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REPORT

on the joint text approved by the Conciliation Committee 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)
(PE-CONS 3664/2002 – C5-0500/2002 – 2001/0018(COD))

European Parliament delegation to the Conciliation Committee

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)

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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, octabromodiphenyl ether) (COM(2001) 012 – 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).

At the sitting of 10 April 2002 Parliament adopted amendments to the common position.

By letter of 2 August 2002 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 12 September 2002.

By letter of 18 October 2002 the President of Parliament informed the Council that it was necessary to extend the period for the work in committee, as laid down in Article 251(7) of the EC Treaty.

At the meeting the Conciliation Committee considered the common position on the basis of the amendments proposed by Parliament.

Following the trialogues and the subsequent meetings of the delegation, an agreement was reached by exchange of letters of 24 and 30 October 2002 and 7 November 2002.

At its meeting of 7 November 2002 the Parliament delegation approved the results of the conciliation by 8 votes to 0, with 5 abstentions.

The following took part in the vote: Giorgos Dimitrakopoulos, Vice-President and chairman of the delegation; Caroline F. Jackson, chair of the Committee on the Environment, Public Health and Consumer Policy; Frédérique Ries, rapporteur; Hans Blokland, David Robert Bowie, Marialiese Flemming, Robert Goodwill, Charlotte Cederschiöld, Françoise Grossetête, Anneli Hulthén, Torben Lund, Ria G.H.C. Oomen-Ruijten, Inger Schörling and Kathleen Van Brempt.

On 8 November 2002 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure,¹ and forwarded it to Parliament and the Council in all the official languages.

The report was tabled on 5 December 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the joint text approved by the Conciliation Committee 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) (PE-CONS 3664/2002 – C5-0500/2002 – 2001/0018(COD))

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee (PE-CONS 3664/2002 – C5-0500/2002),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 012²),
 - having regard to the amended proposal (COM(2001) 555³),
 - having regard to its position at second reading⁴ on the Council common position⁵,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2002) 334 - C5-0339/2002)⁶,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 83 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A5-0437/2002),
1. Approves the joint text;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council to have it published in the Official Journal of the European Communities;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ OJ C 72 E, 21.3.2002, p. 286.

² OJ C 154 E, 29.5.2001, p. 112.

³ OJ C 25 E, 29.1.2002, p. 472.

⁴ P5_TAPROV(2002)0162.

⁵ OJ C OJ C 110 E, 7.5.2002, p. 23.

⁶ OJ C not yet published.

EXPLANATORY STATEMENT

Background

1. On 16 January 2001 the Commission submitted a proposal for a Directive amending for the twenty-fourth time Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances. The objective of the present Directive was to introduce a ban on the placing on the market and use of pentabromodiphenyl ether (pentaBDE). PentaBDE is a brominated flame retarder which is used almost exclusively in the manufacture of flexible polyurethane foam for furniture and upholstery. In view of the dangerous nature of pentaBDE, the Commission decided to apply the precautionary principle and the proposal provided for a ban not only on the marketing and use of pentaBDE, but also on articles containing this substance.
2. On 6 September 2001 Parliament adopted 8 amendments at first reading. The Council adopted its common position on 6 December 2001. At second reading on 10 April 2002, Parliament adopted 4 amendments to the common position.
3. The European Parliament welcomed the proposal to ban the marketing and use of pentaBDE, but criticised the fact that the two other brominated flame retardants on the market, namely octaBDE and decaBDE, are not covered by the proposal. These substances are used mainly in items made of plastic, office equipment, insulation materials used in the building industry and textiles.
4. Consequently, the amendments adopted by the European Parliament at second reading aimed, in particular, at an extension of the scope of the Directive to cover all polybromodiphenyl ethers on the market. In strict application of the precautionary principle the amendments provided for:
 - an immediate ban on the marketing of octaBDE
 - a deferred ban on decaBDE applicable no later than 1 January 2006, unless the final results of the risk assessment currently in progress show that this substance gives no cause for concern.

Conciliation

5. Parliament's delegation to the Conciliation Committee held its constituent meeting on 15 May 2002, and the delegation members mandated the chairman (Mr Dimitrakopoulos), the chairman of the committee responsible (Mrs Jackson), the rapporteur (Mrs Ries) and Mr. Bowe to enter into informal negotiations with the Council.

6. An initial trialogue meeting with the Danish Presidency and the Commission took place on 15 May 2002. At that meeting, Parliament's negotiators insisted on a ban for the two additional substances as provided for in Parliament's amendments. However, no appreciable progress was achieved, as both Council Presidency and Commission referred to the ongoing risk assessment concerning octaBDE and decaBDE. The Commission informed the participants of the trialogue that the results for octaBDE were to be expected in September 2002.
7. After the Conciliation procedure was formally opened as an "A-point" without discussion at the meeting of the Conciliation Committee of 19 September, the discussion in two further trialogue meetings (19 September, 22 October) focused chiefly on the possibility to agree on measures regarding octaBDE and decaBDE. The agreement reached covers the following issues:

Octa-BDE

At the beginning of September 2002 the risk assessment regarding octaBDE, which revealed definite risks for the environment and human health, was concluded. On this basis the Council finally accepted Parliament's wish to include a ban of octaBDE in the present legislative proposal. Parliament's amendments (nos. 1 and 4) relating to octaBDE were therefore accepted.

Parliament's insistence on an introduction of the ban on octa-BDE into the current legislative process allows for an earlier phase-out of these substances. A separate legislative procedure (based on a Commission proposal to be adopted in codecision by Parliament and Council) for the phase-out of octaBDE would have delayed the entry into force of the ban considerably.

Deca-BDE

In contrast to octaBDE, the conclusions of the risk assessment on decaBDE indicate that there is a need for further information and/or testing. It has revealed a number of uncertainties concerning possible effects on the environment of this substance and a risk reduction strategy has therefore to be established without delay.

At the trialogue meeting of 22 November 2002, Council and Commission maintained their resistance to a ban on decaBDE as the results of the risk reduction strategy are not yet available. These results are expected by June 2003. It was therefore agreed to include a recital in the present Directive which calls on the Commission to assess the results of the risk reduction strategy immediately and propose appropriate and strict measures to address the risk identified.

8. By letter of 7 November, the chair of the delegation, Mr. Dimitrakopoulos, informed the Council Presidency that a majority of the Parliament's delegation had accepted the compromise and that the procedure could be officially concluded.

Conclusions

Parliament's delegation is satisfied with the agreement reached which goes beyond what was possible prior to second reading. In particular, the introduction of the ban on octaBDE into the ongoing legislative procedure is a major improvement on the common position. This allows for a considerably accelerated entry into force of this ban and will guarantee a high level of protection of human health and the environment. As for decaBDE, the delegation is convinced that, in the light of ongoing risk reduction strategy, the text agreed is the furthest compromise that can be reached at this stage. The delegation thanks the Danish Presidency and the Commission for their constructive cooperation. The delegation therefore recommends that Parliament adopt the attached joint text.