

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0271/2001

12 July 2001

*****I**

REPORT

on the proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether)
(COM(2001) 12 – C5-0018/2001 – 2001/0018(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Frédérique Ries

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL	5
DRAFT LEGISLATIVE RESOLUTION.....	10
EXPLANATORY STATEMENT	11

PROCEDURAL PAGE

By letter of 16 January 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether) (COM(2001) 12 - 2001/0018 (COD)).

At the sitting of 18 January 2001 the President of Parliament announced that she had referred this proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0018/2001).

The Committee on the Environment, Public Health and Consumer Policy appointed Frédérique Ries rapporteur at its meeting of 24 January 2001.

It considered the Commission proposal and draft report at its meetings of 25 June 2001 and 11 July 2001.

At the latter meeting it adopted the draft legislative resolution by 42 votes to 5, with 0 abstentions.

The following were present for the vote: Guido Sacconi, acting chairman; Alexander de Roo and Ria G.H.C. Oomen-Ruijten, vice-chairmen; Frédérique Ries, rapporteur, Per-Arne Arvidsson, María del Pilar Ayuso González, Paolo Bartolozzi (for Caroline F. Jackson), Jean-Louis Bernié, Hans Blokland, David Robert Bowe, John Bowis, Hiltrud Breyer, Philip Bushill-Matthews (for Christa Klab), Martin Callanan, Chris Davies, Avril Doyle, Anne Ferreira, Francesco Fiori (for Giacomo Santini pursuant to Rule 153(2)), Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Françoise Grossetête, Cristina Gutiérrez Cortines, Anneli Hulthén, Marie Anne Isler Béguin, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Giorgio Lisi (for Emilia Franziska Müller), Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Jorge Moreira da Silva, Rosemarie Müller, Riitta Myller, Giuseppe Nisticò, Karl Erik Olsson, Horst Schnellhardt, Inger Schörling, Jonas Sjöstedt, María Sornosa Martínez, Bart Staes (for Patricia McKenna), Dirk Sterckx (for Marit Paulsen), Catherine Stihler, Antonios Trakatellis, Kathleen Van Brempt (for Dorette Corbey) and Phillip Whitehead .

The Committee on Legal Affairs and the Internal Market decided on 25 January 2001 not to deliver an opinion.

The report was tabled on 12 July 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether) (COM(2001) 12 – C5-0018/2001 – 2001/0018(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1 Title

Proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether)

Proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether, ***octabromodiphenyl ether***)

Justification

Modification of the title so that this proposal for a directive ensures the banning not only of pentaBDE but also of octaBDE.

Amendment 2 Recital 5

(5) The commercially available, technical grade, diphenyl ethers are mixtures and contain molecules with different numbers of bromine atoms. Technical grade octabromodiphenyl ether (octaBDE) contains pentaBDE, in addition to mainly octaBDE and heptaBDE. ***OctaBDE is currently the subject of risk assessment under Regulation (EEC) 793/93. This risk assessment is not yet complete and though risk reduction measures may be recommended in the future the present proposal should not have the***

(5) The commercially available, technical grade, diphenyl ethers are mixtures and contain molecules with different numbers of bromine atoms. Technical grade octabromodiphenyl ether (octaBDE) contains pentaBDE, in addition to mainly octaBDE and heptaBDE. ***In order to protect human health and the environment the use of octaBDE with more than 0.1 % pentaBDE can no longer be admitted from the moment pentaBDE is restricted. Furthermore, although the risk assessment***

¹ OJ C 154, 29.5.2001, p.112.

effect of restricting technical grade octaBDE.

for octaBDE is not yet complete, the effect of this proposal should be a ban on this substance, while the current risk assessment establishes its known risks for human health and the environment.

Justification

As octaBDE contains pentaBDE, the use of which will be banned, it is clear that octaBDE containing more than 0.1% should be banned from the same date as the ban on the use of pentaBDE.

The risk assessments on octaBDE currently in progress in the United Kingdom, for environmental impacts, and in France, for public health, will be completed before the end of the year. The initial results which have been made public reveal definite risks for human health and the environment. Application of the precautionary principle thus requires that we should not wait for final validation of the study to ban the substance.

Amendment 3
Recital 5 a (new)

(5 a) Safer alternatives to the use of PBDEs are commercially available, be it halogen-free flame retardants or alternative materials;

Justification

It is important to know that safer alternatives are available.

Amendment 4
Recital 5 b (new)

(5 b) It is generally admitted that the procedures for the evaluation and control of the risks of existing substances under Council Regulation 793/93/EEC are slow and cumbersome; the delay in the evaluation of risks of octaBDE and decaBDE is largely due to the individual method chosen to test and classify these chemical products; furthermore, thousands of potentially dangerous substances have still not been evaluated; the Commission

and the Member States should undertake to establish a method for the evaluation of risks by family of chemical products, so as to speed up the process of classification and quickly detect substances which are harmful to human health and the environment.

Justification

The considerable amount of time it takes at present to evaluate chemical products, such as brominated fire retardants, does not allow a risk management strategy to be implemented at Community level. Thousands of substances are placed on the market without any evaluation of risks having been carried out. It is thus virtually impossible to ban the use of all substances which are a risk for human health and the environment. To end this impasse, it is essential that the Member States and the Commission undertake to develop a new method based on an evaluation of risks by family of chemical products.

Amendment 5 ANNEX, second column, point 3

<i>3. By way of derogation these provisions do not apply to technical grade octabromodiphenyl ether provided it contains less than 5% diphenylether, pentabromo derivative by mass.”.</i>	<i>Delete</i>
--	----------------------

Justification

The derogation for octaBDE is not justified. It is completely contradictory to ban the use of pentaBDE as such and at the same time to authorise its presence in another substance.

Amendment 6
ANNEX, point [XX] a (new)

<i>“[XX]a diphenylether, octabromo derivative $C_{12}H_2Br_8O$.</i>	<i>1. May not be placed on the market or used as a substance or as a constituent of preparations in concentrations higher than 0.1 % by mass. 2. Articles may not be placed on the market if they, or flameretarded parts thereof, contain this substance in concentrations higher than 0.1 % by mass.</i>
---	---

Justification

The initial results of the octaBDE risk assessments currently in progress in the United Kingdom (environmental impact) and France (public health) also reveal definite risks for human health and the environment. Application of the precautionary principle thus requires that we should not wait for final validation of the study to ban the substance.

Amendment 7
Annex, point (XX) b (new)

<i>[XX b]diphenylether, decabromo derivative $C_{12}H_2Br_{10}O$</i>	<i>1. May not be placed on the market or used as a substance or as a constituent of preparations in concentrations higher than 0.1 % by mass. 2. Articles may not be placed on the market if they, or flameretarded parts thereof, contain this substance in concentrations higher than 0.1 % by mass.</i>
--	---

Justification

In the directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment, the European Parliament voted for a phase out of all PBDEs by January 2006. There is no justified reason to wait to phase them out in all applications, given their known international reputation of being dangerous substances for health and environment (bioaccumulative, production of dioxins, endocrine disrupting effects, etc.). Waiting till the conclusions of the risk assessments are available to start the legislative procedure could cause years of unnecessary delay (one year for a risk reduction strategy, half a year for the recommendation of the Commission, one and a half years for the codecision procedure), and is clearly in contradiction with the precautionary principle.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether) (COM(2001) 12 – C5-0018/2001 – 2001/0018(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 12¹),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0018/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0271/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 154, 29.5.2001, p. 112.

EXPLANATORY STATEMENT

The Treaty establishing the European Community, among other objectives, seeks the approximation of national legislation as far as is necessary for the functioning of the internal market and in Article 95(3) in particular provides that achievement of this objective will take as a base a high level of protection concerning health and environmental protection, taking account of any new development based on scientific facts.

The proposal for a European Parliament and Council directive submitted by the Commission, which is being considered here, comes within this general context as it represents the 24th amendment of Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations and in particular the use of pentabromodiphenyl ether (pentaBDE).

Pentabromodiphenyl ether is a brominated flame retardant used almost exclusively in the manufacture of flexible polyurethane foam for furniture and upholstery. It belongs to a group of ten substances, the polybrominated diphenyl ethers.

Apart from pentabromodiphenyl ether there are two other polybrominated diphenyl ether flame retardants on the market: decaBDE and octaBDE. The latter is used mainly in items made of plastic and in small components such as office equipment and domestic electrical appliances.

The risks to the environment of **pentaBDE** have been assessed under Council Regulation 793/93/EEC on the evaluation and control of the risks of existing substances. The risk assessment clearly showed the need for reducing risks to the environment from the production and use of polyurethane foam containing pentaBDE.

(Risk assessments for **octaBDE** and **decaBDE** are in progress at present and the conclusions should be submitted to the Scientific Committee on toxicity, ecotoxicity and the environment (CSTEE) before the end of the year.)

In its opinion of 4 February 2000 the Scientific Committee on toxicity, ecotoxicity and the environment confirmed the conclusions of the risk assessment of pentaBDE and in particular the need to reduce risks to protect the environment. More seriously, the same committee (CSTEE) in its opinion of 19 June 2000 confirmed the concerns about exposure of breast-fed children to pentaBDE and the fact that the increasing levels of pentaBDE in breast milk might be the result of a use not yet identified.

Acting on these opinions the Commission is therefore proposing the total ban on the marketing and use of pentaBDE and the placing on the market of articles containing this substance.

In the light of these new scientific findings concerning the dangers of pentaBDE and in particular its increasing levels in breast milk, the rapporteur proposes that great vigilance is needed as regards this aspect and strict guarantees on minimum requirements for the protection of workers in contact with this substance.

On the basis of the risk assessment and recommended risk reduction strategy in the

framework of Regulation 793/93/EEC and taking into account the precautionary principle, the rapporteur shares the Commission's approach of prohibiting the placing on the market and use of pentaBDE and articles containing pentaBDE.

Furthermore, the rapporteur considers that there is a contradiction in banning the use of pentaBDE as a substance while permitting pentaBDE residues to be present in other substances. Your rapporteur therefore proposes deletion of the text in the proposal which permits such residues to be present, so as to ban pentaBDE in all its forms.

Your rapporteur also proposes banning octaBDE on the grounds that the initial results of the current risk assessments give every reason to suppose that it is harmful both to the environment (assessment by British experts) and to public health (assessment by French experts). This is not a case of pre-judging, but of anticipating the conclusions of the risk assessment, with strict application of the precautionary principle.

The rapporteur also wishes to point out that the use of an individual approach for testing the dangers posed by chemical products is not appropriate. The time it takes at present to evaluate chemical products is regrettable. Too often the supervisory authorities fail to keep up with changes in chemical composition, as shown by the delay in the decaBDE and octaBDE risk assessments; the rapporteur therefore proposes that the Commission and the Member States consider a new, quicker and more effective method of assessment.

In the light of these aspects, and applying the precautionary principle, the rapporteur recommends approval of the Commission proposal with the amendments indicated.