



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 15 April 2013
(OR. en)**

8035/13

**Interinstitutional File:
2013/0075 (NLE)**

**ENV 255
ENT 91
ONU 31
OC 178**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken, on behalf of the European Union, at the sixth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants with regard to the proposal for an amendment to Annexes A and B

COMMON GUIDELINES

Consultation deadline for Croatia: 19.4.2013

COUNCIL DECISION

of ...

**on the position to be taken, on behalf of the European Union,
at the sixth meeting of the Conference of the Parties to the Stockholm Convention
on Persistent Organic Pollutants
with regard to the proposal for an amendment to Annexes A and B**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 14 October 2004, the Stockholm Convention on Persistent Organic Pollutants ("the Convention") was approved, on behalf of the European Community, by Council Decision 2006/507/EC¹.
- (2) The Union has implemented the obligations of the Convention in Union law by way of Regulation (EC) No 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organic pollutants² ("the POPs Regulation").
- (3) The Union places a strong emphasis on the need for the gradual expansion of Annexes A, B and/or C to the Convention with new substances which fulfil the criteria for persistent organic pollutants (POPs), taking into account the precautionary principle, with a view to meeting the objective of the Convention and the commitment of governments made at the World Summit on Sustainable Development held in Johannesburg in 2002 to minimise the adverse effects of chemicals by 2020.
- (4) Pursuant to Article 22 of the Convention, the Conference of the Parties ("COP") may adopt decisions amending Annexes A, B and C to the Convention. Those decisions enter into force one year from the date of communication by the depositary of an amendment, save for those parties to the Convention ("the Parties") that have opted out.

¹ OJ L 209, 31.7.2006, p. 1.

² OJ L 158, 30.4.2004, p. 7.

- (5) Following a nomination of hexabromocyclododecane¹ (HBCDD or HBCD) received from Norway in 2008, the Persistent Organic Pollutants Review Committee ("POP RC") established under the Convention has concluded its work on HBCDD. POP RC has found that HBCDD meets the criteria of the Convention for a listing in Annex A thereto. At its sixth meeting, the COP is expected to decide on the inclusion of HBCDD in Annex A to the Convention.
- (6) HBCDD was included in Annex XIV to 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)² by Commission Regulation (EU) No 143/2011³. Therefore, HBCDD is subject to the authorisation procedure under that Regulation and placing on the market and use of HBCDD is to be prohibited by August 2015 unless an authorisation is granted to a particular person for a particular use. Pursuant to Article 22 of the Convention, the Union and Member States may need to opt out of the amendment to Annex A thereto to list HBCDD, until that date, in order to avoid legal conflicts. Since HBCDD is capable of long-range environmental transport, a global phase-out of the use of this substance would be more beneficial to Union citizens than a Union-wide phase-out under REACH.

¹ Hexabromocyclododecane (CAS No.: 25637-99-4), 1,2,5,6,9,10-hexabromocyclododecane (CAS No.: 3194-55-6) and its main diastereoisomers: alpha-hexabromocyclododecane (CAS No.: 134237-50-6); beta-hexabromocyclododecane (CAS No.: 134237-51-7); and gamma-hexabromocyclododecane (CAS No.: 134237-52-8).

² OJ L 396, 30.12.2006, p. 1.

³ OJ L 44, 18.2.2011, p. 2.

- (7) POP RC recommends the listing of HBCDD under the Convention with specific exemptions for production and use of HBCDD in expanded polystyrene (EPS) and extruded polystyrene (XPS) in buildings. Those applications represent the vast majority of the use of HBCDD in the Union. Approximately three to five years are needed in order to reach sufficient capacity to replace HBCDD in the Union. The Union should therefore support the proposed specific exemptions during the sixth meeting of the COP.
- (8) POP RC notes that if HBCDD is listed in Annex A to the Convention, waste management measures in accordance with Article 6 of the Convention would ensure that products and articles containing HBCDD are disposed of in such a way that their persistent organic pollutant content is destroyed or otherwise disposed of in an environmentally sound manner.
- (9) POP RC recognises the challenges in identifying materials containing HBCDD. POP RC also recognises that recycling of EPS and XPS does occur, and that means to distinguish materials that contain HBCDD from those that do not, would be of assistance in implementing Article 6 of the Convention.
- (10) As recycling of EPS and XPS does occur in the Union, the Union should endeavour to include in Annex A to the Convention a clause allowing the recycling of EPS and XPS wastes containing HBCDD and the use in line with the specific exemptions for the production and use of HBCDD. Such recycling should take place under specific and well-defined conditions, and should be subject to review by the COP, by its eighth meeting.

- (11) Perfluorooctane sulfonic acid (PFOS) and its derivatives were added to Annex I to the POPs Regulation by Commission Regulation (EU) No 757/2010¹.
- (12) POP RC encourages the Parties to stop using PFOS in fire-fighting foams, insecticides for the control of red imported fire ants and termites, decorative metal plating, carpets, leather and apparel, textiles and upholstery. POP RC also encourages the Parties to restrict the use of PFOS in hard metal plating, currently allowed as a specific exemption, to closed-loop systems only, currently allowed as an acceptable purpose under the Convention.
- (13) PFOS and its derivatives are listed in Annex I to the POPs Regulation only with a small number of exemptions provided for under the Convention. Considering the POP RC decision, the relevant specific exemptions and acceptable purposes for PFOS and its derivatives should be deleted from Annex B to the Convention except for the exemption for the use as wetting agents in controlled electroplating systems. That exemption should be maintained until its expiry in 2015 but not beyond that date,

HAS ADOPTED THIS DECISION:

¹ OJ L 223, 25.8.2010, p. 29.

Article 1

1. The position to be taken by the Union at the sixth meeting of the COP to the Stockholm Convention on Persistent Organic Pollutants shall be to support:
 - the listing of hexabromocyclododecane¹ (HBCDD) in Annex A to the Convention with specific exemptions for production and use of HBCDD in expanded polystyrene (EPS) and extruded polystyrene (XPS) in buildings;
 - the deletion of the following specific exemptions and acceptable purposes from the entry on perfluorooctane sulfonic acid (PFOS) and its derivatives in Annex B to the Convention: fire-fighting foams, insecticides for the control of red imported fire ants and termites, decorative metal plating, carpets, leather and apparel, textiles and upholstery, following consideration of the recommendations of the POP RC.

¹ Hexabromocyclododecane (CAS No.: 25637-99-4), 1,2,5,6,9,10-hexabromocyclododecane (CAS No.: 3194-55-6) and its main diastereoisomers: alpha-hexabromocyclododecane (CAS No.: 134237-50-6); beta-hexabromocyclododecane (CAS No.: 134237-51-7); and gamma-hexabromocyclododecane (CAS No.: 134237-52-8).

2. The Union shall endeavour to include in Annex A to Convention:
 - a clause allowing the recycling of EPS and XPS wastes containing HBCDD and use in line with the specific exemptions for production and use of HBCDD under specific and well defined conditions;
 - a review by the COP, by its eighth meeting, of this recycling clause.
3. Refinement of this position, in light of developments at the sixth meeting of the COP, may be agreed during coordination on the spot.

Article 2

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

Done at ...,

For the Council

The President
