



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.8.2004
COM(2004) 537 final

Proposal for a

COUNCIL DECISION

**concerning proposals, on behalf of the European Community and the Member States,
for amendments to Annexes I - III of the 1998 Protocol to the 1979 Convention
on Long Range Transboundary Air Pollution on Persistent Organic Pollutants and to
Annexes A - C of the Stockholm Convention on Persistent Organic Pollutants**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants entered into force on 23 October 2003. The aim of the Protocol is to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants that cause significant adverse effects on human health or the environment as a result of their long-range transboundary atmospheric transport. The Protocol lists 16 substances in Annexes I, II and III which are subject to production and use prohibitions or restrictions or emission control measures.
2. The Council adopted a Decision on the conclusion, on behalf of the Community, of the Protocol on 17 February 2004. The instrument for Community ratification was deposited on 30 April 2004.
3. The Stockholm Convention on persistent organic pollutants entered into force on 17 May 2004. The aim of the Convention is to protect human health and the environment from persistent organic pollutants. The Convention provides a framework, based on the precautionary principle, for elimination of production, use, import and export of the initial twelve priority persistent organic pollutants, their safe handling and disposal and elimination or reduction of releases of certain unintentional persistent organic pollutants.
4. The Commission made in June 2003 a proposal for a Council Decision on the conclusion, on behalf of the Community, of the Convention. The Council has reached an agreement on the proposal but has not yet adopted the Decision. However, it is assumed that the Community becomes a Party to the Convention by the end of 2004.
5. According to Article 14 of the Protocol, any Party may propose amendments to Annexes I, II or III of the Protocol by submitting proposals in writing to the Executive Secretary of the United Nations Economic Commission for Europe. The proposing Party shall provide the information specified in Executive Body Decision 1998/2. In the Convention, Article 8(1) stipulates that any Party may submit a proposal to the Secretariat for listing a chemical in Annexes A, B or C. The proposal shall contain the information specified in Annex D. The procedure for the adoption of amendment to Annexes is foreseen by Article 14 of the Protocol and Article 22 of the Convention.
6. Proposals to amend Annexes to the Convention or the Protocol should only be done on behalf of the Community and its Member States, based on the obligation of co-operation and unity in the international representation of the Community that flows from Article 10 of the EC Treaty.
7. Annexes I and II of the Protocol contain currently three persistent organic pollutants that are not listed in the Stockholm Convention. These intentionally produced substances, chlordecone, hexabromobiphenyl and hexachlorocyclohexane (HCH, including lindane) fulfil the screening criteria laid down in Annex D of the Convention and they should be added also to Annex A of the global Convention in order to protect human health and the environment.

8. According to available scientific information and review reports and taking due account of the screening criteria laid down in Annex D of the Convention and Executive Body Decision 1998/2, hexachlorbutadiene, pentachlorobenzene and polychlorinated naphthalenes exhibit characteristics of persistent organic pollutants. The same applies to pentabromodiphenyl ether on which Norway has already made a proposal for the inclusion in the Protocol, octabromodiphenyl ether and short-chained chlorinated paraffins which have all been evaluated under the Council Regulation (EEC) No 793/93 on evaluation and control of risks of existing substances¹ and their marketing and use has been prohibited or severely restricted by Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations².
9. The production, placing on the market and use of these substances has already ceased or has been severely restricted in the Community, whereas it cannot be excluded that they are still in production or use in other countries. Due to the potential for long-range environmental transport of these chemicals, the measures taken nationally or at the Community level are not sufficient to safeguard the high level of protection of the environment and human health but wider international action is necessary.
10. The Council Decision on proposing new substances to be included in the Protocol and in the Convention concerns environmental protection. Therefore, it is appropriate that the Decision is based on Article 175(1), in conjunction with Article 300(2).

It is thus appropriate to propose, on behalf of the Community and the Member States which are Parties to the Protocol and to the Convention, inclusion of hexachlorbutadiene, pentachlorobenzene, polychlorinated naphthalenes, octabromodiphenyl ether and short-chained chlorinated paraffins to the relevant Annexes of the Protocol and of the Stockholm Convention. Moreover, pentabromodiphenyl ether, chlordecone, hexabromobiphenyl and HCH, including lindane, should be proposed to be included in Annex A of the Stockholm Convention.

¹ OJ L 84, 5.4.1993, p. 1.

² OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/21/EC (OJ L 57, 25.2.2004, p. 4). As regards pentabromodiphenyl ether the legislative procedure has been initiated to allow for a time limited exception linked to the security of aircraft passengers.

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concerning proposals, on behalf of the European Community and the Member States, for amendments to Annexes I - III of the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants and to Annexes A - C of the Stockholm Convention on Persistent Organic Pollutants

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) in conjunction with Article 300(2), second paragraph,

Having regard to the proposal from the Commission³,

Whereas:

- (1) The promotion of measures at international level to deal with regional or worldwide environmental problems is one of the objectives of the Community's policy on the environment, in accordance with Article 174 of the Treaty.
- (2) The Community ratified on 30 April 2004 the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (hereafter called "the Protocol") and is in the process of ratification of the Stockholm Convention on Persistent Organic Pollutants (hereafter called "the Convention").
- (3) The Protocol aims at controlling, reducing or eliminating discharges, emissions and losses of persistent organic pollutants that cause significant adverse effects on human health or the environment as a result of their long-range transboundary atmospheric transport. The Protocol stipulates, in principle, the elimination or reduction of production and use and emissions of sixteen substances regarded as persistent organic pollutants.
- (4) The Convention provides a framework, based on the precautionary principle, for elimination of production, use, import and export of the initial twelve priority Persistent Organic Pollutants, their safe handling and disposal and elimination or reduction of releases of certain unintentional Persistent Organic Pollutants.

³ O J C , , p .

- (5) According to Article 14 of the Protocol and Article 8 of the Convention, any Party may propose amendments to the Protocol and to the Convention, respectively. The procedure for the adoption of amendment to Annexes is foreseen by Article 14 of the Protocol and Article 22 of the Convention. Based on the obligation to ensure unity in the international representation of the Community and in order to ensure that proposals are justified and have sufficient support in the Community, only joint proposals by the Community and the Member States should be submitted.
- (6) Having taken due account of Decision 1998/2 of the Executive Body for the Convention on Long-Range Transboundary Air Pollution and Annex D of the Convention it has been shown that hexachlorobutadiene, pentachlorobenzene and polychlorinated naphthalenes, pentabromodiphenyl ether, octabromodiphenyl ether and short-chained chlorinated paraffins exhibit characteristics of persistent organic pollutants. Due to the potential for long-range environmental transport of these chemicals, the measures taken nationally or at Community level are not sufficient to safeguard a high level of protection of the environment and human health but wider international action is necessary. It is therefore appropriate that the Community and the Member States which are Parties to the Protocol or to the Convention, propose inclusion of these substances to the relevant Annexes of the Protocol and of the Convention taking into account the existing Community legislation and the possible authorised uses and derogations given therein.
- (7) Chlordecone and hexabromobiphenyl are currently listed in Annex I of the Protocol and hexachlorocyclohexane (HCH, including lindane) is listed in Annex II of the Protocol. Taking due account of Annex D of the Convention, these substances exhibit characteristics of persistent organic pollutants and warrant global action. It is therefore appropriate that the Community and the Member States which are Parties to the Convention, propose inclusion of these substances to the relevant Annexes of the Convention.
- (8) The provisions of the Protocol and the Convention concern environmental protection, and consequently, it is appropriate to choose Article 175(1), in conjunction with Article 300(2), as the legal basis.

HAS DECIDED AS FOLLOWS:

Article 1

The Commission is hereby authorised to submit to the Executive Secretariat of the United Nations Economic Commission for Europe the proposal, on behalf of the Community and the Member States which are Parties to the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants, to include the following substances in the Protocol:

a) to Annex I of the Protocol:

- hexachlorobutadiene (CAS number: 87-68-3),

- octabromodiphenyl ether (CAS number: 32536-52-0), and
- pentachlorobenzene (CAS number: 608-93-5);

b) to Annex I and III of the Protocol:

- polychlorinated naphthalenes (a group of substances containing one to eight chlorine atoms);

c) to Annex II of the Protocol:

- short-chained chlorinated paraffins (alkanes, C10-C13, chloro).

The Commission together with the Member States shall ensure that relevant information supporting the proposals is submitted to the Secretariat.

Article 2

The Commission is hereby authorised to submit to the Secretariat of the Convention the proposal, on behalf of the Community and the Member States which are Parties to the Stockholm Convention on Persistent Organic Pollutants, to include the following substances in the Convention:

a) to Annex A of the Convention:

- the substances listed in Article 1 subparagraph (a),
- pentabromodiphenyl ether (CAS number: 32534-81-9)
- chlordecone (CAS number: 145-50-0),
- hexabromobiphenyl (CAS number: 36355-01-8), and
- hexachlorocyclohexane (HCH, including lindane) (CAS numbers: 608-73-1 and 58-89-9);

b) to Annex A and C of the Convention:

- polychlorinated naphthalenes (a group of substances containing one to eight chlorine atoms);

c) to Annex B of the Convention:

- short-chained chlorinated paraffins (alkanes, C10-C13, chloro).

The Commission together with the Member States shall ensure that relevant information supporting the proposals is submitted to the Secretariat.

Done at Brussels,

*For the Council
The President*