



To: Mr. Karmenu Vella
Member of the European Commission
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Response to the reply by European Commissioner Mr. Karmenu Vella on the EU Recast Regulation on Persistent Organic Pollutants (Recast of Regulation (EC) No 850/2004) of April 4th

Date: April 18th

Dear Mr. Commissioner Vella,

Thank you for your April 4th letter in which you explain the European Commission's rationale behind the concentration limit for the sum of the POP-PBDEs in mixtures and articles and the limit in wastes. We appreciate you taking the time to answer our concerns. We would like to further explain our rationale and provide the EU with an opportunity to advance on the Stockholm Convention implementation at the upcoming 9th Conference of the Parties.

500 mg/kg as an unintentional trace contaminant level in articles

In your response you characterized the 500 mg/kg limit value for the sum of PBDEs in articles as the value specified as the unintentional trace contaminant level in accordance with Article 4(1)(b) of the Recast. You also mentioned some other reasons for this value such as limitations in distinguishing different PBDEs in large-scale measurements.

Our response: The definition of unintentional trace contamination is, “a level below which the substance cannot be meaningfully used and above the detection limit of existing detection methods to enable control and enforcement.”

The 500 mg/kg (ppm) concentration value of PBDEs (0.05% of weight of article) certainly does not constitute a “meaningful use” as it cannot supply a flame retardant function. However, conventional lab methods (gas chromatography coupled with mass spectrometry) can measure PBDEs with a 0.5 – 2.5 ng/g (ppb) limit of detection. For this reason, the current value of 500 mg/kg (ppm) does not meet the definition of unintentional trace contamination.

In fact, the EU previously used 10 mg/kg (ppm) as the unintentional trace contaminant level for commercial pentaBDE and octaBDE in articles. Since the same analytic methods are used for detecting and quantifying decaBDE as for pentaBDE and octaBDE, there is no reason to increase the limit value above 10 ppm for unintentional trace contaminants.

In practice and according to our experience (data from [Toxic Loophole](#) report), the levels of PBDEs measured in recycled plastic products on the EU market are too high to be consistent with unintentional trace contaminants. Instead, the data indicates that PBDE levels in these products are the

result of toxic recycling. This directly conflicts with the Stockholm Convention prohibition on the recycling of materials containing decaBDE. To comply with the Stockholm Convention, the sum limit for tetra-, penta-, hexa-, hepta-, and decaBDE should be 10 ppm for decaBDE and other PBDE substances, giving the alternative of a maximum of 50 ppm for the sum of all POP-PBDEs.

The principal consequence of the PBDE recycling exemption in the Stockholm Convention is contamination of products made of recycled plastic or foam with toxic chemicals. If the European Commission insists that only unintentional trace contamination of PBDEs in articles is allowed, then the European Union (EU) should publicly withdraw its registration for the recycling of PBDEs ([tetraBDE](#), [pentaBDE](#), [hexaBDE](#), and [heptaBDE](#)) at the upcoming 9th Conference of the Parties of the Stockholm Convention.

We note that only seven Parties are registered for these recycling exemptions. Japan withdrew their recycling exemptions for recycling automobile shredder residues to refuse paper and plastic fuel and recycling automobile shredder residues to sound-proofing products. We are also aware that Czechia, Iran, and Vietnam no longer have recycling exemptions for [TetraBDE and PentaBDE](#) as of 2014 – 2015 and Czechia and Iran also no longer have recycling exemptions for [HexaBDE and HeptaBDE](#) as of 2014 – 2015. We hope the EU can follow suit at COP9.

We also note that [technical solutions exist for separation](#) of PBDE-contaminated waste including [Creasolv](#), x-ray fluorescence devices, x-ray transmission devices, and even low-cost sink-float methods. Techniques for destruction of PBDEs as required under the Stockholm Convention include [non-combustion techniques](#) such as super critical water oxidation (SCWO), gas phase chemical reduction, and mechanochemical processes such as high-energy ball milling

1000 mg/kg as the waste limit

This limit was established in Annex IV of the Recast. You pointed out that this limit value remains at the same level as the cumulative concentration limit specified in Annex IV to Regulation (EC) No 850/2004 for the four original POP-PBDEs even though decaBDE is now covered by that limit value in the Recast.

Our response: The original concentration limit of 1000 mg/kg (ppm) for the sum of the POP-PBDEs (tetra-, penta-, hexa-, heptaBDE) in waste established in Annex IV of the Recast was set inconsistently with the conclusions of the [EU's own consultants](#). The EU's consultants recommended two levels for each of the POPs. The preferred levels were the lower levels (LPCL1). The recommended lower level for each of the PBDEs (tetra-, penta-, hexa- and heptaBDE) was 10 ppm. This meant a total LPCL of 50 ppm for mixtures of the POP BDEs including decaBDE – not 1000 mg/kg. In our view, the currently proposed limit of 1000 ppm for PBDEs should be strengthened to a science-based limitation of 50 ppm.

While we appreciate that these policies have a revision clause after two years, the data on PBDE contamination in EU consumer products should result in a prompt revision to prevent further contamination and exposure. EU consumers should be able to purchase products made of recycled materials without having to worry that they contain substances that are globally banned due to its very harmful properties.

Thank you for consideration of views.

Sincerely,

Mr Jindřich Petrlík, Arnika

Ms Giulia Carlini, Center for International Environmental Law (CIEL)
Ms Tatiana Santos, European Environmental Bureau (EEB)
Ms Kistine Garcia, Ecologistas en Acción
Ms Génon K. Jensen, Health and Environment Alliance (HEAL)
Ms Alexandra Caterbow, Health and Environment Justice Support (HEJSupport)
Ms Sasha Gabizon, Women Engage for a Common Future (WECF)
Ms Pamela Miller and Dr. Tadesse Amera, International POPs Elimination Network (IPEN)