

COMMON POSITION (EC) No 21/2002**adopted by the Council on 6 December 2001****with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council of ... 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)**

(2002/C 110 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Under Article 14 of the Treaty, an area without internal frontiers is to be established, in which the free movement of goods, persons, services and capital is ensured.

(2) The risks to the environment of pentabromodiphenyl ether (pentaBDE) have been assessed under Council Regulation (EEC) 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽⁴⁾. The risk assessment identified a need for reducing risks of pentaBDE to the environment. In its opinion of 4 February 2000, the Scientific Committee on toxicity, ecotoxicity and the environment (CSTEE) confirms the conclusions of the assessment of pentaBDE on the need to reduce risks to protect the environment. Furthermore, the CSTEE confirmed, in its opinion of 19 June 2000, the concern about exposure of breast-fed children to pentaBDE and that the increasing levels of pentaBDE in breast milk might be the result of a use not yet identified.

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 112.

⁽²⁾ OJ C 193, 10.7.2001, p. 27.

⁽³⁾ Opinion of the European Parliament of 6 September 2001 (OJ C 72 E, 21.3.2002, p. 288), Council Common Position of 6 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 84, 5.4.1993, p. 1.

(3) The Commission has adopted a Recommendation in the framework of Regulation (EEC) No 793/93 on a risk-reduction strategy for pentaBDE providing for restrictions on marketing and use to control risk to the environment. It also recommended that any measures should take account of the concerns about infants exposed via breast milk.

(4) In order to protect health and the environment the placing on the market and the use of pentaBDE and the placing on the market of articles containing pentaBDE should be prohibited.

(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.

(6) Presence of pentaBDE in concentrations higher than 0,1 % can be identified using standard analytical techniques such as GC-MS (gas chromatography-mass spectrometry). These techniques can distinguish between technical grades of octaBDE and pentaBDE.

(7) This Directive does not affect Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁵⁾, and in individual directives based thereon, in particular Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ⁽⁶⁾ and Council Directive 98/24/EC of 7 April 1998 on protection of health and safety of workers from the risk related to chemical agents at work (14th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ⁽⁷⁾,

⁽⁵⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁶⁾ OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).

⁽⁷⁾ OJ L 131, 5.5.1998, p. 11.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby amended as set out in the Annex to this Directive.

Article 2

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive no later than ...(*). They shall forthwith inform the Commission thereof.

They shall apply those provisions from ...(**).

When Member States adopt these measures, the provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publi-

cation. The methods of making such a reference shall be laid down by the Member States.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) 12 months from the entry into force of this Directive.

(**) 18 months from the entry into force of this Directive.

ANNEX

The following point [XX] is added to Annex I to Directive 76/769/EEC:

'[XX] diphenylether, pentabromo derivative C ₁₂ H ₅ Br ₅ O	1. May not be placed on the market or used as a substance or as a constituent of substances or of preparations in concentrations higher than 0,1 % by mass. 2. Articles may not be placed on the market if they, or flame-retarded parts thereof, contain this substance in concentrations higher than 0,1 % by mass.'
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 15 January 2001 the Commission forwarded a proposal for a Directive based on Article 95 of the Treaty relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether) ⁽¹⁾.
2. The European Parliament adopted its opinion at first reading on 6 September 2001 ⁽²⁾.
3. The Economic and Social Committee delivered its opinion on 25 April 2001 ⁽³⁾.
4. On 6 December 2001 the Council adopted its Common Position in accordance with Article 251 of the Treaty.

II. AIM

The aim of the Commission proposal is to ban the use and marketing of goods containing pentabromodiphenyl ether (pentaBDE).

III. ANALYSIS OF THE COMMON POSITION

1. The Council has been examining the proposal since the beginning of 2001. The Council's common position is generally consistent with the Commission's amended proposal.

The Council incorporated one European Parliament amendment and part of another.

2. The Council welcomed *Amendment 5* deleting the derogation for octabromodiphenyl ether (octaBDE) which contains less than 5 % pentaBDE.
3. The Council incorporated part of *Amendment 2* stipulating that octaBDE containing more than 0,1 % pentaBDE can no longer be allowed since the use of pentaBDE is restricted.
4. The Council does not consider it appropriate to discuss extending the scope of the Directive to octabromodiphenyl ether (octaBDE) and decabromodiphenyl ether (decaBDE) before the risk assessment has been completed. Consequently, the Council rejected *Amendments 1, 3, 6, 15 and 16* as well as part of *Amendment 2*.
5. The Council also rejected *Amendment 4* concerning the procedures for the evaluation and control of risks, as the Council considers this amendment to be beyond the scope of the Directive.

IV. CONCLUSION

By incorporating the European Parliament amendments which strengthen the provisions on pentaBDE, the Council believes that it has found a balanced solution which takes account of the risk-assessment procedure on the one hand, and which guarantees a high level of human health and environmental protection on the other.

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 112.

⁽²⁾ OJ C 72 E, 21.3.2002, p. 288.

⁽³⁾ OJ C 193, 10.7.2001, p. 27.