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Proposal for a

**COUNCIL DECISION**

**on the acceptance of the Amendments to the 1998 Protocol to the 1979 Convention on  
Long-Range Transboundary Air Pollution on Persistent Organic Pollutants**

## **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 Persistent Organic Pollutants (the Protocol). This Protocol aims to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants (POPs). It requires Parties (i) to eliminate the production and use of the substances, including aldrin, dieldrin and toxaphene, in accordance with the specified implementation requirements, (ii) to restrict the use of dichlorodiphenyltrichloroethane (DDT), hexachlorocyclohexanes (HCH) and polychlorinated biphenyls (PCBs) and (iii) to reduce their total annual emissions of polycyclic aromatic hydrocarbons (PAHs), dioxins/furans (PCDD/PCDF) and of hexachlorobenzene (HCB) from the level of the emission in 1990 (or an alternative year between 1985 and 1995). In this respect, Parties must ensure (i) that operators of major stationary sources of emissions of PCDD/PCDF, PAHs and HCB, including combustion plants, plants producing coke, iron and steel and aluminium and wood preservation installations make use of the best available techniques (BAT), (ii) that certain waste incinerators comply with given emission limit values (ELVs) applicable to PCDD/PCDF, (iii) that effective measures are taken to control POPs emissions from mobile sources and (iv) that POPs, once they become waste, are transported and disposed of in an environmental sound manner. Parties must also develop and maintain emission inventories for PCDD/PCDF, PAHs and HCB and collect information on the production and sales of the other POPs covered by the Protocol. With a view to planning measures and initiatives to comply with all their obligations under the Protocol, Parties are required to develop strategies, policies and programmes.

The accession of the Community to the Protocol was approved on behalf of the Community by Council Decision 2004/259/EC of 19 February 2004<sup>2</sup>. The Protocol, which entered into force on 23 October 2003, has been transposed into EU law through several instruments<sup>3</sup>. They include most notably 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>, Directives 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste<sup>5</sup> and 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control<sup>6</sup>,

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

<sup>2</sup> OJ L 81, 19.3.2004, p. 35.

<sup>3</sup> The detailed requirements on the reporting of atmospheric emissions of PAHs, HCB, dioxins/furans and PCBs are set out in a separate Decision of the Executive Body of the LRTAP Convention Parties, and 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 158, 30.4.2004, p. 7.

<sup>5</sup> OJ L 332, 28.12.2000, p. 91

<sup>6</sup> OJ L 24, 29.1.2008, p. 8.

now both replaced by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (IED)<sup>7</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 2007<sup>8</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 sought to update the list of POPs covered by the Protocol, to make the Protocol more adaptable to future developments on the BAT and to facilitate accession to the amended Protocol by Parties with an economy in transition. Accordingly, the Commission was authorised by the Council of the European Union in 2008 and 2009 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 27<sup>th</sup> session of the Executive Body (EB) of the LRTAP Convention of Decisions 2009/1, 2009/2 and 2009/3 that have amended the text and the Annexes of the Protocol<sup>9</sup> and of Decision 2009/4 updating guidance on the BAT<sup>10</sup>.

Decision 2009/3, which amends Annex V of the Protocol on the identification of the BAT for controlling emissions of POPs from the source categories listed in Annex VIII of this Protocol and which deletes Annex VII on recommended control measures from reducing emissions of POPs from mobile sources, does not call for ratification by the Parties. In accordance with Article 14(4) of the Protocol, this amendment was communicated to all Parties to the Protocol on 14 September 2010 and entered into force on 14 December 2010. As to Decision 2009/4, as a Decision aimed at adopting a guidance document on BAT to control emissions of persistent organic pollutants, it does not require ratification by the Parties.

In accordance with Article 14(3) of the Protocol, Decisions 2009/1 and 2009/2, which amend the text of the Protocol and its Annexes I, II, III, IV, VI and VIII, have to be ratified by the Parties. In particular, the amended Protocol includes (i) new substances (hexachlorobutadiene, tetra-, penta-, hexa- and heptabromodiphenyl ethers, pentachlorobenzene, perfluorooctane sulfonate (PFOS), polychlorinated naphthalenes and short-chain chlorinated paraffins (SCCP)), (ii) updates the implementation requirements applicable to DDT, heptachlor, hexachlorobenzene and PCBs and the ELVs applicable to PCDD/PCDF emissions from certain waste incinerators, (iii) establishes new ELVs for PCDD/PCDF emissions from sinter-plants and electric arc furnaces, and (iv) adds PCBs to the list of substances the annual emissions of which must remain below the emission level of the reference year and must be reported. The amended Protocol provides also some flexibility for Parties with an economy in transition that accede to the amended Protocol regarding the timeframes for the application of the ELVs and of the BAT and the choice of the reference year as the basis upon which Parties must reduce their total annual emissions of PCDD/PCDF, PAHs, HCB and PCBs.

EU legislation, notably Commission Regulations (EU) No 756/2010 and 757/2010 of 24 August 2010<sup>11</sup> and 519/2012 of 19 June 2012<sup>12</sup>, amending Regulation (EC) No 850/2004, as well as the above-mentioned IED and the Commission Implementing Decisions adopted under it and establishing the BAT conclusions for various industrial sectors, in particular the

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<sup>7</sup> OJ L 334, 17.12.2010, p. 17.

<sup>8</sup> Report of the Executive Body on its 25<sup>th</sup> session (10-13 December 2007), ECE/EB.AIR/91.

<sup>9</sup> Decisions 2009/1, 2009/2 and 2009/3, 27<sup>th</sup> session of the Executive Body for the Convention, 14 – 18 December 2009, ECE/EB.AIR/99/Add.1.

<sup>10</sup> Decisions 2009/4, 27<sup>th</sup> session of the Executive Body for the Convention, 14 –18 December 2009, ECE/EB.AIR/99/Add.1.

<sup>11</sup> OJ L 223, 25.8.2010, p. 20 and 29, respectively.

<sup>12</sup> OJ L159, 20.6.2012, p. 1.

production of iron and steel<sup>13</sup>, transposes fully the requirements of the amendments to the Protocol. The specific and conditional exemptions for the production, placing on the market and use of SCCP and PFOS set out in EU legislation are in conformity with the allowable exemptions as provided for in the Protocol, as amended.

These amendments 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 POPs, including PAHs, PCDD/PCDF, HCB and PCBs<sup>14</sup>.

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

The Annexes to this Decision include the amending texts to the Protocol as laid down in Decisions 2009/1 and 2009/2.

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<sup>13</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>14</sup> 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.

Proposal for a

## **COUNCIL DECISION**

### **on the acceptance of the Amendments to the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants**

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>15</sup>.
- (2) The Union is a Party to the 1998 Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants following its approval on 19 February 2004<sup>16</sup>.
- (3) The Parties to the Protocol of the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants opened negotiations in 2007 with a view to improving further the protection of human health and the environment, including through the updating of the list of substances concerned and the emission limit values applicable to certain waste incinerators.
- (4) The Parties present at the 27<sup>th</sup> session of the Executive Body of the UNECE Convention on Long-Range Transboundary Air Pollution adopted by consensus Decisions 2009/1, 2009/2, 2009/3 and 2009/4 amending the Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants.
- (5) Decision 2009/3 entered into force and became effective on the basis of the expedited procedure provided for in Article 14(4) of the Protocol.
- (6) Decision 2009/4, as a Decision aimed at adopting a guidance document on best available techniques to control emissions of persistent organic pollutants, does not require ratification.
- (7) Decisions 2009/1 and 2009/2 require ratification by the Parties to the Protocol in accordance with Article 14(3) of the Protocol.
- (8) The Amendments to the Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants should therefore be accepted on behalf of the European Union,

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<sup>15</sup> OJ L 171, 27.6.1981, p.11.

<sup>16</sup> OJ L 81, 19.3.2004, p. 35.

HAS ADOPTED THIS DECISION:

*Article 1*

The Amendments to the Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants are hereby accepted on behalf of the Union.

The texts of the Amendments to the Protocol are 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 14(3) of the 1998 Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 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*