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European Union

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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 March 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 132 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, at the Eighth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants regarding the proposals for amendments of Annexes A and C

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Delegations will find attached document COM(2017) 132 final.

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Brussels, 17.3.2017  
COM(2017) 132 final

2017/0058 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union, at the Eighth  
Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants  
regarding the proposals for amendments of Annexes A and C**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Stockholm Convention on Persistent Organic Pollutants (POPs)<sup>1</sup> was adopted in May 2001 in the framework of the United Nations Environment Programme (UNEP). The European Union and its Member States<sup>2</sup> are parties to the Convention<sup>3</sup> and the provisions of the Convention have been implemented in Union law by Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC<sup>4</sup> (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 the 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 of the Convention, which lays down the rules for including additional chemicals in the Annexes to the Convention.

At the eighth Conference of the Parties (COP8) in April/May 2017, three decisions should be taken to add decabromodiphenyl ether (commercial mixture, c-decaBDE) and short-chain chlorinated paraffins to Annex A (elimination) and hexachlorobutadiene to Annex C (unintentional production). Hexachlorobutadiene is already listed in Annex A and should also be considered for listing in Annex C, based on the recommendation by the Persistent Organic Pollutants Review Committee (POPRC), since there are a number of unintentional releases.

As regards the three substances, the production, placing on the market, use and unintentional emission have already ceased or have been substantially reduced in the Union, whereas it cannot be excluded that they are still produced, placed on the market, used and/or significantly unintentionally emitted in other countries. Due to the potential for long-range environmental transport of these chemicals, 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 but wider international action is necessary.

### THE POP RC RECOMMENDATIONS

#### Decabromodiphenyl ether (commercial mixture, c-decaBDE)

At its 11<sup>th</sup> meeting, the POPRC adopted the risk management evaluation on decabromodiphenyl ether (commercial mixture, c-decaBDE). The risk management evaluation concluded inter alia that:

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<sup>1</sup> [http://www.pops.int/documents/convtext/convtext\\_en.pdf](http://www.pops.int/documents/convtext/convtext_en.pdf).

<sup>2</sup> One EU Member State has not yet ratified (Italy).

<sup>3</sup> 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).

<sup>4</sup> 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/EEC (OJ L 158, 30.4.2004, p. 7).

- C-decaBDE is an intentionally produced chemical consisting of the fully brominated decaBDE congener or BDE-209 ( $\geq 90-97\%$ ), with small amounts of nona- and octa-bromodiphenyl ether. C-decaBDE has been under investigation for its potential health and environmental impacts for more than a decade and has been subject to restrictions and voluntary risk management actions in some countries and regions, as well as by some companies. However, production of c-decaBDE is still ongoing in a few countries globally.
- Emissions of c-decaBDE to the environment occur at all its life cycle stages, but are assumed to be highest during service life and in the waste phase. Monitoring data shows that c-decaBDE levels are generally highest near wastewater discharges and in areas around electronic waste and recycling plants. The average service life for electric and electronic equipment is about 10 years hence c-decaBDE will continue to be released to the environment through articles in use for years to come. The most efficient control measure to reduce the releases of c-decaBDE and its main constituent BDE-209, would be to list BDE-209 (c-decaBDE) in Annex A of the Convention without specific exemptions.

The POPRC at its 12<sup>th</sup> meeting decided, in accordance with paragraph 9 of Article 8 of the Convention, to recommend to the Conference of the Parties that it consider listing decabromodiphenyl ether (BDE-209; decaBDE) of c-decaBDE in Annex A to the Convention with specific exemptions for some critical spare parts, to be further defined, for the automotive and aerospace industries.

For the automotive industry, the POPRC recommended the production and use of c-decaBDE limited to certain spare parts for use in legacy vehicles. Legacy vehicles are defined as vehicles that have ceased mass production, and the spare parts are defined by one or more of the following categories:

- (a) Powertrain and under-hood applications such as battery mass wire, battery interconnection wire, mobile air-conditioning (MAC) pipe, powertrains, exhaust manifold bushings, under-hood insulation, wiring and harness under hood (engine wiring, etc.), speed sensors, hoses, fan modules and knock sensors;
- (b) Fuel system applications such as fuel hoses, fuel tanks and fuel tanks under body;
- (c) Pyrotechnical devices and applications affected by pyrotechnical devices such as air bag ignition cables, seat covers/ fabrics (only if airbag relevant) and airbags (front and side).

For the aerospace industry, a phase-out of c-decaBDE in new aircrafts by 2018 is widely supported, while conflicting information was provided by the aerospace and defence industry in Europe and in North America, as regards the timing of a phase-out of decaBDE in existing aircraft types and in spare parts for existing aircraft types. Some information indicates that it would be possible to phase-out c-decaBDE by 2018, whereas there was also a request for an exemption for the continued use of c-decaBDE in all spare parts for existing aircraft types for the remainder of their products lives. The POPRC concluded that the information provided on spare parts containing c-decaBDE used in existing aircraft types did not allow the further defining of critical spare parts by the Committee.

### **Short-chain chlorinated paraffins (SCCPs)**

At its twelfth meeting, the POPRC adopted the risk management evaluation on short-chain chlorinated paraffins (SCCPs). The risk management evaluation concluded *inter alia* that:

- SCCPs may be released into the environment at all life cycle stages: during production, storage, transportation, use, and disposal of SCCPs and products that contain SCCPs. Although data are limited, major sources of release of SCCPs are likely the formulation and manufacturing of products containing SCCPs, such as PVC plastics, and use in metalworking fluids.
- Listing SCCPs to the Convention in Annex A or B to eliminate or restrict the production and use of SCCPs is expected to result in benefits to human health, the environment, agriculture and biota. The benefits of eliminating or restricting SCCPs are considered to be significant given the costs associated with the significant adverse effects on human health and the environment that are likely to result from the continued production and use of SCCPs.

The POPRC at its 12<sup>th</sup> meeting decided, in accordance with paragraph 9 of Article 8 of the Convention, to recommend to the Conference of the Parties that it consider listing short-chain chlorinated paraffins in Annex A to the Convention, including controls to limit the presence of SCCPs in other chlorinated paraffin mixtures, with or without specific exemptions. The POPRC considered that the EU has taken measures to limit the content of SCCPs in other chlorinated paraffin mixtures, which demonstrates that controlling unintentional production is technically feasible. In the EU, only the use of substances or preparations containing SCCPs in concentrations lower than 1% by weight or articles containing SCCPs in concentrations lower than 0.15% by weight is allowed. However, the POPRC did not specify particular limits in the decision adopted at its 12<sup>th</sup> meeting.

### **Hexachlorobutadiene (HCBD)**

At its ninth meeting, the POPRC adopted the risk management evaluation on **hexachlorobutadiene (HCBD)**. The risk management evaluation concluded *inter alia* that:

- HCBD is generated as an unintentional by-product from industrial manufacturing processes (particularly the production of other chlorinated hydrocarbons and the production of magnesium). Measures to minimise releases during production are known and already applied in countries that are parties to the Stockholm Convention.
- HCBD is unintentionally generated during combustion and other thermal processes and industrial processes. Measures to reduce unintentional releases of POPs from such processes will lead to a further reduction of HCBD releases. Monitoring of HCBD may induce additional costs.

HCBD is released to an unknown extent from former waste disposal sites. Control measures to minimise such releases are available. The POPRC at its 9<sup>th</sup> meeting in October 2013 recommended the listing of HCBD in Annex A and Annex C to the Convention without exemption.

In accordance with Article 8 (9) of the Convention, the POPRC submitted these recommendations to the COP7 for its consideration at the meeting in May 2015. COP7 decided to add HCBD to Annex A to the Convention and requested to collect further

information related to the sources of unintentional release of HCBD so as to better inform the decision-making at COP8 on possible listing in Annex C. POPRC was requested to evaluate that information and concluded at its 12<sup>th</sup> meeting that although unintentional production and releases declined in recent decades, the existing and remaining sources are still important to the unintentional generation and release of HCBD. Application of BAT and BEP has strong beneficial effects to further control and reduce emissions. Costs for implementation of measures to reduce releases of HCBD, enforcement and supervision are considered low as the control measures for other unintentional POPs are already applied.

## **OTHER POSSIBLE ACTIONS BY THE CONFERENCE OF THE PARTIES**

### **Perfluorooctane sulfonic acid (PFOS)**

Perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOS-F) are listed in Annex B to the Convention with acceptable purposes for which production and use is still allowed. The POPRC endorsed, at its twelfth meeting, consolidated guidance on alternatives to perfluorooctane sulfonic acid (PFOS) and its related chemicals. That guidance includes recommendations for the use of alternatives for those uses of PFOS that are still allowed as acceptable purposes under the Convention.

The guidance concludes that fluorinated or non-fluorinated alternatives exist for nearly all current uses of PFOS. While the alternatives may be initially slightly more expensive and less effective, they may be less hazardous, but that has to be assessed accordingly. Since the assessment is rather complex, the POPRC thought that there may be a need to use more often Article 9, subparagraph 1 (b), of the Convention which states that each Party shall facilitate or undertake the exchange of information relevant to alternatives to persistent organic pollutants, including information relating to their risks as well as to their economic and social cost.

When evaluating alternatives it should be considered that chemicals with structures similar to those of the listed PFOS substances could cause concerns similar to those related to the latter substances. Therefore, POPRC underlined that increasing effort will be needed to study the toxicological and environmental properties of alternatives and to make the resulting information public and trustworthy. More international cooperation and private sector transparency can save resources and speed up processes.

The POPRC concluded that alternatives are available for the acceptable purposes for use of PFOS in photo imaging, fire-fighting foam, certain medical devices (such as ethylene tetrafluoroethylene copolymer (ETFE) layers and radio-opaque ETFE production, in vitro diagnostic medical devices, and CCD colour filters) and metal plating (hard metal plating) only in closed-loop systems.

For the following acceptable purposes for use of PFOS the POPRC did not conclude whether it is technically feasible to use alternatives since detailed chemicals information about the alternatives was missing: aviation hydraulic fluids, photo-resist and anti-reflective coatings for semi-conductors, etching agent for compound semi-conductors and ceramic filters.

As regards the use of PFOS in insect baits for the control of leaf cutting ants from *Atta* spp. and *Acromyrmex* spp., the POPRC concluded that it seems possible to use alternatives for some countries, but not yet for all.

The Secretariat of the Convention is requested by decision SC-7/5 to prepare a document providing possible actions by the Conference of the Parties, should the Conference conclude that there is no continued need for the various acceptable purposes for perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride listed in Annex B, for consideration by the Conference of the Parties at its eighth meeting.

- **Consistency with Union policies**

**DECABDE AND UNION LAW**

Directive 2011/65/EU (ROHS Directive) restricts the use of decabromodiphenyl ether in electrical and electronic equipment<sup>5</sup>. Manufacture, placing on the market or use of decabromodiphenyl ether (decaBDE) either as a substance, or as a constituent in other substances, in mixtures and in articles is restricted pursuant to Commission Regulation (EU) 2017/227 establishing a new entry 67 in Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council (REACH)<sup>6</sup>. Pursuant to entry 67, manufacture, placing on the market or use of decabromodiphenyl ether shall only be allowed for the production of aircrafts<sup>7</sup> until 2 March 2027, for spare parts of aircrafts produced before the expiry of that period, and for the production of spare parts for motor vehicles, agricultural and forestry vehicles or machinery<sup>8</sup> produced before 2 March 2019. Additionally, electrical and electronic equipment under the scope of the ROHS Directive and articles placed on the market before 2 March 2019 are also exempted. The restriction was published in the Official Journal on 10 February 2017<sup>9</sup>.

The listing of decaBDE in Annex A to the Convention with the scope suggested by the POPRC would require an amendment of Annex A to the POPs Regulation and would have an effect on Union law since certain derogations under REACH would have to be deleted. Although all sectors of industry had the possibility to participate in the review process under the Convention, it cannot be assumed that the absence of any comments from the agricultural and forestry vehicles and machinery industries are an indication that the derogations recently granted under REACH for these sectors are no longer needed. Therefore, the Commission will consult the relevant stakeholders involved in the process under REACH prior to COP8 to enable them to provide further clarification. If the need for the exemptions granted under REACH can be demonstrated, the Union should put forward to COP8 a request for such exemptions.

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<sup>5</sup> Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88).

<sup>6</sup> 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).

<sup>7</sup> The concept of 'aircraft' is defined for the purpose of the entry.

<sup>8</sup> Motor vehicles within the scope of Directive 2007/46/EC, agricultural and forestry vehicles within the scope of Regulation (EU) No 167/2013 of the European Parliament and of the Council or machinery within the scope of Directive 2006/42/EC of the European Parliament and of the Council.

<sup>9</sup> Commission Regulation (EU) 2017/227 of 9 February 2017 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards bis(pentabromophenyl)ether (OJ L 35, 10.2.2017, p. 6).

## **SCCPs AND UNION LAW**

SCCPs are listed in the Protocol on POPs of the Convention on Long Range Transboundary Air Pollution and, therefore, Parties are requested to eliminate its production and use. By virtue of Commission Regulation (EU) No 2015/2030<sup>10</sup>, which amends Regulation (EC) No 850/2004, production, placing on the market and use of SCCPs is prohibited in the Union.

However, by way of derogation, the production, placing on the market and use of substances or preparations containing SCCPs in concentrations lower than 1 % by weight or articles containing SCCPs in concentrations lower than 0,15 % by weight is still allowed. In addition, use is allowed in respect of: (a) conveyor belts in the mining industry and dam sealants containing SCCPs already in use before or on 4 December 2015; and (b) articles containing SCCPs other than those referred to in (a) already in use before or on 10 July 2012.

The listing of SCCPs in Annex A with the scope suggested by the POPRC is not expected to require changes of Union law since production, placing on the market and use of SCCPs are already prohibited and limit values for the presence of SCCPs in other chlorinated paraffin mixtures resulting from the manufacturing process are already set.

## **HCBD AND UNION LAW**

HCBD is a priority hazardous substance under the Water Framework Directive (Directive 2000/60/EC)<sup>11</sup>. Furthermore, HCBD is listed in the Protocol on POPs of the UNECE Convention on Long-Range Transboundary Air Pollution (CLRTAP) and, therefore, Parties are requested to eliminate its production and use. Commission Regulation (EU) No 519/2012<sup>12</sup> implements the ban in Union law. However, wastes and contaminated land issues remain, as well as consideration of measures to prevent re-introduction.

Whilst the production of HCBD is prohibited in the Union, it still may be produced unintentionally in some industrial activities. Such activities, when meeting the thresholds in the Directive on industrial emissions (Directive 2010/75/EU<sup>13</sup>), are required to apply the best available techniques (BAT) to prevent and reduce emissions and the impact on the environment as a whole. In order to operate, an industrial installation must obtain a permit from a Member State competent authority. These permits must contain emission limit values for the polluting substances listed in Annex II of Directive 2010/75/EU, as well as other substances, likely to be emitted in significant quantities having regard to their nature and their potential for cross-media pollutant transfer.

The listing of HCBD in Annex C with the scope suggested by the POPRC is not expected to require changes of Union law since the prevention and reduction of unintentional releases of HCBD is already addressed by Directive 2010/75/EU.

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<sup>10</sup> Commission Regulation (EU) 2015/2030 of 13 November 2015 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 298, 14.11.2015, p. 1).

<sup>11</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p.1.)

<sup>12</sup> Commission Regulation (EU) No 519/2012 of 19 June 2012 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 159, 20.06.2012, p.1).

<sup>13</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).



## **PFOS AND UNION LAW**

The production, placing on the market and use of PFOS is prohibited pursuant to Regulation (EC) No 850/2004, but certain derogations are granted in line with acceptable purposes specified in Annex B to the Convention, which are registered under the Convention. Depending on the outcome of the review of the continued need for the acceptable purposes that will be carried out by COP8, which will also consider the continued need for the acceptable purposes in the Union, it may be necessary to revise the Union law by deleting those derogations that may no longer be available since they are no longer needed by Parties, including the Union.

The continued need for the derogations in the Union has been continuously analysed by the Commission in cooperation with the Member States in recent years in order to identify those that are no longer needed, as requested by the Convention. The most recent study (not yet published) concludes that three acceptable purposes are still needed in the Union since industry did not yet phase-out those uses: photo-resist and anti-reflective coatings for semi-conductors, etching agent for compound semi-conductors and ceramic filters, metal plating (hard metal plating) only in closed-loop systems. Exemptions for those uses should continue to be available in the coming years.

The acceptable purposes for use of PFOS in photo imaging and aviation hydraulic fluids, which are currently registered by the EU under the Convention, are no longer required since alternatives are used by industry.

The acceptable purposes for use of PFOS in insect baits for the control of leaf cutting ants from *Atta* spp. and *Acromyrmex* spp., fire-fighting foam and certain medical devices (such as ethylene tetrafluoroethylene copolymer (ETFE) layers and radio-opaque ETFE production, in vitro diagnostic medical devices, and CCD colour filters), which are not registered by the EU under the Convention, should be deleted since viable alternatives exist.

## **PROCEDURE FOR ADDING NEW POP SUBSTANCES AND AMENDING THE ANNEXES OF THE CONVENTION**

According to Article 8 of the Convention, any Party may submit a proposal to the Secretariat for listing a chemical in Annexes A, B and/or C. The Persistent Organic Pollutants Review Committee (POPRC) shall examine the proposal.

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 includes an analysis of possible control measures and of the availability of alternatives shall be drawn up. On this basis, the POPRC 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.

For the Union, amendments to the Annexes A, B and/or C enter into force one year from the date of the communication by the depositary of their adoption by the COP.

## **THE POP RC RECOMMENDATIONS AND UNION LAW**

The POPRC recommendation, if followed by the COP in April/May 2017, will result in international bans on manufacturing, placing on the market, import/export and use of c-decaBDE and SCCPs, excluding c-decaBDE production and use for spare parts for motor vehicles and possibly aircrafts. The COP may be required to consider the need for other specific exemptions since Parties may put forward requests at the COP.

The listing of c-decaBDE in Annex A to the Convention with the scope suggested by the POPRC will require an amendment to Annex I of the POPs Regulation and may have effects on current Union laws.

The listing of SCCPs in Annex A and of HCBd in Annex C to the Convention with the scope suggested by the POPRC is not expected to require changes of existing entries in the Annexes of the POPs Regulation but will require the transfer of those chemicals into the appropriate Annex 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 committee procedures established in Articles 5a of Decision 1999/468/EC<sup>14</sup>, having regard to Articles 10 and 11 of Regulation (EU) No 182/2011<sup>15</sup>.

### **The European Union POSITION**

In view of the above, at the eighth COP to the Stockholm Convention, the Union should support adding:

- decaBDE to Annex A, with specific exemptions for spare parts for the automotive and the aerospace industry, and specific exemptions for aircrafts and for spare parts for agricultural and forestry vehicles and certain machinery coherent with Union legislation. In conformity with the POPRC recommendations, the listing without 'specific exemptions' for aircrafts and for spare parts for agricultural and forestry vehicles and certain machinery may be supported, if the relevant stakeholders involved in the process under REACH cannot demonstrate prior to COP8 that those exemptions are still necessary;
- SCCPs to Annex A, with use conditions and exemptions coherent with Union legislation;
- HCBd to Annex C, as already supported at COP7, coherent with Union legislation.

Furthermore, the Union should support the deletion of the acceptable purposes for PFOS and its derivatives that are no longer needed by Parties, except those for photo-resist and anti-reflective coatings for semi-conductors, as etching agent for compound semi-conductors and ceramic filters and in metal plating (hard metal plating) only in closed-loop systems.

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<sup>14</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

<sup>15</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

The procedural legal basis for the proposed Council Decision is Article 218(9) TFEU, which is the appropriate basis for an act defining the European Union position in a "body set up by an international agreement" (such as the Conference of the Parties to the Stockholm Convention), when that body is called upon to adopt acts having legal effects.

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).

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

### **• Stakeholder consultations**

As SCCPs are already listed in the POPs Regulation (EC) No 850/2004 no further consultation within the Union is considered warranted. As HCB is already listed in Annex A to the Stockholm Convention and in the POPs Regulation (EC) No 850/2004 no further consultation within the Union is considered warranted.

As the placing on the market and use of c-decaBDE is restricted in the Union pursuant to the entry 67 in Annex XVII to Regulation (EC) No 1907/2006 (REACH) and there are discrepancies with the POPRC recommendations, further consultation is deemed necessary to obtain information in order to clarify whether the derogations recently granted under REACH for aircrafts and for spare parts for agricultural and forestry vehicles and certain machinery are no longer needed.

The continued need for the acceptable purposes for PFOS by the Union has been continuously analysed in recent years by the Commission in cooperation with the Member States and in consultation with stakeholders, *inter alia* through studies analysing the continued need for acceptable purposes by the Union and discussions at competent authority meetings in which stakeholders participate. Member States and stakeholders agreed to the analysis including the conclusions, which is also reflected in the position of the Union at previous COPs.

All substances have been subjected to open consultations with stakeholders world-wide during the POPRC assessment and stakeholders have also been admitted to the deliberations of POPRC.

### **• Impact assessment**

Before the POPRC makes its recommendations for a chemical in accordance with Article 8(9) of the Stockholm Convention, the POPRC prepares both a risk profile and a risk management evaluation for each chemical.

Persistent Organic Pollutants (POPs) pose a risk to human health and the environment and, due to their potential for long range transport, require global action to reduce or eliminate any releases of POPs. In the light of this objective and the requirements of Article 8(7)(a) of the Stockholm Convention, the POPRC undertakes a risk management evaluation regarding possible control measures for chemicals under consideration for inclusion in the Convention, encompassing the full range of options for that chemical, including management and elimination. For the purpose of preparing this evaluation, both Parties and observers to the

Convention are invited to provide the POPRC with relevant information on socio-economic considerations associated with possible control measures for that chemical.

In accordance with Annex F to the Stockholm Convention, the information provided should reflect due regard for the differing capabilities and conditions among the Parties and should include consideration of the following indicative list of items:

- (a) Efficacy and efficiency of possible control measures in meeting risk reduction goals;
- (b) Alternatives (products and processes);
- (c) Positive and/or negative impacts on society of implementing possible control measures;
- (d) Waste and disposal implications (in particular, obsolete stocks of pesticides and clean-up of contaminated sites);
- (e) Access to information and public education;
- (f) Status of control and monitoring capacity; and
- (g) Any national or regional control actions taken, including information on alternatives, and other relevant risk management information.

On the basis of the risk profiles and risk management evaluations prepared for the three chemicals that are proposed to be listed in the Annexes to the Stockholm Convention at COP8, the POPRC recommended, at its 12<sup>th</sup> meeting, the measures (explained above) that should be taken for each chemical in order to achieve the objectives of the Convention whilst taking into account the socio-economic effects of those measures.

#### **4. BUDGETARY IMPLICATIONS**

As a Party, the Union has to provide an annual contribution to the Stockholm Convention Trust Fund. This contribution will evolve depending on the conclusions of the discussions at the eighth meeting of the Conference of the Parties on the budget for the period 2018-2019. The annual contribution by the Union for 2016 amounted to about 113000 EUR which was covered within existing envelopes.

#### **5. OTHER ELEMENTS**

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

The Stockholm Convention requires Parties to establish an Implementation Plan and to regularly revise that plan by addressing newly listed chemicals. The Convention also includes requirements on monitoring, effectiveness evaluation and reporting. All those elements are reflected in Regulation (EC) No 850/2004 implementing the Convention.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, at the Eighth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants regarding the proposals for amendments of Annexes A and C**

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 Stockholm Convention on Persistent Organic Pollutants ("the Convention") was approved, on behalf of the European Community, by Council Decision 2006/507/EC<sup>16</sup>.
- (2) The Union has implemented the obligations of the Convention in Union law by way of Regulation (EC) No 850/2004 of the European Parliament and the Council<sup>17</sup>.
- (3) The Union places strong emphasis on the need for the gradual expansion of Annexes A, B and/or C to the Convention with new substances which fulfil the criteria for persistent organic pollutants (POPs), taking into account the precautionary principle, with a view to meeting the objective of the Convention and the commitment of governments made at the World Summit on Sustainable Development held in Johannesburg in 2002 to minimise the adverse effects of chemicals by 2020.
- (4) Pursuant to Article 22 of the Convention, the Conference of the Parties ("COP") may adopt decisions amending Annexes A, B and/or C to the Convention. Those decisions enter into force one year from the date of communication by the depositary of an amendment, save for those parties to the Convention ("the Parties") that have opted out.
- (5) Following a nomination of commercial decabromodiphenyl ether (c-decaBDE) received from Norway in 2013, the Persistent Organic Pollutants Review Committee ("POPRC") established under the Convention has concluded its work on c-decaBDE. POPRC has found that c-decaBDE meets the criteria of the Convention for a listing in

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<sup>16</sup> 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).

<sup>17</sup> 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/EEC (OJ L 158, 30.4.2004, p. 7).

Annex A. At its eighth meeting, the COP is expected to decide on the inclusion of c-decaBDE in Annex A to the Convention.

- (6) Manufacture, placing on the market or use of decabromodiphenyl ether as a substance, as a constituent in other substances, in mixtures and in articles is restricted pursuant to Commission Regulation (EU) 2017/227<sup>18</sup> establishing entry 67 of Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council (REACH)<sup>19</sup>. Pursuant to entry 67, manufacture, placing on the market or use of decabromodiphenyl ether shall only be allowed for a limited time for new aircrafts and for spare parts for aircraft, motor vehicles, agricultural and forestry vehicles and certain machinery.
- (7) Following a nomination of short-chain chlorinated paraffins (SCCPs) received from the Union in 2006, POPRC has found that short-chain chlorinated paraffins (SCCPs) meet the criteria of the Convention for a listing in Annex A. At its eighth meeting, the COP is expected to decide on the inclusion of SCCPs in Annex A to the Convention.
- (8) The production, placing on the market and use of SCCPs is prohibited with certain exemptions for products already in use in the Union pursuant to Regulation (EC) No 850/2004, as amended by Commission Regulation (EU) No 2015/2030<sup>20</sup>. That Regulation also specifies limit values for the presence of SCCPs in other chlorinated paraffin mixtures resulting from the manufacturing process. Since SCCPs are capable of long-range environmental transport, a global phase-out of the use of this substance would be more beneficial to the Union citizen than the prohibition under Regulation (EC) No 850/2004 in the Union.
- (9) Following a nomination of hexachlorobutadiene (HCBD) received from the Union in 2011, POPRC has found that HCBD meets the criteria of the Convention for a listing in Annexes A and C. At its seventh meeting, the COP decided to list HCBD in Annex A. However, the COP adopted decision SC-7/11, by which the POPRC was requested to further evaluate HCBD on the basis of newly available information in relation to its listing in Annex C and to make a recommendation to the COP on listing HCBD in Annex C for further consideration at its eighth meeting.
- (10) The production, placing on the market and use of HCBD is prohibited in the Union pursuant to Regulation (EC) No 850/2004, as amended by Commission Regulation (EU) No 519/2012<sup>21</sup>, but it may be produced unintentionally in some industrial

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<sup>18</sup> Commission Regulation (EU) 2017/227 of 9 February 2017 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards bis(pentabromophenyl)ether (OJ L 35, 10.2.2017, p. 6).

<sup>19</sup> 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).

<sup>20</sup> Commission Regulation (EU) 2015/2030 of 13 November 2015 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 298, 14.11.2015, p. 1).

<sup>21</sup> Commission Regulation (EU) No 519/2012 of 19 June 2012 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 159, 20.06.2012, p.1).

activities. Such activities are covered under Directive 2010/75/EU of the European Parliament and of the Council<sup>22</sup> and require the application of certain emission management measures. Since HCBd is capable of long-range environmental transport, global action on unintentional releases of this substance would be more beneficial to the Union citizen than the measures under Regulation (EC) No 850/2004 in the Union.

- (11) Perfluorooctane sulfonic acid (PFOS) and its derivatives are listed in Annex B to the Convention with a number of acceptable purposes. The COP will be requested to review the continued need of those acceptable purposes. Regulation (EC) No 850/2004 prohibits the production, placing on the market and use of PFOS but exempts certain uses that are still needed in the Union. Consequently, the Union should support the deletion of the 'acceptable purposes' for PFOS and its derivatives that are no longer needed by Parties, except those for photo-resist and anti-reflective coatings for semi-conductors, as etching agent for compound semi-conductors and ceramic filters and in metal plating (hard metal plating) only in closed-loop systems.

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The position to be taken by the Union at the eighth Conference of the Parties to the Stockholm Convention shall be, in line with the recommendations of the Persistent Organic Pollutants Review Committee<sup>23</sup>, to support:

- the listing of decabromodiphenyl ether (BDE-209) present in commercial decabromodiphenyl ether in Annex A to the Convention. The Union shall support the listing with 'specific exemptions' for the production and use of decaBDE in spare parts for the automotive and the aerospace industry, in aircrafts and in spare parts for agricultural and forestry vehicles and certain machinery. In conformity with the POPRC recommendations, the Union may support the listing without 'specific exemptions' for aircrafts and for spare parts for agricultural and forestry vehicles and certain machinery if no other Parties or directly implicated stakeholders can demonstrate their need;
- the listing of short-chain chlorinated paraffins (SCCPs) in Annex A to the Convention;
- the listing of hexachlorobutadiene (HCBd) in Annex C to the Convention;
- the deletion of the following acceptable purposes from the entry on perfluorooctane sulfonic acid (PFOS) and its derivatives in Annex B to the Convention: photo imaging, aviation hydraulic fluids, certain medical devices (such as ethylene tetrafluoroethylene copolymer (ETFE) layers and radio-opaque ETFE production, in vitro diagnostic medical devices, and CCD colour filters), fire-fighting foam, insect baits for control of leaf-cutting ants from *Atta* spp. and *Acromyrmex* spp..

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<sup>22</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>23</sup> Decisions POPRC-12/3, POPRC-12/4, POPRC-12/5

2. Minor changes to this position may be agreed to by the representatives of the Union, in light of the developments at the eighth meeting of the Conference of the Parties to the Stockholm Convention, without further decision of the Council.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*