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Proposal for a

**COUNCIL DECISION**

**on the acceptance of the Amendment to the 1998 Protocol to the 1979 Convention on  
Long-Range Transboundary Air Pollution on Heavy Metals.**

## **EXPLANATORY MEMORANDUM**

The 1979 Convention on Long-Range Transboundary Air Pollution (the LRTAP Convention) concluded under the auspices of the UN Economic Commission for Europe (UNECE) is the main international legal framework for cooperation and measures to limit and gradually reduce and prevent air pollution and its adverse effects upon human health and the environment in the UNECE region, with a specific focus on long-range transboundary air pollution.

The LRTAP Convention was signed on behalf of the European Economic Community on 14 November 1979 and approved by Council Decision 81/462/EEC of 11 June 1981<sup>1</sup>.

To date, the LRTAP Convention has been extended by eight Protocols, including the 1998 Aarhus Protocol on Heavy Metals (the Protocol). This Protocol aims to reduce and control anthropogenic emissions into the air of lead (Pb), cadmium (Cd) and mercury (Hg), as harmful heavy metals subject to long-range transboundary atmospheric transport, with a view to further protecting human health and the environment. In this respect, it requires Parties to reduce their total annual emissions of lead, cadmium and mercury below their levels in 1990 (or an alternative year between 1985 and 1995). The Protocol requires Parties to apply best available techniques (BAT) for defined emission source categories and sets emission limit values applicable to specific major stationary sources, including large combustion sources and waste incineration plants. Parties must develop and maintain emission inventories for Pb, Cd and Hg, phase out leaded petrol and reduce mercury concentration levels in alkaline batteries. They are also encouraged to implement product management measures for other mercury-containing products, including measuring devices.

The accession of the Community to the Protocol was approved on behalf of the Community by Council Decision 2001/379/EC of 4 April 2001<sup>2</sup>. The Protocol, which entered into force on 29 December 2003, has been transposed into EU law through several instruments<sup>3</sup>. Regarding air quality monitoring, these instruments include Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air<sup>4</sup>. As to the requirement to apply BAT for source categories listed in Annex II and emission limit values set out in Annex V to the Protocol, relevant EU legislation includes most notably Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions<sup>5</sup>. Concerning the product standards on lead and mercury set out in Annex VI to the Protocol, applicable EU legislation includes Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC<sup>6</sup> and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC<sup>7</sup>. Regarding product management measures listed in Annex VII of the Protocol, relevant EU legislation includes Commission Regulation (EU) No 1103/2010 of 29 November 2010 establishing, pursuant to Directive 2006/66/EC of

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<sup>1</sup> OJ L 171, 27.6.1981, p. 11.

<sup>2</sup> OJ L 134, 17.5.2001, p. 40.

<sup>3</sup> The last remaining technical issue, the requirements on the reporting of emissions of Cd, Pb and Hg, are covered by the Commission Proposal for a Directive of the European Parliament and of the Council on the reduction of national emission of certain atmospheric pollutants and amending Directive 2003/35/EC, of 18 December 2013, COM(2013) 920.

<sup>4</sup> OJ L 23, 26.1.2005, p. 3.

<sup>5</sup> OJ L 334, 17.12.2010, p. 17.

<sup>6</sup> OJ L 350, 28.12.1998, p.58.

<sup>7</sup> OJ L 266, 26.9.2006, p.1.

the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators<sup>8</sup>, Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>9</sup>, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)<sup>10</sup> and Directive 2007/51/EC of the European Parliament and of the Council of 25 September 2007 amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury<sup>11</sup> now repealed by entry 18a of Annex XVII of Regulation (EC) No 1907/2006 (REACH)<sup>12</sup>.

In accordance with Article 10(3) of the Protocol, the Parties reviewed the sufficiency and effectiveness of the Protocol obligations. Parties then agreed in 2009<sup>13</sup> and 2010<sup>14</sup>, based notably upon the proposals by the European Union, on the opening of negotiations for the revision of the text and of the annexes of the Protocol. This revision has sought in particular to facilitate non-Parties to the Protocol to accede to an amended Protocol and to make the Protocol more adaptable to future developments on the BAT. Accordingly, the Commission was authorised by the Council of the European Union on 26 July 2010<sup>15</sup> and 11 April 2011<sup>16</sup> to participate on behalf of the European Union (EU) in the negotiations.

The negotiation process led to the adoption by consensus of the Parties present at the 31<sup>st</sup> session of the Executive Body (EB) of the LRTAP Convention of Decisions 2012/5 and 2012/6 that have amended the text and the Annexes II to VI of the Protocol<sup>17</sup> and of Decision 2012/7 establishing a BAT guidance document<sup>18</sup>.

Decision 2012/6, which amends Annex III of the Protocol on the identification of the BAT for controlling emissions of heavy metals and their compounds from the source categories listed in Annex II of this Protocol, does not call for ratification by the Parties. In accordance with Article 13(4) of the Protocol, this amendment was communicated to all Parties to the Protocol on 11 October 2013 and entered into force on 9 January 2014. Similarly, Decision 2012/7, as a guidance document, does not require ratification by the Parties.

In accordance with Article 13(3) of the Protocol, Decision 2012/5, which amends the text of the Protocol and its Annexes II, IV, V and VI, has to be ratified by the Parties. The amended

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<sup>8</sup> OJ L 313, 30.11.2010, p. 3.

<sup>9</sup> OJ L 037, 13.2.2003, p.19

<sup>10</sup> OJ L 037, 13.2.2003, p.24

<sup>11</sup> OJ L 257, 3.10.2007, p. 13

<sup>12</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.

<sup>13</sup> Report of the Executive Body on its December 2009 27<sup>th</sup> session, ECE/EB.AIR/99/add.2, 10 May 2010.

<sup>14</sup> Report of the Executive Body on its December 2010 28<sup>th</sup> session, ECE/EB.AIR/106, para 57, 24 February 2011.

<sup>15</sup> Council Decision of 26 July 2010 on the participation of the European Union in negotiations of amendments to the 1998 Protocol on Heavy Metals to the 1979 Convention on Long-Range Transboundary Air Pollution (unpublished).

<sup>16</sup> Council Decision of 11 April 2011 on amending Council Decision of 26 July 2010 on the participation of the European Union in negotiations of amendments to the 1998 Protocol on Heavy Metals to the 1979 Convention on Long-Range Transboundary Air Pollution (unpublished).

<sup>17</sup> Decisions 2012/5 and 2012/6, 31<sup>st</sup> session of the Executive Body for the Convention, 14 – 18 December 2012, ECE/EB.AIR/113/Add.1.

<sup>18</sup> Decision 2012/7, 31<sup>st</sup> session of the Executive Body for the Convention, 14 –18 December 2012, ECE/EB.AIR/113/Add.1.

Protocol sets out, in particular, stricter emission limit values for dust emissions from certain major stationary sources as well as flexible transitional arrangements that shall benefit those Parties that will accede the Protocol, as amended, between 1<sup>st</sup> January 2014 and 31 December 2019.

The amendment to the Protocol is largely covered by current EU law notably via existing emission source control legislation, including above-mentioned Directive 2010/75/EU and the Commission Implementing Decisions adopted in accordance with this Directive and which establish the applicable BAT conclusions for various industrial sectors, such as the manufacture of glass<sup>19</sup> and the production of iron and steel<sup>20</sup>, cement, lime and magnesium oxide<sup>21</sup> and chlor-alkali<sup>22</sup>. Additionally, the adoption of Commission Implementing Decisions under Directive 2010/75/EU for the non-ferrous metals industrial sector and the smitheries and foundries industry shall complete EU coverage of the amendment to the Protocol. This amendment shall be further transposed in particular via a new Directive setting updated national emission ceilings for certain atmospheric pollutants and providing for annual national emission inventories that shall cover, among others, emissions of lead, cadmium and mercury<sup>23</sup>.

In view of the above, it is appropriate for the European Union to accept the Amendment to the Protocol.

The Annex to this Decision includes the amending text to the Protocol as laid down in Decision 2012/5.

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<sup>19</sup> Commission Implementing Decision 2012/134/EU of 28 February 2012 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass, OJ L 70, 8.3.2012, p. 1.

<sup>20</sup> Commission Implementing Decision 2012/135/EU of 28 February 2012 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production, OJ L 70, 8.3.2012, p. 63.

<sup>21</sup> Commission Implementing Decision 2013/163/EU of 26 March 2013 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide, OJ L 100, 9.4.2013, p. 1.

<sup>22</sup> Commission Implementing Decision 2013/732/EU of 9 December 2013 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali, OJ L 332, 11.12.2013, p. 34.

<sup>23</sup> *Supra* n° 3.

Proposal for a

## **COUNCIL DECISION**

### **on the acceptance of the Amendment to the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals.**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Union is a Party to the UNECE Convention on Long-Range Transboundary Air Pollution following its approval in 1981<sup>24</sup>.
- (2) The Union is a Party to the 1998 Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals following its approval on 4 April 2001<sup>25</sup>.
- (3) The Parties to the Protocol of the Convention on Long-Range Transboundary Air Pollution on Heavy Metals opened negotiations in 2009 whose scope was extended in 2010 with a view to improving further the protection of human health and the environment, including through the updating of emission limit values addressing emissions of air pollutants at source.
- (4) The Parties present at the 31<sup>st</sup> session of the Executive Body of the UNECE Convention on Long-Range Transboundary Air Pollution adopted by consensus Decisions 2012/5 and 2012/6 amending the Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals.
- (5) Decision 2012/6 entered into force and became effective on the basis of the expedited procedure provided for in Article 13(4) of the Protocol.
- (6) Decision 2012/5 requires ratification by the Parties to the Protocol in accordance with Article 13(3) of the Protocol.
- (7) The Amendment to the Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals should therefore be accepted on behalf of the European Union,

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<sup>24</sup> OJ L 171, 27.6.1981, p.11.

<sup>25</sup> OJ L 134, 17.5.2001, p. 40.

HAS ADOPTED THIS DECISION:

*Article 1*

The Amendment to the Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals is hereby accepted on behalf of the Union.

The text of the Amendment to the Protocol is attached to this Decision.

*Article 2*

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the deposit of the instrument of acceptance provided for in Article 13(3) of the 1998 Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals, in order to express the consent of the European Union to be bound by this Protocol, as amended.

*Article 3*

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

Done at Brussels,

*For the Council*  
*The President*