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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting 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)
(12332/1/2001 – C5-0638/2001 – 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.

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PROCEDURAL PAGE

At the sitting of 6 September 2001 Parliament adopted its position at first reading 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 - 2001/0018(COD)).

At the sitting of 13 December 2001 the President of Parliament announced that the common position had been received and referred to the Committee on the Environment, Public Health and Consumer Policy (12332/1/2001 - C5-0638/2001).

The committee had appointed Frédérique Ries rapporteur at its meeting of 24 January 2001.

It considered the common position and draft recommendation for second reading at its meetings of 19 February 2002 and 21 March 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Caroline F. Jackson (chairman), Mauro Nobilia and Anneli Hulthén (vice-chairmen), Frédérique Ries (rapporteur), Per-Arne Arvidsson, Hans Blokland, David Robert Bowie, Philip Bushill-Matthews (for María del Pilar Ayuso González), Robert Goodwill, Françoise Grossetête, Eija-Riitta Anneli Korhola, Jules Maaten, Minerva Melpomeni Malliori, Patricia McKenna, Riitta Myller, Ria G.H.C. Oomen-Ruijten, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Robert William Sturdy (for John Bowis), Charles Tannock (for Martin Callanan), Antonios Trakatellis, Kathleen Van Brempt and Phillip Whitehead.

The recommendation for second reading was tabled on 21 March 2002.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting 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) (12332/1/2001 – C5-0638/2001 – 2001/0018(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (12332/1/2001 – C5-0638/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 12²),
 - having regard to the Commission's amended proposal (COM(2001) 555³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Consumer Policy (A5-0090/2002),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ Texts adopted on 6 September 2001 (item 2).

² OJ C 154, 29.5.2001, p. 112.

³ OJ C 25, 29.1.2002, p. 472.

Amendment 1

TITLE

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)

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***)

(Same as Amendment 1 adopted at first reading on 6 September 2001)

Justification

Modification of the title so that this proposal for a directive ensures the banning not only of pentaBDE but also of octaBDE, in line with Amendment 3.

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. In order to protect human health and the environment, the use of octaBDE containing more than 0,1% pentaBDE should no longer be allowed once pentaBDE is restricted.

(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 containing more than 0,1% pentaBDE should no longer be allowed once pentaBDE is restricted. ***Furthermore, although the risk assessment for octaBDE is officially not yet complete, the substance must be banned since the current assessment reveals definite risks for human health and the environment.***

(Modified version of Amendment 2 adopted at first reading on 6 September 2001)

Justification

The results of the risk assessments on octaBDE conducted in the United Kingdom, for environmental impacts, and in France, for public health, are due to be published shortly. Here again, the initial results reveal definite risks for human health and the environment. Scientific experts in charge of these risk assessments have therefore both proposed carrying out additional debromination tests and asked the competent authorities in the Member States to consider applying the precautionary principle. It is thus legitimate, in application of this principle, to ban the substance without waiting for final validation of the study.

Amendment 3

ANNEX

Annex I, point [XXa] (new) (Directive 76/769/EEC)

***[XXa] diphenylether, octabromo
derivative $C_{12}H_2Br_8O$***

- 1. May not be placed on the market or used as a substance or as a constituent of substances or preparations in concentrations higher than 0.1 %.***
- 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.***

(Modified version of Amendment 6 adopted at first reading on 6 September 2001)

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 4

ANNEX

[XX b] diphenylether, decabromo derivative C₁₂H₂Br₁₀O

- 1. May not be placed on the market or used as a substance or as a constituent of substances or 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.***
- 3. These provisions shall apply at the latest from 1 January 2006 onwards, unless the risk assessment according to Regulation (EEC) 793/93 concludes that decaBDE gives no cause for concern.***

(Modified version of Amendment 16 adopted at first reading on 6 September 2001)

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 with respect to this specific application by January 2006. As regards decaBDE, it should nevertheless be possible to lift this ban depending on the results of the risk currently in progress.

EXPLANATORY STATEMENT

1. Background

1.1. Procedure and aim of the directive

On 15 January 2001 the Commission adopted a proposal for a directive amending for the twenty-fourth time Council 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 (*used almost exclusively in the manufacture of flexible polyurethane foam for furniture and upholstery*).

This proposal follows on from the risk-assessment conclusions and the two opinions delivered by the Scientific Committee on toxicity, ecotoxicity and the environment (CSTEE) on this brominated flame retardant. All of these highlighted the harmful effect of pentaBDE on the environment and public health.

In view of the dangerous nature of pentaBDE, the Commission has decided to apply the precautionary principle. Its proposal provides for a ban not only on the marketing and use of pentaBDE, but also on articles containing this substance. However, it also includes a derogation from this rule since it permits pentaBDE residues of up to 5% to be present in octaBDE.

OctaBDE and decaBDE are the two other brominated flame retardants to be found on the market (*used mainly in items made of plastic and office equipment, in insulation materials used in the building industry and in textiles*). They have been on the list of priority substances since 1993 and are currently the subject of a risk assessment, whose conclusions were due to be submitted to the CSTEE by the end of 2001.

1.2. Parliament's opinion at first reading

While welcoming the proposal to amend Directive 76/769/EEC with a view to banning the marketing and use of pentaBDE, the European Parliament also considered that this ban was not enough. Calling for strict application of the precautionary principle and thus more effective protection of individuals and the environment, it proposed:

- **a ban on pentaBDE in all its forms** so that the use of octaBDE containing more than 0.1% of pentaBDE would no longer be tolerated;
- **extension of the scope** of the directive to cover all polybromodiphenyl ethers on the market:
 - *with an immediate ban on the marketing of octaBDE in order to take account of the known results of assessments in progress which have revealed definite risks for the environment and human health;
 - *with a deferred ban on decaBDE applicable no later than 1 January 2006, depending on the final results of the risk-assessment.

2. Commission amended proposal and Council common position

In its amended proposal of 28 September 2001 the Commission approved the European Parliament's amendments (No 5 and No 2, first part) seeking to ban pentaBDE in all its forms. **The Council's common position**, with the exception of a technical amendment to the annex, has taken over all the points in the Commission's amended proposal, **which means that it has only accepted a small proportion of the European Parliament's amendments.**

The Council and the Commission did not accept six of the eight amendments adopted by the European Parliament, in particular those seeking to extend the scope of the Directive to cover octaBDE and decaBDE. It should nonetheless be noted that two Member States –Sweden and Denmark – expressed their firm support for the position adopted by the European Parliament at first reading.

The Commission has also attached a declaration to the minutes of the common position, undertaking to consider as a matter of urgency the need for a new proposal to restrict the marketing and use of octaBDE and decaBDE as soon as the risk assessments and analyses relating to the availability of safe substitute products have been completed.

3. Amendment of the common position

Your rapporteur proposes amending the Council common position on the following grounds:

- * the common position does not meet the European Parliament's fundamental call for extension of the directive to cover all polybromodiphenyl ethers on the market;
- * the common position does not take account of the latest information forwarded by the United Kingdom (Member State acting as rapporteur on environmental aspects of the risk assessment) to the European Chemicals Bureau, which is sufficiently alarming for scientific experts to consider whether the precautionary principle should be applied;
- * a strict application of the precautionary principle requires the immediate implementation of a risk reduction policy for pentaBDE and octaBDE and implementation as from 1 January 2006 for decaBDE; this will guarantee a high level of protection of human health and the environment.

In short, the rapporteur considers it essential to include in the recommendation for second reading Amendments 1, 2 (2nd part), 6 and 16 adopted by the European Parliament at first reading.