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COMMISSION REGULATION (EU) No .../..

of XXX

**amending Regulation (EC) No 850/2004 of the European Parliament and of the Council
on persistent organic pollutants as regards Annex I**

(Text with EEA relevance)

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COMMISSION REGULATION (EU) No .../..

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amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EEC¹, and in particular Article 14(3) thereof,

Whereas:

- (1) Regulation (EC) No 850/2004 implements in the law of the Union the commitments set out in the Stockholm Convention on Persistent Organic Pollutants approved by Council Decision 2006/507/EC² and in the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (hereinafter 'the Protocol') approved by Council Decision 2004/259/EC³ (hereinafter 'CLRTAP').
- (2) Decision 2009/2⁴, adopted by the CLRTAP Executive Body at its 27th Session from 14 to 18 December 2009, identified short-chain chlorinated paraffins (hereinafter 'SCCPs') as a persistent organic pollutant. As such, they were added to the Protocol for elimination, subject to two exemptions: use as fire retardants in rubber used in conveyor belts in the mining industry or in dam sealants. Decision 2009/2 obliges the Parties to the Protocol to eliminate these two uses once suitable alternatives are available. Decision 2009/2 was implemented in the law of the Union by Commission Regulation (EU) No 519/2012⁵, which listed SCCPs in Annex I to Regulation (EC) No 850/2004.
- (3) The SCCPs entry in Annex I to Regulation (EC) No 850/2004 provides for derogation for the production, placing on the market, and use of SCCPs in conveyor belts in the mining industry and in dam sealants. To comply with Decision 2009/2, according to that entry, as soon as new information on details of uses and safer alternative

¹ OJ L 158, 30.4.2004, p. 7.

² 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).

³ Council Decision 2004/259/EC of 19 February 2004 concerning the conclusion, on behalf of the European Community, of the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (OJ L 81, 19.3.2004, p. 35).

⁴ C.N.556.2010.TREATIES-4.

⁵ 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, 20.6.2012, p. 1).

substances or technologies become available, the Commission must review the derogations with a view to phasing out the remaining uses of SCCPs. Such review, whilst mandated by Decision 2009/2, is in line with Article 14(3) of Regulation (EC) No 850/2004.

- (4) In accordance with Decision 2009/2 and the SCCPs entry in Annex I to Regulation (EC) No 850/2004, the review of the exemptions should focus on the existence of suitable alternatives for the two remaining uses. Once such alternatives are identified, the exemptions should be deleted from the entry.
- (5) In 2010 the Netherlands submitted a dossier on SCCPs entitled Evaluation of Possible Restrictions on Short Chain Chlorinated Paraffins (hereinafter 'the dossier')⁶. The dossier identifies a number of alternatives which could be used instead of SCCPs in conveyor belts in the mining industry and in dam sealants. The dossier takes into the consideration the outcome of a public consultation which was conducted during its preparation by the Netherlands.
- (6) Among the various alternatives identified, the most well-known are the medium and long-chain chlorinated paraffins, (MCCPs and LCCPs), with MCCPs appearing to be the alternative of choice for the vast majority of users. Both MCCPs and LCCPs combine performance characteristics, that resemble those of SCCPs. Other available alternatives include substances such as, organophosphate flame retardants and phosphate plasticisers, inorganic flame retardants and several others.
- (7) In the course of that public consultation, it has been suggested by some European companies that a transition to alternatives may not necessarily be smooth and re-formulation could take a considerable time. However, examples show that there are European companies that have begun using alternatives without major difficulties. With particular regard to the two applications that are exempt under Regulation (EC) No 850/2004, a major manufacturer of the conveyor belts has indicated that transition to MCCPs was smooth and incurred only low cost. At the time of the preparation of the same consultation, two other companies were working on alternatives.
- (8) In 2013 the Commission consulted with the relevant stakeholders in the mining industry. The consultation indicated that conveyer-belts containing SCCPs are no longer used by the industry for mining purposes.
- (9) With regard to dam sealants containing SCCPs, they do not appear to be manufactured, placed on the market or used in the Union. Indeed, already in 2008 the relevant stakeholders indicated to the European Chemicals Agency⁷ that SCCPs do not appear to be in use or are in the process of being phased-out in sealants (including dam sealants) in Europe.
- (10) In June 2012, the only known entity that registered manufacture of SCCPs under Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁸

⁶ Evaluation of Possible Restrictions on Short Chain Chlorinated Paraffins (SCCPs), prepared for National Institute for Public Health and the Environment (RIVM), The Netherlands, RPA July 2010.

⁷ http://echa.europa.eu/documents/10162/13640/tech_rep_alkanes_chloro_en.pdf

⁸ 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).

declared that they had stopped and do not intend to re-start manufacture of the substance.

- (11) There are suitable alternatives to the use of SCCPs in conveyor belts in the mining industry and in dam sealants. Consequently, the Commission is obliged by Decision 2009/2 and the review clause in the SCCPs entry in Annex I to Regulation (EC) No 850/2004 to eliminate those two uses. Although the industry appears to have voluntarily phased-out those two uses, the exemptions in the entry should be deleted to ensure full compliance with the thrust of the international agreement to eliminate the use of persistent organic pollutants.
- (12) It is necessary to clarify that, with regard to SCCPs, the prohibition in Article 3(1) of Regulation (EC) No 850/2004 does not apply to conveyor belts in the mining industry and dam sealants produced before or on the date of entry into force of this Regulation until six months after the date of its entry into force.
- (13) It is also necessary to clarify that, with regard to SCCPs, the prohibition in Article 3(1) of Regulation (EC) No 850/2004 does not apply to conveyor belts in the mining industry and dam sealants already in use before or on the date of entry into force of this Regulation.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Council Directive 67/548/EEC⁹,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 850/2004 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
[...]

⁹ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1).