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Proposal for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Stockholm Convention on Persistent Organic Pollutants (POPs)[1] was adopted in May 2001 in the framework of the United Nations Environment Programme (UNEP). The European Union and its Member States[2] are parties to the Convention[3] and the provisions of the Convention have been implemented in EU law by Regulation (EC) 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC[4] (the POPs Regulation).

The overall objective of the Stockholm Convention is to protect human health and the environment from POPs. Specific reference is made to the precautionary approach as set out in Principle 15 of the 1992 Rio Declaration on Environment and Development. The principle is made operational in Article 8 of the Convention, which lays down the rules for including additional chemicals in the Annexes to the Convention.

At the sixth Conference of the Parties in May 2013, a decision should be taken to add to Annex A of the Stockholm Convention, which lists substances to be eliminated, a new substance, Hexabromocyclododecane (HBCDD)[5], nominated in 2008 by Norway. At the same meeting, a decision should be taken to delete a number of specific exemptions and acceptable purposes for the production, placing on the market and use of Perfluorooctane sulfonic acid (PFOS) and its derivatives.

HBCDD AND EU LAW

HBCDD is used solely as an additive flame retardant in Expanded Polystyrene (EPS), Extruded Polystyrene (XPS), High Impact Polystyrene (HIPS) and in polymer dispersion for textiles.

HBCDD is a persistent, bioaccumulative and toxic (PBT) substance. As such, it has been identified as a Substance of Very High Concern (SVHC) under 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)[6]. In 2011 HBCDD was included[7] in Annex XIV to REACH and thereby made subject to the authorisation procedure under that Regulation. Therefore, if a person wishes to place on the market and/or use HBCDD after 21 August 2015 (the so-called sunset date), he must submit an application for authorisation for the relevant use to the European Chemicals Agency (ECHA) by 21 February 2014. After 21 August 2015, placing on the market and use of HBCDD will be prohibited unless an authorisation is granted to a particular person for a particular use.

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1 http://www.pops.int/documents/convtext/convtext_en.pdf.

2 Two EU Member States have not yet ratified (Italy and Malta).

3 OJ L 209, 31.7.2006, p. 1.

4 OJ L 158, 30.4.2004, p. 7.

5 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).

6 OJ L 396, 30.12.2006, p. 1.

7 Regulation (EU) No 143/2011 of 17 February 2011 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH'), L 44, 18.2.2011, p.2.

After 21 August 2015, EU manufacturers of EPS, XPS, HIPS and textiles, containing HBCDD will be able to manufacture these materials only if authorised to do so. Imported articles containing HBCDD are outside of the scope of authorisation under REACH.

Substances listed in Annexes A, B and/or C to the Stockholm Convention[8] will need to be included in the POPs Regulation in order to ensure that the EU implementation corresponds to the international commitments.

PFOS AND EU LAW

At the fourth meeting of the Conference of the Parties to the Convention on 4–8 May 2009, it was agreed to list, *inter alia*, PFOS and its derivatives under Annex B to the Convention, with a number of specific exemptions and acceptable purposes. The implementing EU legislation is more restrictive than the Stockholm Convention as it does not include the exemptions and the acceptable purposes that were already banned in the EU under REACH. This was done in order to comply with the over-arching principle of not lowering the level of environmental protection in the EU.

PROCEDURE FOR ADDING NEW POP SUBSTANCES AND AMENDING THE ANNEXES OF THE CONVENTION

According to Article 8 of the Convention, Parties may submit proposals to the Secretariat for listing a chemical in Annexes A, B and/or C. The Persistent Organic Pollutants Review Committee (POP RC) shall examine the proposal.

If this review concludes that the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal shall proceed and a risk management evaluation that includes an analysis of possible control measures shall be drawn up. On this basis, the POP RC recommends whether the chemical should be considered by the Conference of Parties (COP) for listing in Annexes A, B and/or C. The final decision is taken by the COP.

For the EU, amendments to the Annexes A, B and/or C enter into force one year from the date of the communication by the depositary of their adoption by the COP.

THE POP RC RECOMMENDATIONS

The POP RC has decided at its eighth meeting in October 2012 to recommend the listing of HBCDD in Annex A to the Convention with specific exemptions for production and use in EPS and XPS in buildings. The POP RC recommendation is based on the existence of alternatives to HBCDD. However, their availability in sufficient quantities and potentially the need to adapt the production system for EXP and EPS in buildings within a short period of time is questionable, in particular for some developing countries.

The POP RC also notes in the decision that the end-of-life disposal of products and articles containing HBCDD will represent a long-term source of emissions into the environment, and that, if HBCDD is listed in Annex A to the Convention, waste management measures in accordance with Article 6 paragraph 1(d) 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.

In accordance with Article 8 paragraph 9 of the Convention, the POP RC has decided to submit that recommendation to the COP for its consideration at the meeting in May 2013.

[8] The same applies to substances added to Annexes I, II and/or III of the UN-ECE Protocol on POPs.

The POP RC also adopted a number of recommendations on alternatives to the use of PFOS in open applications. In its recommendations, POP RC considers that information on the commercial availability and effectiveness of safer alternatives to PFOS for the following applications has become available, and encourages parties to stop using PFOS for these applications: fire-fighting foams; insecticides for the control of red imported fire ants and termites; decorative metal plating; carpets; leather and apparel; textiles and upholstery. Furthermore, POP RC encourages parties to restrict the use of PFOS in hard metal plating, to closed-loop systems only.

THE POP RC RECOMMENDATIONS AND EU LAW

The POP RC recommendation, if followed by the COP in May 2013, will result in an international ban on manufacturing, placing on the market and use of HBCDD, except for its use in EPS and XPS in building-related applications. This specific exemption will apply for a period of five years, extendable, if necessary, by another five years.

The listing of HBCDD in Annex A to the Convention will require amendments to the POPs Regulation. According to Article 14(1) of the Regulation, when substances are added to the Convention, changes to the Annexes of the Regulation can be made in accordance with the normal committee procedures established in Articles 5a of Decision 1999/468/EC[9], having regard to Articles 10 and 11 of Regulation (EU) No 182/2011[10]. The inclusion of HBCDD under the Convention should be timed so that the subsequent amendment of the POPs Regulation could be applicable from the finalisation of the authorisation procedure for HBCDD under REACH. This may require allowing the Parties to the Convention to postpone the transposition of the relevant COP decision until February 2016.

The time limited exemption under the Convention has a similar objective to the authorisation procedure under REACH. Both devices force operators to phase out problematic substances, whilst allowing for reasonable time to do so. In the case of HBCDD, the timing of both instruments will coincide, thus they will have similar effects on the majority[11] of the EU market. Manufacturers, traders and users of HBCDD in building-related applications of EPS and XPS, which are covered by the exemption, will be able to apply for and benefit from authorisations under REACH. Manufacturers, traders and users of HBCDD in HIPS, textiles and non-building-related applications of EPS and XPS must switch to alternatives. However, due to the availability of alternatives, the small size of the relevant markets and – in the case of textiles - based on the current market trends where the use of HBCDD has significantly diminished over the last years, it is unlikely that the relevant market operators would invest in applications for authorisations. Therefore, even without listing of HBCDD under the Convention, it is expected that these uses will be phased out and effectively banned in the EU after 21 August 2015 under REACH.

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9 Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

10 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

11 In 2008 the use of HBCDD in EPS and XPS constituted 96.3% of the total use of HBCDD in the EU. According to the 2011 assessment of the consumption of HBCDD in EPS and XPS in conjunction with national fire requirements (see http://www.klif.no/publikasjoner/2819/ta2819.pdf), in Europe, 70% of EPS is used in building related applications, 25% in packaging and 5 % in other applications. Packaging material is generally thought to be HBCDD free. Therefore, vast majority of HBCDD containing EPS is used in building-related applications. HBCDD containing XPS is thought to be used only in building related applications.

Whilst the effect on the EU market of both measures is largely similar, listing of HBCDD under the Convention and the implementation in EU law will bring significant added value. HBCDD is a persistent organic pollutant capable of long-range environmental transport. Therefore, the REACH authorisation procedure may not be sufficient to protect EU citizens and the environment from adverse effects of HBCDD, as it will not affect manufacturing and use of HBCDD in third countries. Global action is therefore necessary. Furthermore, listing of HBCDD under the Convention will level the playing field between its users in the EU and in third countries. Whilst the former group is obliged under REACH to invest resources in switching to alternatives and/or preparing applications for authorisation, the latter group is currently not subjected to such pressures, as imported articles are not subject to REACH authorisation. Listing HBCDD with the time-barred exemption under the Convention will force third country operators to start investing in switching to alternatives just like the REACH authorisation process forces EU users to invest in the switch.

Once adopted by the COP, the POP RC recommendation on HBCDD should be implemented in the EU Law in a manner which would make REACH and the POPs Regulation complement rather than contradict one another. This means that the exemption for building related uses, when implemented through the POPs Regulation, will be limited to those authorised under REACH. This approach will be in line with the overarching principle of not lowering the environmental protection in the EU. It will also protect the investment of the market operators who were successful in obtaining authorisations under REACH. The exemption under the POPs Regulation will have to be time-barred. This means that, unless extended, the exemption will expire 5 years after its entry into force (February 2021). However, if despite the information submitted by the industry, more time is needed in order to substitute HBCDD, the EU may propose to extend the validity of the exemption under the Convection by another 5 years (February 2026).

With regards to PFOS and its derivatives, a deletion of the specific exemptions listed in the decision of the POP RC will have no impact on the EU law as the relevant exemptions were either not implemented in the POPs Regulations or have already expired. The only exception to this is the exemption for the use of PFOS in hard metal plating in open systems, currently exempted under the POPs Regulation for the use as wetting agents in controlled electroplating systems. This exemption under the POPs Regulation is however only allowed until 26 August 2015.

THE EU POSITION

In view of the above, at the Sixth COP to the Stockholm Convention, the European Union should support the adding of HBCDD to Annex A to the Convention (with the exemption for its production and use in EPS and XPS in buildings). Parties to the Convention should be allowed to postpone the transposition of listing of HBCDD until February 2016. Furthermore, the European Union should support the deletion of the relevant specific exemptions and acceptable purposes for PFOS and its derivatives, except for the exemption for the use as wetting agents in controlled electroplating systems. That exemption should be maintained until its expiry in 2015. The exemption should not be extended beyond that date.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The relevant risks and socio economic considerations related to the use of HBCDD in the EU and in the world were investigated by ECHA in 2008 and POP RC between 2009 and 2012. Both investigations involved consultation with interested parties.

THE CONSULTATION

When HBCDD was recommended for inclusion in Annex XIV to REACH, ECHA prepared a background document[12] supporting the recommendation. The background document was based on a paper entitled Data on Manufacture, Import, Export, Uses and Releases of HBCDD as well as Information on Potential Alternatives to its Use[13]. Both documents were subject to public consultation.

The information presented in those two documents on manufacture import and export, uses and releases from uses is based on the Risk Assessment Report with additional data supplied by the HBCD Industry User Group in October 2008. This additional data comprises summary data for the total sales and consumption of HBCDD across the EU for each year from 2003 until 2007. The information on possible alternatives to HBCDD has been taken from a wide variety of sources including reviews undertaken by both industry and regulators that have aimed to identify candidate substances/techniques.

At its seventh meeting, the POP RC adopted the risk management evaluation (RME) for HBCDD[14]. The RME was consulted with the stakeholders, including industry representatives, between 2010 – 2012 POP RC invited the *ad hoc* working group on HBCDD that prepared the RME to collect further information in respect of HBCDD. POP RC agreed to review the additional information and to consider at its eighth meeting whether to specify the annex to the Convention and possible exemptions to be considered by the COP in listing HBCDD. Twenty-six Parties and country observers submitted information[15]. In addition, seven non-governmental observers submitted information[16].

RESULTS OF THE CONSULTATION

Listing of HBCDD under the Convention in accordance with the POP RC recommendation and the subsequent implementation in the EU through the POPs Regulation will ban the production, placing on the market and use of HBCDD in, HIPS and textiles as well as non-building-related applications of EPS and XPS.

HIPS

According to the documents published by ECHA, HIPS with HBCDD is mainly used in video and stereo equipment, distribution boxes for electrical lines in the construction sector and refrigerator lining. Different sources estimate the HBCDD content of flame-retarded HIPS between 1-7% (w/w) and the EU Risk Assessment Report assumed as a realistic worst case, that HIPS contains 7% HBCDD. The use volume has not changed in the last few years in Europe and is estimated at 210 tonnes/year (1.81% of the total use of HBCDD in the EU).

HBCDD is not widely used in HIPS and it is reasonable to assume that alternative flame retardants are available for this application. The following chemicals can be used as alternatives to HBCDD in HIPS: Ethylenebis(tetrabromophthalimide) (EBTPI), (technically feasible, commercially available and used extensively); Decabromodiphenylethane (DBDPE)

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12 http://echa.europa.eu/documents/10162/42ddec00-863a-4cff-abd2-6d4b39abe114.

13 http://echa.europa.eu/documents/10162/eb5129cf-38e3-4a25-a0f7-b02df8ca4532.

14 UNEP/POPS/POPRC.7/19/Add.1, available at: http://chm.pops.int/Convention/POPsReviewCommittee/POPRCMeetings/POPRC7/POPRC7Documents/tabid/2267/language/en-US/Default.aspx.

15 Argentina, Azerbaijan, Brazil, Bulgaria, Cambodia, Cameroon, Canada, China, Germany, Guatemala, Indonesia, Ireland, Israel, Italy, Kiribati, Latvia, Mali, Mexico, Monaco, Myanmar, the Netherlands, Norway, Poland, Romania, Thailand and United States of America.

16 Great Lakes Solutions, Green Chemicals Srl, International POPs Elimination Network IPEN, PS Foam Industry, Extruded Polystyrene Foam Association, and jointly the industry associations EXIBA (a Cefic sector group) and EPS (PlasticsEurope), as well as former POPRC member.

(technically feasible, commercially available and used extensively). DBDPE is commonly used in HIPS and textiles, with better effect than HBCDD and approximately equal price as HBCDD; Triphenyl phosphate (technically feasible, commercially available and used extensively); Bisphenol A bis (biphenyl phosphate) (BDP) (technically feasible, commercially available and used extensively); Diphenyl cresyl phosphate (technically feasible, commercially available and used extensively).

Other chemicals that can be used as alternatives to HBCDD in HIPS include a variety of brominated flame retardants used in conjunction with antimony trioxide (ATO). These include: Tris(tribromoneopentyl)phosphate; Tetrabromobisphenol A-Bis(2,3-dibromopropyl ether) (TBBPA-DBPE); 2,4,6-tris(2,4,6-tribromophenoxy)-1,3,5 triazine; Ethane-1,2-bis(pentabromophenyl) and Ethylenebis(tetrabromophtalimide).

Alternative materials to HIPS are also on the market. More specifically, in electrical products HIPS can be replaced by various alternative materials, including blends of polycarbonate / acrylonitrile butadiene styrene (PC/ABS), polystyrene / polyphenylene ether (PS/PPE) and polyphenylene ether / high impact polystyrene (PPE/HIPS) without flame retardants or with the use of non-halogenated phosphorus flame retardants.

Textiles

According to the documents published by ECHA, HBCDD is used in textile applications to comply with British and German DIN flame retardant standards, mainly for upholstered furniture and seating in transportation, draperies, bed mattress ticking, interior and automobile textiles. A likely HBCDD concentration in the final product is estimated to be 10-15%. After a substantial reduction of this use during the last few years it is estimated that only about 210 tonnes/year are currently used in textile coating (1.81% of the total use of HBCDD in the EU).

The relatively low quantity of HBCDD used in textile coatings and the high reduction in its use in the last few years was assumed to reflect the availability of equally effective alternatives. Flame retardant use in textiles can be avoided if the material itself is non-flammable or has low flammability. Some natural materials such as wool may therefore be used as barrier materials in furniture. Other inherently flame retardant materials include rayon with a phosphorus additive, polyester fibres, and aramids. Also several chemicals are available that may be used as drop-in alternatives for HBCDD in textile applications.

For textile back coating, chemical alternatives to HBCDD include, Decabromodiphenylethane (DBDPE) (technically feasible, commercially available and used extensively); ethylene bis(tetrabromophtalimide) (technically feasible, commercially available and used extensively); chlorinated paraffins (technically feasible, available and used extensively) and ammonium polyphosphates (technically feasible, available and used extensively). It should nevertheless be noted that, with the exception of ammonium polyphosphates, these are halogenated and persistent substances with the potential of being themselves classified as POPs at a later stage. Furthermore, short chain chlorinated paraffins (SCCPs) are already restricted[17] under the POPs Regulation.

In textiles fire safety may also be achieved by the use of intumescent systems. Intumescence is the formation of a foamed char, which acts as heat insulation. An intumescent system is generally a combination of a source of carbon to build up char, an acid generating compound and a decomposing compound to generate blowing gases to produce foamed char.

[17] 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.

Non-building-related applications of EPS and XPS

According to the 2011 report entitled Assessment of the consumption of HBCDD in EPS and XPS in conjunction with national fire requirements[18], in the EU, 70% of EPS is used in building related applications, 25% in packaging (industrial and food) and 5% in other applications. Packaging material is generally thought to be HBCDD free. The main non-building related use of HBCDD containing EPS is the use in automobile cushions for children to meet the needs of the FMVSS 302 standard. There do not appear to be any non-building-related applications of HBCDD-containing XPS in the EU.

During the two year consultation period no request for a specific exemption for non-building related uses of EPS and XPS has been made by governments or industry. It is therefore assumed that there are either alternative chemicals used in those applications or alternative materials altogether.

Building-related applications of EPS and XPS

The main use of HBCDD in the EU is in the production of EPS and XPS. HBCDD-containing EPS is mainly used in building-related applications. HBCDD-containing XPS appears to be used only in building-related applications.

At present, suitable flame retardant is available but in insufficient quantities to replace HBCDD in most building-related uses of XPS or EPS, as much higher levels of non-halogen flame retardant (EPS and XPS contain 0.7 % and 2.5 % HBCDD respectively) would be necessary. In March 2011, Great Lakes Solutions announced it will scale up production of a high molecular weight brominated co-polymer of styrene and butadiene flame retardant (Polymeric FR) suitable for EPS and XPS. It is expected, however, to take several years for the industry to fully convert to this technology. According to the industry hazard assessment, it is persistent, but not bioaccumulative or toxic.

According to the information presented during the eighth meeting of POP RC, currently pilot scale quantities of Polymeric FR are being submitted to downstream users for testing. Plant scale production trials have run successfully and Polymeric FR should be commercially available in 2012 from Great Lakes Solutions-Chemtura Corporation. ICL-Industrial Products recently announced that they are aiming for commercial production by 2014 (10 000 MT). Albemarle (US) will have the chemical commercially available in 2014. The sufficient capacity to replace HBCDD should therefore be reached within 3-5 years.

Considering the foregoing, the time-limited exemption for the use of HBCDD in building-related applications of EPS and XPS should be supported in order to allow the industry enough time to switch to the alternatives.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal consists in a Council Decision, based on Articles 192(1) and 218(9) of the TFEU, establishing the position to be adopted, on behalf of the EU, at COP6 of the Stockholm Convention on Persistent Organic Pollutants with regard to the proposal for an amendment of Annexes A and B.

Article 218(9) TFEU is the appropriate legal basis as the act that COP6 is called upon to adopt is a decision amending an annex to the Stockholm Convention which has legal effects.

[18] http://www.klif.no/publikasjoner/2819/ta2819.pdf.

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on the position to be adopted, on behalf of the European Union, at the Sixth Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants with regard to the proposal for an amendment of 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) The Stockholm Convention on Persistent Organic Pollutants (hereinafter referred to as 'the Convention') was ratified by the European Union on 16 November 2004, based on the 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[19].

(2) The European Union has implemented the obligations from the Convention in European Union law by way of Regulation (EC) No 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organics pollutants and amending Directive 79/117/EEC[20] (the POPs Regulation).

(3) The European Union places strong emphasis on the need for the Convention to gradually expand its Annexes A, B and/or C with new substances which meet the criteria of being persistent organic pollutants (POPs), taking into account the precautionary principle, with a view to meeting the objective of the Convention and the commitment of all governments made at the Johannesburg Summit 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 that have opted out.

(5) Following a nomination of Hexabromocyclododecane (HBCDD)[21] 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. The

[19] OJ L 209, 31.7.2006, p. 1.

[20] OJ L 158, 30.4.2004, p. 7.

[21] 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).

forthcoming Conference of the Parties to the Convention is expected to decide on the inclusion of HBCDD in Annex A of the Convention.

(6) In 2011, HBCDD was included[22] 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)[23]. HBCDD is therefore subject to the authorisation procedure under that Regulation. Placing on the market and use of HBCDD will be prohibited unless an authorisation is granted to a particular person for a particular use. Since HBCDD is capable of long-range environmental transport, a global phase-out of the use of this substance will be more beneficial to the EU citizen than an EU-wide phase-out under REACH.

(7) In order to align the listing under the POPs Regulation with the relevant deadline in Annex XIV to REACH, the Parties to the Convention should be allowed to delay the transposition of the COP decision listing HBCDD until February 2016.

(8) POP RC recommends the listing of HBCDD under the Convention with a specific time limited exemption for production and use of HBCDD in building-related applications of EPS and XPS. Those applications represent the vast majority of the use of HBCDD in the EU. Three to five years are needed in the EU in order to reach the sufficient capacity to replace HBCDD in the EU. The EU should therefore support the proposed specific exemption during COP6.

(9) POP RC notes that if HBCDD is listed in Annex A, waste management measures in accordance with of Article 6 paragraph 1(d) 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.

(10) Wastes containing HBCDD, especially EPS and XPS used in building-related applications, are currently recycled in a number of countries which are Parties to the Convention. These Parties may propose an exemption, allowing temporarily the recycling of HBCDD containing wastes in an analogous fashion to the clause which was included during COP4 in Part IV to Annex A and allows the recycling of wastes containing tetrabromodiphenyl ether and pentabromodiphenyl ether under certain well-defined conditions.

(11) In 2010, Perfluorooctane sulfonic acid (PFOS) and its derivatives were listed[24] in Annex I to the POPs Regulation.

(12) POP RC encourages 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 encourage 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.

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22 Regulation (EU) No 143/2011 of 17 February 2011 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH'), L 44, 18.2.2011, p.2.

23 OJ L 396, 30.12.2006, p. 1.

24 Commission Regulation (EU) No 757/2010 of 24 August 2010 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annexes I and III, OJ L 223, 25.8.2010, p. 29.

(13) PFOS and its derivatives were listed in Annex I to the POPs Regulation only with a small number of exemptions provided for under the Convention. Considering POP RC decision, the relevant specific exemptions and acceptable purposes for PFOS and its derivatives should be deleted except for the exemption for the use as wetting agents in controlled electroplating systems. That exemption should be maintained until its expiry in 2015. The exemption should not be extended beyond that date.

HAS ADOPTED THIS DECISION:

Article 1

1 The position to be taken by the European Union at the Sixth Conference of the Parties to the Stockholm Convention shall be to support

- the listing of hexabromocyclododecane (HBCDD)[25] in Annex A to the Convention with a time limited exemption for production and use of HBCDD in building-related applications;

- the deletion of the following 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,

in line with the recommendations of the Persistent Organic Pollutants Review Committee[26].

Minor changes vis-à-vis the recommendations of the Persistent Organic Pollutants Review Committee may be agreed to by the representatives of the Union at the Sixth Conference of the Parties to the Stockholm Convention without further decision of the Council.

2 The Parties to the Convention should be allowed to postpone the transposition of the listing of HBCDD in Annex A to the Convention until February 2016.

3 In case the inclusion in Annex A of a clause temporarily allowing the recycling of wastes containing HBCDD under specific, well-defined conditions is proposed, the European Union may support such an amendment.

Article 2

After its adoption, the Decision of the Conference of the Parties to the Stockholm Convention shall be published in the *Official Journal of the European Union.*

Done at Brussels,

For the Council
The Presiden

[25] 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).

[26] Decisions POPRC-8/3: Hexabromocyclododecane and POPRC-8/8: Perfluorooctane sulfonic acid, its salts, perfluorooctane sulfonyl fluoride and their related chemcials in open applications (part of POPRC-8/16), available at: http://chm.pops.int/Convention/POPsReviewCommittee/LatestMeeting/POPRC8/MeetingDocuments/tabid/2801/Default.aspx