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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

of [...]

establishing the position to be adopted on behalf of the European Union at the Fifth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants (POPs) with regard to the proposal for an amendment of Annex A

EXPLANATORY MEMORANDUM

The Stockholm Convention on Persistent Organic Pollutants (POPs)¹ was adopted in May 2001, upon completion of three years of negotiations conducted in the framework of the United Nations Environment Programme (UNEP). The European Community and its Member States² are parties to the Convention³ and the provisions of the Convention have been implemented in EU law by Regulation (EC) 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organics pollutants and amending Directive 79/117/EEC⁴ (hereafter called the POPs Regulation).

The overall objective of the Stockholm Convention is to protect human health and the environment from POPs. Specific reference is made to a precautionary approach as set out in Principle 15 of the 1992 Rio Declaration on Environment and Development. The principle is made operational in Article 8, which lays down the rules for including additional chemicals in the Annexes of the Convention.

The nine intentionally produced chemicals originally listed in Annex A of the Stockholm Convention (aldrin, chlordane, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, toxaphene and PCBs) are subject to a ban on production and use except where there are generic or specific exemptions. In addition, the production and use of DDT, a pesticide still used in many developing countries for malaria and other disease vector control, is severely restricted, as set out in Annex B of the Stockholm Convention. Finally three substances (PCDD/PCDF, HCB and PCB) which may be formed and released unintentionally are listed in Annex C. These original substances were supplemented with additional nine new substances (commercial octa-BDE, commercial penta-BDE, PFOS, chlordecone, hexabromobiphenyl, alpha hexachlorocyclohexane, beta hexachlorocyclohexane, lindane and Pentachlorobenzene) added to the Annexes by decisions made by the fourth Conference of the Parties in May 2009.

At the fifth Conference of the Parties in April 2011, a decision should be taken to add to the Annex A of the Stockholm Convention a new substance (endosulfan) nominated in 2007 by the European Union.

1. ADDING NEW POP SUBSTANCES TO THE ANNEXES OF THE CONVENTION

According to Art 8 of the Convention, parties may submit proposals to the Secretariat for listing a chemical in Annexes A, B and/or C. The Secretariat shall verify whether the proposal contains the necessary information. If the proposal is satisfactory it shall be forwarded to the Persistent Organic Pollutants Review Committee (POP RC). The POP RC shall examine the proposal taking into account all information provided. Where the POP RC decides that the criteria have been fulfilled it shall review the proposal and prepare a draft risk profile.

If this review concludes that the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal shall proceed and a risk management evaluation that

¹ http://www.pops.int/documents/convtext/convtext_en.pdf

² Three EU Member States have not yet ratified (Ireland, Italy and Malta)

³ OJ L 209, 31.7.2006, p. 1

⁴ OJ L 158, 30.4.2004, p. 7

includes an analysis of possible control measures shall be drawn up. On this basis, the POP RC recommends whether the chemical should be considered by the Conference of Parties (COP) for listing in Annexes A, B and/or C. The final decision is taken by the COP.

2. RULES FOR CHANGES OF THE ANNEXES A, B AND/OR C

According to Art 22 of the Convention, the Annexes A, B and/or C are amended by a decision of the COP and enter into force one year from the date of the communication by the depositary of the adoption of changes to Annexes A, B and/or C, save for those parties who chose to opt out from the amendment to the Annex.

3. THE SUBSTANCE AND EU LAW

Endosulfan has been subject to a decision for non-inclusion in Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market. Any substances that will be listed in Annexes A, B and/or C to the Stockholm Convention⁵ will need to be included in the POPs Regulation in order to ensure that the EU implementation corresponds to the international commitments. In addition to restricting certain substances, the international instruments also contain reporting requirements, which are included in the Regulation as well. Therefore, in order to maintain a manageable overview of how the EU meets its international commitments and to ensure consistent reporting, it would be appropriate to add endosulfan to the appropriate Annex of the Regulation, even if it is already restricted partly by another EU instrument.

4. THE POP RC RECOMMENDATIONS

The POP RC has decided at its fifth meeting in October 2010 to recommend the listing of the technical endosulfan (CAS No: 115-29-7), its related isomers (CAS No: 959-98-8 and CAS No: 33213-65-9) and endosulfan sulfate (CAS No: 1031-07-8) in Annex A of the Convention with specific exemptions and to submit that recommendation to the COP for its consideration at the meeting on 25 – 29 April 2011, in accordance with Article 8 paragraph 9 of the Convention.

The Conference of the Parties may need to decide on possible time-restricted exemptions for certain Parties to allow a gradual phase-in of the elimination requirement for endosulfan, its related isomers and endosulfan sulphate.

5. THE EU POSITION

In view of the above, at the Fifth Conference of the Parties to the Stockholm Convention the European Union should support the adoption of the amendment to the Stockholm Convention by adding technical endosulfan, its related isomers and endosulfan sulfate to annex A.

⁵ The same applies to substances added to Annexes I, II and/or III of the UN-ECE Protocol on POPs

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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 Commission⁶,

Whereas:

- (1) The promotion of measures at international level to deal with global environmental problems is one of the objectives of the European Union's policy on the environment, in accordance with Article 191 of the Treaty.
- (2) The European Union ratified on 16 November 2004 the Stockholm Convention on Persistent Organic Pollutants (hereafter called the Convention) based on the 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 Pollutants⁷.
- (3) The European Union has implemented the obligations from the Convention in European Union law by way of Regulation (EC) No 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organics pollutants and amending Directive 79/117/EEC⁸ (hereafter called the POPs Regulation).
- (4) The European Union places strong emphasis on the need for the Convention to gradually expand its Annexes A, B and/or C with new substances which meet the criteria of being POP substances, taking into account the precautionary principle, with a view to meeting the objective of the Convention and the commitment of all governments made at the Johannesburg Summit in 2002 to minimise the adverse effects of chemicals by 2020.

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 209, 31.7.2006, p. 1

⁸ OJ L 158, 30.4.2004, p. 7

- (5) In accordance with Article 22 of the Convention, amendments to Annexes A, B and C of the Convention are adopted by decision of the Conference of the Parties (COP) and enter into force one year from the date of communication by the depositary of an amendment, save for those parties that have opted out.
- (6) Following a nomination of endosulfan received from the European Union in 2007, the Persistent Organic Pollutants Review Committee established under the Convention has concluded its work on endosulfan. POP RC has found that endosulfan meets the criteria of the Convention. The forthcoming Conference of the Parties to the Convention is expected to decide on the inclusion of technical endosulfan, its related isomers and endosulfan sulfate in Annex A of the Convention. Specific exemptions (time limited exemptions for certain Parties) may be requested and the EU should be in a position to respond to such requests during COP5.
- (7) Endosulfan is subject to Commission Decision of 2 December 2005 concerning the non-inclusion of endosulfan in Annex I to the Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market⁹ and the withdrawal of authorisation for plant protection products containing this active substance¹⁰.
- (8) The amendment to Annex A of the Convention by technical endosulfan, its related isomers and endosulfan sulfate will require amendments to the POPs Regulation. According to Article 14 (1) of the Regulation, when substances are added to the Convention, changes to the Annexes of the Regulation can be made in accordance with the normal committee procedures established in Articles 5 and 7 of Decision 1999/468/EC, having regard to the provisions of Article 8 thereof.
- (9) The amendment to Annex A should be supported,

HAS ADOPTED THIS DECISION:

Sole Article

At the Fifth Conference of the Parties to the Stockholm Convention, the Commission shall support, on behalf of the European Union, the adoption of the amendment to the Stockholm Convention by adding endosulfan to annex A.

Done at Brussels, [...]

*For the Council
The President
[...]*

⁹ OJ L 230, 19.8.1991, p. 1

¹⁰ OJ L 317, 03.12.2005, p. 25