

DIRECTIVE 2002/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 January 2003
on the restriction of the use of certain hazardous substances in electrical and electronic equipment

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⁾,

Having regard to the opinion of the Committee of Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 8 November 2002 ⁽⁴⁾,

Whereas:

- (1) The disparities between the laws or administrative measures adopted by the Member States as regards the restriction of the use of hazardous substances in electrical and electronic equipment could create barriers to trade and distort competition in the Community and may thereby have a direct impact on the establishment and functioning of the internal market. It therefore appears necessary to approximate the laws of the Member States in this field and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.
- (2) The European Council at its meeting in Nice on 7, 8 and 9 December 2000 endorsed the Council Resolution of 4 December 2000 on the precautionary principle.
- (3) The Commission Communication of 30 July 1996 on the review of the Community strategy for waste management stresses the need to reduce the content of hazardous substances in waste and points out the potential benefits of Community-wide rules limiting the presence of such substances in products and in production processes.
- (4) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution by cadmium ⁽⁵⁾ invites the Commission to pursue without delay the development of specific measures for such a programme. Human health also has

to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented. The Resolution stresses that the use of cadmium should be limited to cases where suitable and safer alternatives do not exist.

- (5) The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2002/96/EC of 27 January 2003 of the European Parliament and of the Council on waste electrical and electronic equipment ⁽⁶⁾ are necessary to reduce the waste management problems linked to the heavy metals concerned and the flame retardants concerned. In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes. Even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment.
- (6) Taking into account technical and economic feasibility, the most effective way of ensuring the significant reduction of risks to health and the environment relating to those substances which can achieve the chosen level of protection in the Community is the substitution of those substances in electrical and electronic equipment by safe or safer materials. Restricting the use of these hazardous substances is likely to enhance the possibilities and economic profitability of recycling of WEEE and decrease the negative health impact on workers in recycling plants.
- (7) The substances covered by this Directive are scientifically well researched and evaluated and have been subject to different measures both at Community and at national level.
- (8) The measures provided for in this Directive take into account existing international guidelines and recommendations and are based on an assessment of available scientific and technical information. The measures are necessary to achieve the chosen level of protection of

⁽¹⁾ OJ C 365 E, 19.12.2000, p. 195 and OJ C 240 E, 28.8.2001, p. 303.

⁽²⁾ OJ C 116, 20.4.2001, p. 38.

⁽³⁾ OJ C 148, 18.5.2001, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 15 May 2001 (OJ C 34 E, 7.2.2002, p. 109), Council Common Position of 4 December 2001 (OJ C 90 E, 16.4.2002, p. 12) and Decision of the European Parliament of 10 April 2002 (not yet published in the Official Journal), Decision of the European Parliament of 18 December 2002 and Decision of the Council of 16 December 2002.

⁽⁵⁾ OJ C 30, 4.2.1988, p. 1.

⁽⁶⁾ See page 24 of this Official Journal.

human and animal health and the environment, having regard to the risks which the absence of measures would be likely to create in the Community. The measures should be kept under review and, if necessary, adjusted to take account of available technical and scientific information.

- (9) This Directive should apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation, in particular Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances ⁽¹⁾.
- (10) The technical development of electrical and electronic equipment without heavy metals, PBDE and PBB should be taken into account. As soon as scientific evidence is available and taking into account the precautionary principle, the prohibition of other hazardous substances and their substitution by more environmentally friendly alternatives which ensure at least the same level of protection of consumers should be examined.
- (11) Exemptions from the substitution requirement should be permitted if substitution is not possible from the scientific and technical point of view or if the negative environmental or health impacts caused by substitution are likely to outweigh the human and environmental benefits of the substitution. Substitution of the hazardous substances in electrical and electronic equipment should also be carried out in a way so as to be compatible with the health and safety of users of electrical and electronic equipment (EEE).
- (12) As product reuse, refurbishment and extension of lifetime are beneficial, spare parts need to be available.
- (13) The adaptation to scientific and technical progress of the exemptions from the requirements concerning phasing out and prohibition of hazardous substances should be effected by the Commission under a committee procedure.
- (14) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives

The purpose of this Directive is to approximate the laws of the Member States on the restrictions of the use of hazardous substances in electrical and electronic equipment and to contri-

bute to the protection of human health and the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Article 2

Scope

- Without prejudice to Article 6, this Directive shall apply to electrical and electronic equipment falling under the categories 1, 2, 3, 4, 5, 6, 7 and 10 set out in Annex IA to Directive No 2002/96/EC (WEEE) and to electric light bulbs, and luminaires in households.
- This Directive shall apply without prejudice to Community legislation on safety and health requirements and specific Community waste management legislation.
- This Directive does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- 'electrical and electronic equipment' or 'EEE' means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Annex IA to Directive 2002/96/EC (WEEE) and designed for use with a voltage rating not exceeding 1 000 volts for alternating current and 1 500 volts for direct current;
- 'producer' means any person who, irrespective of the selling technique used, including by means of distance communication according to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽³⁾:
 - manufactures and sells electrical and electronic equipment under his own brand;
 - resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the 'producer' if the brand of the producer appears on the equipment, as provided for in subpoint (i); or
 - imports or exports electrical and electronic equipment on a professional basis into a Member State.

Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed a 'producer' unless he also acts as a producer within the meaning of subpoints (i) to (iii).

⁽¹⁾ OJ L 78, 26.3.1991, p. 38. Directive as amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 144, 4.6.1997, p. 19. Directive as amended by Directive 2002/65/EC (L 271, 9.10.2002, p. 16).

Article 4

Prevention

1. Member States shall ensure that, from 1 July 2006, new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE). National measures restricting or prohibiting the use of these substances in electrical and electronic equipment which were adopted in line with Community legislation before the adoption of this Directive may be maintained until 1 July 2006.

2. Paragraph 1 shall not apply to the applications listed in the Annex.

3. On the basis of a proposal from the Commission, the European Parliament and the Council shall decide, as soon as scientific evidence is available, and in accordance with the principles on chemicals policy as laid down in the Sixth Community Environment Action Programme, on the prohibition of other hazardous substances and the substitution thereof by more environment-friendly alternatives which ensure at least the same level of protection for consumers.

Article 5

Adaptation to scientific and technical progress

1. Any amendments which are necessary in order to adapt the Annex to scientific and technical progress for the following purposes shall be adopted in accordance with the procedure referred to in Article 7(2):

- (a) establishing, as necessary, maximum concentration values up to which the presence of the substances referred to in Article 4(1) in specific materials and components of electrical and electronic equipment shall be tolerated;
- (b) exempting materials and components of electrical and electronic equipment from Article 4(1) if their elimination or substitution via design changes or materials and components which do not require any of the materials or substances referred to therein is technically or scientifically impracticable, or where the negative environmental, health and/or consumer safety impacts caused by substitution are likely to outweigh the environmental, health and/or consumer safety benefits thereof;
- (c) carrying out a review of each exemption in the Annex at least every four years or four years after an item is added to the list with the aim of considering deletion of materials and components of electrical and electronic equipment from the Annex if their elimination or substitution via design changes or materials and components which do not require any of the materials or substances referred to in

Article 4(1) is technically or scientifically possible, provided that the negative environmental, health and/or consumer safety impacts caused by substitution do not outweigh the possible environmental, health and/or consumer safety benefits thereof.

2. Before the Annex is amended pursuant to paragraph 1, the Commission shall *inter alia* consult producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumer associations. Comments shall be forwarded to the Committee referred to in Article 7(1). The Commission shall provide an account of the information it receives.

Article 6

Review

Before 13 February 2005, the Commission shall review the measures provided for in this Directive to take into account, as necessary, new scientific evidence.

In particular the Commission shall, by that date, present proposals for including in the scope of this Directive equipment which falls under categories 8 and 9 set out in Annex IA to Directive 2002/96/EC (WEEE).

The Commission shall also study the need to adapt the list of substances of Article 4(1), on the basis of scientific facts and taking the precautionary principle into account, and present proposals to the European Parliament and Council for such adaptations, if appropriate.

Particular attention shall be paid during the review to the impact on the environment and on human health of other hazardous substances and materials used in electrical and electronic equipment. The Commission shall examine the feasibility of replacing such substances and materials and shall present proposals to the European Parliament and to the Council in order to extend the scope of Article 4, as appropriate.

Article 7

Committee

1. The Commission shall be assisted by the Committee set up by Article 18 of Council Directive 75/442/EEC ⁽¹⁾.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

⁽¹⁾ OJ L 194, 25.7.1975, p. 39.

*Article 8***Penalties**

Member States shall determine penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

*Article 9***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 13 August 2004. They shall immediately inform the Commission thereof.

When Member States adopt those 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.

2. Member States shall communicate to the Commission the text of all laws, regulations and administrative provisions adopted in the field covered by this Directive.

*Article 10***Entry into force**

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

*Article 11***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 27 January 2003.

For the European Parliament

The President

P. COX

For the Council

The President

G. DRYS

ANNEX

Applications of lead, mercury, cadmium and hexavalent chromium, which are exempted from the requirements of Article 4(1)

1. Mercury in compact fluorescent lamps not exceeding 5 mg per lamp.
2. Mercury in straight fluorescent lamps for general purposes not exceeding:
 - halophosphate 10 mg
 - triphosphate with normal lifetime 5 mg
 - triphosphate with long lifetime 8 mg.
3. Mercury in straight fluorescent lamps for special purposes.
4. Mercury in other lamps not specifically mentioned in this Annex.
5. Lead in glass of cathode ray tubes, electronic components and fluorescent tubes.
6. Lead as an alloying element in steel containing up to 0,35 % lead by weight, aluminium containing up to 0,4 % lead by weight and as a copper alloy containing up to 4 % lead by weight.
7. — Lead in high melting temperature type solders (i.e. tin-lead solder alloys containing more than 85 % lead),
 - lead in solders for servers, storage and storage array systems (exemption granted until 2010),
 - lead in solders for network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunication,
 - lead in electronic ceramic parts (e.g. piezoelectric devices).
8. Cadmium plating except for applications banned under Directive 91/338/EEC ⁽¹⁾ amending Directive 76/769/EEC ⁽²⁾ relating to restrictions on the marketing and use of certain dangerous substances and preparations.
9. Hexavalent chromium as an anti-corrosion of the carbon steel cooling system in absorption refrigerators.
10. Within the procedure referred to in Article 7(2), the Commission shall evaluate the applications for:
 - Deca BDE,
 - mercury in straight fluorescent lamps for special purposes,
 - lead in solders for servers, storage and storage array systems, network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications (with a view to setting a specific time limit for this exemption), and
 - light bulbs,as a matter of priority in order to establish as soon as possible whether these items are to be amended accordingly.

⁽¹⁾ OJ L 186, 12.7.1991, p. 59.

⁽²⁾ OJ L 262, 27.9.1976, p. 201.

COMMISSION DECISION

of 13 October 2005

amending for the purposes of adapting to the technical progress the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment*(notified under document number C(2005) 3754)***(Text with EEA relevance)**

(2005/717/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽¹⁾, and in particular Article 5(1)(b) thereof,

Whereas:

- (1) Under Directive 2002/95/EC the Commission is required to evaluate certain hazardous substances prohibited pursuant to Article 4(1) of that Directive.
- (2) Certain materials and components containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE) should be exempt from the prohibition, since the elimination or substitution of these hazardous substances in those specific materials and components is still impracticable.
- (3) Since the risk assessment of DecaBDE, under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽²⁾, has concluded that there is at present no need for measures to reduce the risks for consumers beyond those which are being applied already, but additional studies are required under the risk assessment, DecaBDE can be exempted until further notice from the requirements of Article 4(1) of Directive 2002/95/EC. Should new evidence lead to a different conclusion of the risk assessment, this decision would be re-examined and amended, if appropriate. In parallel industry is implementing a voluntary emissions reduction programme.

- (4) Exemptions from the prohibition for certain specific materials or components should be limited in their scope, in order to achieve a gradual phase-out of hazardous substances in electrical and electronic equipment, given that the use of those substances in such applications will become avoidable.

- (5) Pursuant to Article 5(1)(c) of Directive 2002/95/EC, each exemption listed in the Annex to that Directive must be subject to a review at least every four years or four years after an item is added to the list with the aim of considering deletion of materials and components of electrical and electronic equipment if their elimination or substitution via design changes or materials and components which do not require any of the materials or substances referred to in Article 4(1) is technically or scientifically possible, provided that the negative environmental, health and/or consumer safety impacts caused by substitution do not outweigh the possible environmental, health and/or consumer safety benefits thereof. Therefore, the review of each exemption provided for in this Decision will be done before 2010.

- (6) Pursuant to Article 5(2) of Directive 2002/95/EC, the Commission has consulted producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumers associations and forwarded the comments to the Committee established by Article 18 of Council Directive 75/442/EEC of 15 July 1975 on waste ⁽³⁾ (the Committee).

- (7) The Commission submitted the measures provided for in this Decision for vote in the Committee established under Article 18 of Directive 75/442/EEC on waste on 19 April 2005. There was no qualified majority in favour of these measures. Thus, in accordance with the procedure set out in Article 18 of Directive 75/442/EEC, a Proposal for a Council Decision was submitted to Council on 6 June 2005. Since on the expiry date of the period laid down in Article 7(2) of Directive 2002/95/EC the Council had neither adopted the proposed measures nor indicated its opposition to them in accordance with Article 5(6) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾ the measures should be adopted by the Commission,

⁽¹⁾ OJ L 37, 13.2.2003, p. 19.

⁽²⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS DECISION:

Sole Article

The Annex to Directive 2002/95/EC is amended as set out in the Annex to this Decision.

This Decision is addressed to the Member States.

Done at Brussels, 13 October 2005.

For the Commission
Stavros DIMAS
Member of the Commission

ANNEX

The Annex to Directive 2002/95/EC is amended as follows:

1. The title is replaced by the following:

'Applications of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE) which are exempted from the requirements of Article 4(1)';

2. The following point 9a is added:

'9a. DecaBDE in polymeric applications';

3. The following point 9b is added:

'9b. Lead in lead-bronze bearing shells and bushes'.

COMMISSION DECISION

of 21 October 2005

amending for the purposes of adapting to technical progress the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment*(notified under document number C(2005) 4054)***(Text with EEA relevance)**

(2005/747/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽¹⁾, and in particular Article 5(1)(b) thereof,

Whereas:

- (1) In accordance with Directive 2002/95/EC the Commission is required to evaluate certain hazardous substances prohibited pursuant to Article 4(1) of that Directive.
- (2) Certain materials and components containing lead and cadmium should be exempt (or continue to be exempt) from the prohibition, since the use of these hazardous substances in those specific materials and components is still unavoidable.
- (3) Some exemptions from the prohibition for certain specific materials or components should be limited in their scope, in order to achieve a gradual phase-out of hazardous substances in electrical and electronic equipment, given that the use of those substances in such applications will become avoidable.
- (4) Pursuant to Article 5(1)(c) of Directive 2002/95/EC each exemption listed in the Annex must be subjected to a review, at least every four years or four years after an item is added to the list, with the aim of considering deletion of materials and components of electrical and electronic equipment if their elimination or substitution via design changes or materials and components which do not require any of the materials or substances referred to in Article 4(1) are technically or scientifically possible,

provided that the negative environmental, health and/or consumer safety impacts caused by substitution do not outweigh the possible environmental, health and/or consumer safety benefits thereof.

- (5) Directive 2002/95/EC should therefore be amended accordingly.
- (6) Pursuant to Article 5(2) of Directive 2002/95/EC the Commission has consulted producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumers associations and forwarded the comments to the Committee established by Article 18 of Council Directive 75/442/EEC of 15 July 1975 on waste ⁽²⁾, hereinafter 'the Committee'.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Committee,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Directive 2002/95/EC is amended as set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 21 October 2005.

For the Commission

Stavros DIMAS

Member of the Commission

⁽¹⁾ OJ L 37, 13.2.2003, p. 19. Directive as amended by Commission Decision 2005/717/EC (OJ L 271, 15.10.2005, p. 48).

⁽²⁾ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX

Annex to Directive 2002/95/EC is amended as follows:

1. point 7 is replaced by the following:

- '7. — Lead in high melting temperature type solders (i.e. lead-based alloys containing 85 % by weight or more lead),
 - lead in solders for servers, storage and storage array systems, network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications,
 - lead in electronic ceramic parts (e.g. piezoelectronic devices).';

2. point 8 is replaced by the following:

- '8. Cadmium and its compounds in electrical contacts and cadmium plating except for applications banned under Directive 91/338/EEC (*) amending Directive 76/769/EEC (**) relating to restrictions on the marketing and use of certain dangerous substances and preparations.

(*) OJ L 186, 12.7.1991, p. 59.

(**) OJ L 262, 27.9.1976, p. 201.;

3. the following points are added:

- '11. Lead used in compliant pin connector systems.
 - 12. Lead as a coating material for the thermal conduction module c-ring.
 - 13. Lead and cadmium in optical and filter glass.
 - 14. Lead in solders consisting of more than two elements for the connection between the pins and the package of microprocessors with a lead content of more than 80 % and less than 85 % by weight.
 - 15. Lead in solders to complete a viable electrical connection between semiconductor die and carrier within integrated circuit Flip Chip packages.'
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**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.'
-