



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.11.1997  
COM(97) 540 final

97/0297 (CNS)

Proposal for a

COUNCIL DECISION

**CONCERNING THE APPROVAL, ON BEHALF OF THE COMMUNITY, OF  
PARCOM DECISION 96/1 ON THE PHASING OUT OF THE USE OF  
HEXACHLOROETHANE IN THE NON-FERROUS METAL INDUSTRY**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **INTRODUCTION**

1. The document submitted to the Council is a proposal for a Council Decision to approve a Decision taken by PARCOM (PARCOM Decision 96/1) concerning the restriction on the marketing and use of hexachloroethane (HCE) under the Convention for the Prevention of Marine Pollution from Land Based Sources (1974 Paris Convention) on behalf of the Community.
2. The Community is a Party to the Paris Convention following Council decision 75/437/EEC of 3 March 1975<sup>1</sup>. This Decision states that the Community shall be represented in the executive body of the Convention, the Paris Commission (PARCOM), by the European Commission, and that the Commission shall put forward the position of the Community in accordance with such directives as the Council may give it.
3. Each year PARCOM discusses and may adopt, by a three quarters majority, measures in the area of pollution prevention, laid down in PARCOM Recommendations and Decisions.

### **BACKGROUND INFORMATION**

4. In 1992 and 1993, PARCOM adopted two Decisions, PARCOM Decisions 92/4 and 93/1, to restrict the marketing and use of hexachloroethane in non-ferrous metal industry<sup>2</sup>. Since not all Member States are Contracting Parties to PARCOM, this would lead to fragmentation of the internal market. Although this is an area of Community competence, for the reasons given below, the Community did not have a negotiation mandate for these Decisions nor did it take part in the adoption of these Decisions.
5. By virtue of Article 130R(4) of the EC Treaty the Community has external competence for environmental issues. In addition, by virtue of Article 100a and by Council Directive 76/769/EEC<sup>3</sup> the Community is competent in the area of marketing and use restrictions of dangerous substances and preparations.

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<sup>1</sup> OJ No. L 194, 25.7.1975, p. 5

<sup>2</sup> PARCOM Decision 92/4 on the Phasing Out of the Use of HCE in the Secondary Aluminium Industry and in the Primary Aluminium Industry with Integrated Foundries and PARCOM Decision 93/1 on the phasing Out of Use of HCE in the Non-Ferrous Metal Industry.

<sup>3</sup> OJ No. L 262, 27.9.1976, p. 201

Council Directive 76/769/EEC is a framework Directive to approximate Member States' laws, regulations and administrative provisions relating to the restriction on the marketing and use of certain dangerous substances. Any dangerous substance or preparation can be added by amendment to this Directive.

6. In December 1994, the Commission submitted a proposal to the Council concerning the amendment of Directive 76/769/EEC in order to transform PARCOM Decisions 92/4 and 93/1 into Community law<sup>4</sup>. The European Parliament, in its opinion of 20 September 1994<sup>5</sup>, proposed two amendments to the proposed Directive. According to the first amendment, an additional derogation from the ban would be given to aluminium casting works using very small amounts of HCE. The second amendment related to the entry into force of the Directive. In respect of the first amendment, this additional derogation would have virtually no effect on the environment as it concerns only 2% of HCE use. It would however, save from going out of business more than 100 small and medium enterprises employing several thousands of people. The Commission supported both of the amendments and modified its proposal accordingly.
7. However, the Community should not accept dissimilar international obligations. For this reason, it was important to ensure that the existing PARCOM Decisions were modified. Therefore the Commission submitted a Recommendation for a Council Decision authorising the Commission to propose and negotiate on behalf of the Community an amendment to PARCOM Decisions 92/4 and 93/1.
8. The Council granted the negotiation mandates on 4 March 1996. The Commission entered into negotiations in PARCOM in accordance with the negotiation directives granted by the Council. In June 1996 PARCOM Decision 96/1 on the Phasing Out of the Use of HCE in Non-Ferrous Metal Industry, which includes the required amendments, was adopted by PARCOM.
9. In the meantime, the Council has adopted Council Directive 97/16/EC<sup>6</sup> which is the fifteenth amendment to Council Directive 76/769/EEC on the restrictions on the marketing and use of certain dangerous substances and preparations and adds hexachloroethane to Annex I of Council Directive 76/769/EEC. Thus PARCOM Decision 96/1 is now in conformity with the relevant Community legislation.

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<sup>4</sup> OJ No. C 382, 31.12.94, p.35.

<sup>5</sup> OJ No. C 269, 16.10.1995 p.63.

<sup>6</sup> OJ No. L 116, 6.05.1997, p. 31

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THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 100a, in conjunction with Article 228(2), first sentence, and (3), first paragraph,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas on 3 March 1975 the Community concluded the Convention of the Prevention of Marine Pollution from Land Based Sources (Paris Convention)<sup>3</sup> thus becoming a Contracting Party to this Convention;

Whereas the executive body of the Paris Convention (PARCOM - Paris Commission) may adopt measures in the area of pollution prevention and that it adopted PARCOM Decision 96/1 on the phasing out of the use of hexachloroethane in the non-ferrous metal industry;

Whereas the Commission participated in the adoption of the PARCOM Decision 96/1 on the basis of the authorization granted by the Council and within the negotiation directives issued accordingly;

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<sup>2</sup> Reference of EP's opinion

<sup>3</sup> OJ L 194, 25.7.1975, p.5

Whereas Council Directive 76/769/EEC of 27 July 1976 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 preparations<sup>4</sup>, as last amended by Directive 97/16/EC<sup>5</sup> of 10 April 1997, adds hexachloroethane to the list of dangerous substances in Annex I of Directive 76/769/EEC;

Whereas the provisions of PARCOM Decision 96/1 are in line with Directive 76/769/EEC;

Whereas it is therefore desirable that the Community approve PARCOM Decision 96/1,

**HAS DECIDED AS FOLLOWS**

#### **Sole Article**

1. The PARCOM Decision 96/1 on the Phasing Out of the Use of Hexachloroethane in the Non-Ferrous Metal Industry is hereby approved on behalf of the Community.

The text of the said decision is attached to this Decision .

2. The Commission is hereby authorized to notify this approval to the Paris Commission.

Done at Brussels

For the Council

The President

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<sup>4</sup> OJ No. L 262, 27.09.1976, p. 201

<sup>5</sup> OJ No. L 116, 6.05.1997, p. 31

OSLO AND PARIS CONVENTIONS FOR THE PREVENTION OF MARINE POLLUTION  
JOINT MEETING OF THE OSLO AND PARIS COMMISSIONS  
OSLO: 17 - 21 JUNE 1996

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**PARCOM Decision 96/1 on the Phasing-Out of the Use  
of Hexachloroethane in the Non-Ferrous Metal Industry**

RECALLING PARCOM Decision 92/4 on the Phasing-Out of the Use of Hexachloroethane (HCE) in the Secondary Aluminium Industry and in the Primary Aluminium Industry with Integrated Foundries;

RECALLING PARCOM Decision 93/1 on the Phasing Out of the Use of Hexachloroethane (HCE) in the Non-Ferrous Metal Industry;

CONSIDERING that organohalogen compounds which are toxic, persistent and liable to bioaccumulate are a cause of marine pollution requiring urgent measures;

CONSIDERING that these substances are on the Paris Convention priority list;

CONSIDERING that hexachloroethane has been used till now in the non-ferrous metal industry, mainly as a degasifier in magnesium and copper foundries;

CONSIDERING that other systems and alternative substances already exist, capable of attaining similar, or even superior, technical efficiency and performance and that some of the alternative techniques involve less ecological risk;

CONSIDERING that limited exemptions are necessary for some applications in the production of magnesium and aluminium alloys to give small and medium foundries a reasonable period for adaptation;

**Contracting Parties to the Convention for the Prevention of Marine Pollution from Land-Based Sources DECIDE that:**

**1. Programmes and Measures**

1.1 All uses of HCE in the aluminium industry (including integrated and non-integrated foundries casting aluminium) shall be phased out as far as possible by 31 December 1996 and at the latest by 31 December 1997.

1.2 All uses of HCE in other non-ferrous metal industry shall be phased out by 31 December 1997.

- 1.3 As exceptions to this Decision, hexachloroethane may be used:
- a. for grain refining in the production of the magnesium alloys AZ81, AZ91 and AZ92;
  - b. in non-integrated aluminium foundries producing specialised castings for applications requiring high quality and high safety standards and where consumption is less than 1,5 kg of hexachloroethane per day on average.

The need for these exceptions will be reviewed in 1998.

- 1.4 Potential alternative technologies should be assessed by competent authorities for their risks and benefits.

## **2. Entry into Force**

2.1 This Decision replaces PARCOM Decisions 92/4 and 93/1 with effect from the date when the Secretariat has received confirmation from Contracting Parties holding at least three-quarters of the total number of votes in the Paris Commission that they are in a position to proceed.

2.2 That replacement has effect for each Contracting Party from:

- (a) the date mentioned in sub-paragraph 2.1, or
- (b) the date when it delivers such a notification to the Secretariat,

whichever is later.

## **3. Implementation Reports**

3.1 Implementation reports on this Decision should be made to the appropriate OSPAR working group meeting preceding the meeting of OSPAR 1999. When reporting the format as set out in the Appendix should be used to the extent possible.

## Implementation Reporting Format for PARCOM Decision 96/1 on the Phasing-Out of the Use of Hexachloroethane in the Non-Ferrous Metal Industry

Contracting Party	Reservation	Not applicable <sup>4</sup>	MEANS OF IMPLEMENTATION <sup>1,2,3</sup>		
			By legislation	Administrative action	Voluntary agreement
Belgium					
Denmark					
Finland <sup>5</sup>					
France					
Germany					
Iceland					
Ireland					
Netherlands					
Norway					
Portugal					
Spain					
Sweden					
United Kingdom					
EC					
Luxembourg <sup>6</sup>					
Switzerland <sup>5</sup>					

<sup>1</sup> Give information on specific measures taken to give effect to this Decision.

<sup>2</sup> Provide information on any special difficulties encountered, such as practical or legal problems, in the implementation of this Decision.

<sup>3</sup> The reasons for not having fully implemented this Decision should be spelt out clearly and plans for full implementation should be reported.

<sup>4</sup> State why this Decision is not applicable.

<sup>5</sup> Contracting State to the OSPAR Convention.

<sup>6</sup> Signatory to the Paris Convention and the OSPAR Convention.



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