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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 January 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 41 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the eleventh meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants as regards the proposals for amendment of Annex A to that Convention

Delegations will find attached document COM(2023) 41 final.

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EUROPEAN
COMMISSION

Brussels, 30.1.2023
COM(2023) 41 final

2023/0014 (NLE)

Proposal for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the eleventh meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants in connection with the envisaged adoption of decisions to amend Annex A by adding dechlorane plus, methoxychlor and UV-328.

2. CONTEXT OF THE PROPOSAL

2.1. The Stockholm Convention

The Stockholm Convention on Persistent Organic Pollutants (the Convention) aims to protect human health and the environment from persistent organic pollutants (POPs). The Convention entered into force on 17 May 2004. The European Union is a party to the Agreement¹. The Convention provides a framework, based on the precautionary principle, for elimination of production, use, import and export of POPs, their safe handling and disposal and elimination or reduction of releases of certain unintentionally produced POPs.

2.2. The Conference of the Parties

Established pursuant to Article 19 of the Convention, the Conference of the Parties is the governing body of the Stockholm Convention. This body normally meets every two years to monitor the implementation of the Convention. It also reviews chemicals brought forward for its consideration by the Persistent Organic Pollutants Review Committee (POPRC).

In accordance with Article 8(1) of the Convention, Parties submitted proposals to the Secretariat for listing of dechlorane plus, methoxychlor and UV-328 in Annex A to the Convention, which was reviewed by the POPRC following Article 8(3) and (4). The POPRC recommended to the Conference of the Parties the listing of methoxychlor in Annex A without specific exemptions, and the listing of dechlorane plus and UV-328 in Annex A with specific exemptions. The procedure for adoption of amendments to Annexes is governed by Article 22 of the Convention.

In accordance with Article 23 of the Convention, each party has one vote. However, regional economic integration organisations such as the EU exercise their right to vote with a number of votes equal to the number of their Member States that are parties to the Convention.

2.3. The envisaged act of the Conference of the Parties

At the eleventh ordinary meeting, the Conference of the Parties will consider the adoption of decisions to list dechlorane plus, methoxychlor and UV-328 in Annex A (elimination), Annex B (restriction) and/or Annex C (unintentional production) to the Convention.

The purpose of the decisions is the listing in Annexes A, B and/or C, which has the effect that the chemicals will be subject to measures aiming at eliminating or restricting their production and use, including the reduction or elimination of releases of unintentionally produced POPs.

The envisaged acts will become binding on the parties in accordance with Article 22(4) of the Convention, which provides: 'The proposal, adoption and entry into force of amendments to Annex A, B or C shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to this Convention, except that an amendment to Annex A, B or C shall not enter into force with respect to any Party that has made a declaration with

¹ OJ L 209, 31.7.2006, p. 1.

respect to amendment to those Annexes in accordance with paragraph 4 of Article 25, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment.’

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be taken on the Union's behalf at the eleventh meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants should be to support the listing of dechlorane plus, methoxychlor and UV-328 in line with the relevant recommendations of the Persistent Organic Pollutants Review Committee (POPRC).

In accordance with Article 8(1) of the Convention, Parties submitted proposals to the Secretariat for listing of dechlorane plus, methoxychlor and UV-328 in Annex A to the Convention, which was reviewed by the POPRC following Article 8(3) and (4). The POPRC examined the proposals by applying the screening criteria in accordance with Annex D to the Convention and concluded that the criteria are fulfilled. After having evaluated the risk profiles for dechlorane plus, methoxychlor and UV-328, and having decided that those substances are likely, as a result of their long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the POPRC recommended to the Conference of the Parties to consider the listing of methoxychlor in Annex A without specific exemptions, and the listing of dechlorane plus and UV-328 in Annex A with specific exemptions.

In order to protect human health and the environment from further releases of dechlorane plus, methoxychlor and UV-328, it is necessary to reduce or eliminate the production and use of those chemicals at global level and to support their listing in the relevant annexes to the Convention. 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 POPs.

The proposal is coherent with the general approach of Regulation (EC) No 1107/2009 and Regulation (EU) No 528/2012 vis-à-vis PBT substances since both provide for criteria not allowing, in principle, the placing on the market and use of active substances that are PBT. A Common Understanding Paper² examines the relationship between the Stockholm Convention, Regulation (EU) 2019/1021 and Regulation (EC) No 1907/2006 with regards to restrictions and authorisation requirements, to ensure coherence.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

² http://ec.europa.eu/growth/sectors/chemicals/reach/special-cases_en

not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’³.

4.1.2. Application to the present case

The Conference of the Parties is a body set up by an agreement, namely the Stockholm convention on Persistent Organic Pollutants.

The acts, which the Conference of the Parties is called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 22 of the Stockholm Convention.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the environment.

Therefore, the substantive legal basis of the proposed decision is Article 192 of the TFEU.

4.3. Conclusion

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

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Stockholm Convention on Persistent Organic Pollutants (the 'Convention') was concluded by the Union by Council Decision 2006/507/EC⁴ and entered into force on 17 May 2004.
- (2) Pursuant to Article 8 of the Convention, the Conference of the Parties to the Convention may list chemicals in Annexes A, B and/or C to the Convention and specify control measures related to such chemicals.
- (3) At its eleventh meeting, the Conference of the Parties to the Convention is expected to adopt decisions to list further chemicals in Annex A to the Convention.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the decisions will be binding on the Union.
- (5) In order to protect human health and the environment from further releases of dechlorane plus, methoxychlor and UV-328, it is necessary to reduce or eliminate the production and use of those chemicals at global level and to support their listing in the relevant annexes to the Convention,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the eleventh meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and any subsequent Conference of the Parties where the point is on the agenda shall be the following, taking due account of the relevant recommendations of the Persistent Organic Pollutants Review Committee (POPRC):

- (a) to support the listing of dechlorane plus in Annex A, with the specific exemptions recommended by the POPRC;

⁴ 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).

- (b) to support the listing of methoxychlor in Annex A, without any specific exemptions;
- (c) to support the listing of UV-328 in Annex A, with the specific exemptions recommended by the POPRC.

Article 2

Refinements of the position referred to in Article 1, in light of the developments at the eleventh meeting of the Conference of the Parties to the Convention and any subsequent Conference of the Parties where the point is on the agenda may be agreed upon by representatives of the Union, in consultation with the Member States, during on-the-spot coordination meetings without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President