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Proposal for a

**COUNCIL REGULATION**

**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)

## **EXPLANATORY MEMORANDUM**

The substance hexabromocyclododecane (HBCDD) was listed in Annex A to the Stockholm Convention on Persistent Organic Pollutants ('the Convention') at the sixth meeting of the Conference of the Parties to that Convention in 2013.

Pursuant to Article 14(1) of Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants, HBCDD should subsequently be listed in Annex I to that Regulation in order to implement in the Union the prohibition on production, use and import of that substance. That Article states further that measures, designed to amend non-essential elements of that Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(3) of that Regulation.

Accordingly, the Commission submitted a draft Regulation for vote to the Committee established by Article 29 of Directive 67/548/EEC. The Committee did not deliver an opinion on the draft Regulation in its meeting on 26 May 2015.

The main concern raised by some Member States was the level proposed in the draft Regulation for the substance, HBCDD, to be regarded as an unintentional trace contaminant (UTC). The Commission took note of this concern, however, it maintains and refers the same legal proposal to the Council on the basis that the Commission already proposed a compromise during that Committee Meeting on 26 May 2015. In place of an UTC level of 10 mg/kg, as was originally included in the Commission's draft Regulation, an UTC level of 100 mg/kg was proposed to Member States during the Committee Meeting and this level is maintained in the Commission's proposal to the Council.

Thus, in accordance with the procedure set out in Article 5a of Decision 1999/468/EC, a Proposal for a Council Regulation is submitted to the Council and forwarded to the European Parliament.

Proposal for a

## **COUNCIL REGULATION**

### **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 COUNCIL OF THE EUROPEAN UNION,

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/EEC<sup>1</sup>, and in particular Article 14(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EC) No 850/2004 implements the commitments of the Union under the Stockholm Convention on Persistent Organic Pollutants ('the Convention') approved by Council Decision 2006/507/EC<sup>2</sup> and under the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants ('the Protocol') approved by Council Decision 2004/259/EC<sup>3</sup>.
- (2) Annex A to the Convention (elimination) contains the chemicals of which the production, use, import and export should be forbidden and for which legal and administrative measures should be taken to eliminate such chemicals.
- (3) The Conference of the Parties to the Convention has, pursuant to Article 8(9) of the Convention, decided at its sixth meeting to amend Annex A to the Convention in order to include hexabromocyclododecane ('HBCDD') in that Annex. That amendment contained a specific exemption for the production and use of HBCDD in expanded polystyrene and extruded polystyrene in buildings.
- (4) In accordance with Article 22(3) of the Convention, amendments to Annexes A, B and C thereto enter into force one year from the date of the communication by the depositary of the amendment, which, for HBCDD, was 26 November 2014.
- (5) Pursuant to Article 14(1) of Regulation (EC) No 850/2004, HBCDD should be listed in Annex I to that Regulation in order to implement in the Union the prohibition of production, use, import and export of that substance.

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<sup>1</sup> [OJ L 158, 30.4.2004, p. 7.](#)

<sup>2</sup> 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).

<sup>3</sup> 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).

- (6) HBCDD is currently listed in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>4</sup>, as a result of which HBCDD may be placed on the market or used after 21 August 2015 only if such placing on the market or use has been authorised in accordance with Title VII of Regulation (EC) No 1907/2006, or if an application has been made for such an authorisation before 21 February 2014, and a decision on that application is still pending.
- (7) As a consequence of the provisions of Title VII of Regulation (EC) No 1907/2006 that have applied to HBCDD since 21 August 2015, the Commission sent the Convention's depositary a notification in accordance with Article 22(3)(b) of the Convention on 25 November 2014 informing it that the Union could not accept the amendment of Annex A to the Convention before 21 August 2015. As that date has now passed, HBCDD should be listed in Annex I to Regulation (EC) No 850/2004.
- (8) Any authorisation granted for the use or placing on the market of HBCDD should be limited to the scope of the specific exemption provided for in the amendment of Annex A to the Convention, which permits the use of HBCDD only in expanded polystyrene and extruded polystyrene in buildings and its production only for that purpose. Since no application for authorisation for use of HBCDD in making extruded polystyrene was received in the Union under Regulation (EC) No 1907/2006, that use should no longer be permitted.
- (9) The amendment of Annex A to the Convention, and more specifically the new Part VII inserted in that Annex, further requires that expanded polystyrene and extruded polystyrene containing HBCDD that are placed on the market can be easily identified throughout its life cycle by labelling or other means. That requirement should be implemented in the Union.
- (10) In order to reinforce the practical application and consistent enforcement in the Union of the prohibition in Article 3 of Regulation (EC) No 850/2004, a threshold limit should be set for HBCDD occurring as an unintentional trace contaminant in substances, preparations and articles. In order to take account of technical developments, this threshold limit should be reviewed by the Commission within 3 years from the date of entry into force of this Regulation with a view to lowering the threshold.
- (11) Annex I to Regulation (EC) No 850/2004 should be amended in order to specify, in accordance with Article 4(4) of the Convention, that the specific exemption for HBCDD expires on 26 November 2019, which is five years after the date of entry into force of the Convention with respect to HBCDD, unless an earlier expiry date is notified by the Union to the Secretariat and indicated in the Register of specific exemptions.
- (12) In order to allow a period of transition to adapt to the rules of this Regulation, the prohibition in Article 3 of Regulation (EC) No 850/2004 should not apply to expanded polystyrene articles and extruded polystyrene articles containing HBCDD produced before or on the date of entry into force of this Regulation until three months after the date of its entry into force.

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<sup>4</sup> 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).

- (13) It is necessary to clarify that neither the prohibition of the production, placing on the market and use laid down in Article 3 of Regulation (EC) No 850/2004 nor the identification requirement referred to in recital (9) should apply to articles containing HBCDD which are already in use on the date of entry into force of this Regulation.
- (14) Where use of HBCDD in expanded polystyrene articles has been authorised in accordance with Title VII of Regulation (EC) No 1907/2006, the import and use of expanded polystyrene articles containing HBCDD should also be allowed for the duration of the validity of that authorisation.
- (15) The committee established by Article 29 of Council Directive 67/548/EEC<sup>5</sup> has not delivered an opinion on the measures provided for in this Regulation and the Commission therefore submitted to the Council a proposal relating to those measures and forwarded it to the European Parliament,

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 Council*  
*The President*

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<sup>5</sup> 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).