

**DIRECTIVE 2003/11/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 February 2003**

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)

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 proposals 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⁾, in the light of the joint text approved by the Conciliation Committee on 8 November 2002,

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) and octabromo-diphenyl ether (octaBDE) have been assessed under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽⁴⁾. The risk assessments on pentaBDE and octaBDE identified a need for reducing risks from these substances to the environment. In its opinions of 4 February 2000 and 31 October 2002, the Scientific Committee on toxicity, ecotoxicity and the environment (CSTEE) confirmed the conclusions of these assessments of pentaBDE and octaBDE 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.
- (3) The Commission has adopted Recommendations in the framework of Regulation (EEC) No 793/93 on a risk reduction strategy for pentaBDE ⁽⁵⁾ and octaBDE ⁽⁶⁾ providing for restrictions on marketing and use to control risks to the environment. They also recommended that any measures should take account of the concerns about infants exposed via milk.

(4) In order to protect health and the environment the placing on the market and the use of pentaBDE and octaBDE and the placing on the market of articles containing one or both of these substances should be prohibited.

(5) The presence of pentaBDE or octaBDE in concentrations higher than 0,1 % can be identified using standard analytical techniques such as GC-MS (gas chromatography-mass spectrometry).

(6) The risk assessment on decaBDE was concluded in August 2002 and has revealed a number of uncertainties concerning possible effects on the environment of this substance. Risk reduction measures should be taken by the Community without delay and a risk reduction strategy has therefore to be established immediately. The Commission expects the results of the risk reduction strategy not later than 30 June 2003. It should then immediately assess these results and propose appropriate and strict measures to address risks identified. The European Parliament and the Council should consider this proposal without delay. Restrictions approved by the Community on the marketing and use of decaBDE are to enter into force without further delay, unless the further testing provided for in the above risk assessment resolves the current uncertainties by concluding that decaBDE gives no cause for concern.

(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 ⁽⁷⁾, 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) ⁽⁸⁾ and Council Directive 98/24/EC of 7 April 1998 on protection of health and safety of workers from the risks related to chemical agents at work (14th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ⁽⁹⁾,

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 112 and OJ C 25, 29.1.2002, p. 472.

⁽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. 235), Council Common Position of 6 December 2001 (OJ C 110 E, 7.5.2002, p. 23) and Decision of the European Parliament of 10 April 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 84, 5.4.1993, p. 1.

⁽⁵⁾ OJ L 69, 10.3.2001, p. 30.

⁽⁶⁾ OJ L 249, 17.9.2002, p. 27.

⁽⁷⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁸⁾ 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).

⁽⁹⁾ OJ L 131, 5.5.1998, p. 11.

HAVE ADOPTED THIS DIRECTIVE:

Article 3

Article 1

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

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

Article 2

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive no later than 15 February 2004. They shall forthwith inform the Commission thereof.

Article 4

This Directive is addressed to the Member States.

They shall apply those measures from 15 August 2004.

Done at Brussels, 6 February 2003.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

For the European Parliament

For the Council

The President

The President

P. COX

P. EFTHYMIU

ANNEX

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

'[XX] diphenylether, pentabromo derivative C₁₂H₃Br₅O

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.'

The following point [XXa] shall be added to Annex I of Directive 76/769/EEC:

'[XXa] diphenylether, octabromo derivative C₁₂H₂Br₈O

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-retardant parts thereof, contain this substance in concentrations higher than 0,1 % by mass.'
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