implementation plans and legal frameworks, research and capacity building activities.

There is little coordination between the Commission and the Member States on their direct support for the Convention, which could improve the effectiveness of the support and ensure that the Union has a stronger voice in steering future action.

Recommendation 8: Commission and Member States to coordinate their voluntary support to the Convention Secretariat. Those Member States that are not yet GEF donors to consider becoming contributors.

10. REPORTING

The reporting format for both annual and triennial Article 12 reporting was established by Commission Decision 2007/639/EC²⁸. 23 Member States provided their first triennial report which was mainly for the period 2004–2006.

14 annual reports were received for 2006, 21 reports for 2007 and 21 reports for 2008. Estonia, Greece, Malta and Portugal have not submitted any report yet.

Recommendation 9: Member States to report regularly to the Commission.

The adopted reporting format fulfilled its role to facilitate the first reporting. A major part of the format is also relevant for subsequent reports, but certain parts of the triennial report are only relevant for the first reporting.

Action 8: Commission to review the current reporting format with a view to increasing its clarity and usability of the (monitoring) data and making it compatible with Shared Environmental Information System²⁹ principles.

11. PENALTIES

The majority of Member States have laid down rules on penalties related to Articles 3, 5, and 7 of the Regulation. Only Hungary reported no strict rules on penalties for infringements and Spain, Ireland and Sweden reported that rules on penalties have been drafted but are not in force yet.

In general penalties are graded depending on the type of violation and the offending body. They include fines (rating from a few Euros up to 10 millions Euros) and imprisonment (ranging from a few days up to 5 years).

Enforcement is ensured by regular inspections in most Member States. The intensity of enforcement cannot be assessed. Up to now, three cases of infringements have been reported, see section 2.2. In all cases measures were taken to withdraw the product from the market, but no information is available as to whether penalties were applied.

Action 9: Commission to clarify situation on penalties and take action accordingly.

12. CONCLUSIONS

The requirements of the Regulation are largely fulfilled in relation to intentionally produced POPs. Production, placing on the market and use have been phased-out; stock inventories

²⁸ OJ L 258, 4.10.2007, p. 39

²⁹ COM (2008) 46

have been prepared and are being updated. Member States continue their efforts to eliminate the stockpiles particularly in view of the end of 2010 deadline for PCB equipments.

Emission inventories for unintentionally produced POPs have been established, but they suffer from data gaps and inconsistencies. Data gaps include insufficient coverage of sources, environmental compartments, number of POP substances and changes in completeness of estimations and reporting methodology. Inconsistencies are observed between E-PRTR and EMEP emission estimates.

Emission data deficits are especially critical for water and land compartments and for HCB and PCB emissions, but all evaluations would benefit from improved reporting. This includes the need to up-date, further specify and review the use of emissions factors. This will be addressed by ongoing review projects for the EMEP/EEA Guidebook and the UNEP dioxin toolkit. A systematic information exchange of Member State authorities on applied methodologies would be an additional tool to further improve the reliability of estimates.

Elaboration of NIPs pursuant to the Convention requirements and the related establishment of NAPs for unintentionally released POPs are not yet completed or have not even started in a number of Member States. 19 Member States have developed NIPs and related NAPs and provided them to the Convention Secretariat.

NAPs generally contain descriptions of measures to identify, characterise and minimise releases of unintentionally produced POPs. The expansion of the inventories from PCDD/PCDFs and PAHs to PCBs and HCB is a priority. Measures to implement the IPPC Directive, BAT and other EU emission limits are still ongoing in many Member States. Domestic combustion has become a new priority issue (caused by efforts to replace use of fossil fuels) followed by elimination of stocks and environmental burdens, as well as open burning of waste.

Waste provisions are well implemented. Concentration thresholds for upper and lower POP content have been established. Changes to the existing derogation clause providing an option to deal with waste in exceptional circumstances as alternatives to destruction or irreversibly transformation of the POPs content are not envisaged.

POP environmental monitoring is established in most Member States. However, there is no EU level database enabling evaluation of time trends in the environment, nor is the information provided by Member States sufficient to evaluate policy effectiveness at EU level. A more comprehensive and detailed compilation of comparable monitoring data at EU level and establishment of a common information system is needed.

Compliance with the reporting obligation is not satisfactory. A significant number of Member States has not respected their reporting obligations. The quality of information provided must improve. The reporting format would benefit from a revision to increase clarity and compatibility with SEIS principles.

Greater coordination of EU assistance would improve its effectiveness and visibility.

The Commission will continue to work with Member States to improve implementation with the aim to protect human health and the environment from POPs.

Abbreviations and units used

BAT	Best Available Techniques
BREF	Best Available Techniques Reference Document
CAs	Competent Authorities
CEN	European Committee for Standardization
CIP	Community Implementation Plan
CORINAIR	Core Inventory of Air Emissions
DDT	Dichlorodiphenyltrichloroethane
EEA	European Environmental Agency
EMEP	European Monitoring and Evaluation Programme
EPER	European Pollutant Emission Register
E-PRTR	European Pollutant Release and Transfer Register
GEF	Global Environmental Facility
HCB	Hexachlorobenzene
IPPC	Integrated Pollution Prevention and Control
I-TEQ	International Toxic Equivalent
MW	Mega Watts
NAP	National Action Plan
NIP	National Implementation Plan
PAHs	Polycyclic Aromatic Hydrocarbons
PBT	Persistent, Bioaccumulative, Toxic
PCBs	Polychlorinated Biphenyls
PCDD/Fs	Polychlorinated Dibenzo- Dioxins and Furans
PCTs	Polychlorinated Terphenyls
POPs	Persistent Organic Pollutants
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
SEIS	Shared Environmental Information System
UNEP	United Nation Environmental Programme
UTC	Unintentional Trace Contaminants
vPvB	very Persistent, very Bioaccumulative