

# EUROPEAN PARLIAMENT

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*Committee on the Environment, Public Health and Consumer Policy*

PROVISIONAL  
2001/0018(COD)

29 May 2001

**\*\*\*I**

## **DRAFT 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.

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## 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 meeting(s) of ... and ... .

At the latter/last meeting it adopted the draft legislative resolution by .. votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ..., chairman/acting chairman; ... (and ...), vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and ... .

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

The report was tabled on ....

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session/is ... p.m. on ....

## 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 <sup>1</sup>

Amendments by Parliament

#### Amendment 1 ANNEX, second column, point 3

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.

3. By way of derogation these provisions do not apply to technical grade octabromodiphenyl ether provided it contains less than **2%** diphenylether, pentabromo derivative by mass.

#### *Justification*

*It is contradictory to prohibit the use of pentaBDE as a substance while permitting its residues to be present in significant quantities in other substances. The proposed maximum of 2% pentaBDE as a residue in technical grade octabromodiphenyl ether corresponds to the lowest percentage which allows the production of octabromodiphenyl ether to continue, pending completion of the risk assessment for this substance.*

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<sup>1</sup> OJ C not yet published.

## 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) 12<sup>1</sup>),
  - 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 (A5-0000/2001),
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.

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<sup>1</sup> OJ C not yet published.

## 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 almost exclusively used 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 are used in applications other than polyurethane foam.

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 will be submitted to the Scientific Committee on toxicity, ecotoxicity and the environment (CSTEE) by 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 dangerousness 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 it is contradictory to prohibit the use of pentaBDE as a substance while permitting its residues to be present in significant quantities in other substances.

*(In order to monitor its presence, analysis techniques such as combined GS-MS (gas chromatography-mass spectrometry) are available for the quantification of pentaBDE. These techniques can also distinguish between technical grades of octaBDE and pentaBDE.*

**The amendment** put forward by the rapporteur to the proposal for a directive, **which sets the maximum percentage of permitted residues in other substances at 2%** rather than the 5% in the Commission proposal, **is thus intended to strengthen and give greater consistency to the proposed ban.**

(This figure of 2% corresponds to the lowest percentage which allows production of octaBDE to continue pending the opinion of the CSTEE on the conclusions of the risk assessment for this substance.)

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