

COMMON POSITION (EC) No 22/2005
adopted by the Council on 4 April 2005

with a view to adopting Directive 2005/.../EC of the European Parliament and of the Council of ... amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles)

(2005/C 144 E/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Commission, has delivered opinions on the health risks raised by these phthalates.

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

- (5) Commission Recommendation 98/485/EC of 1 July 1998 on childcare articles and toys intended to be placed in the mouth by children of less than three years of age, made of soft PVC containing certain phthalates⁽⁴⁾, invited Member States to take measures to ensure a high level of child health protection with regard to these products.

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

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

- (6) Since 1999, the use of six phthalates in toys and childcare articles intended to be placed in the mouth by children under the age of three is subject to a temporary ban at European Union level following the adoption of Commission Decision 1999/815/EC⁽⁵⁾ in the framework of Council Directive 92/59/EEC of 29 June 1992 on general product safety⁽⁶⁾. This Decision is being renewed regularly.

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

Whereas:

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

- (7) Limitations already adopted by certain Member States on the placing on the market of toys and childcare articles because of their phthalate content directly affect the completion and functioning of the internal market. It is therefore necessary to approximate the laws of the Member States in this field and consequently to amend Annex I to Council Directive 76/769/EEC⁽⁷⁾.

(2) Work on the internal market should improve the quality of life, health protection and consumer safety. This Directive complies with the requirements of ensuring a high level of health protection and of consumer protection in the definition and implementation of all Community policies and activities.

- (8) The precautionary principle should be applied where scientific evaluation does not allow the risk to be determined with sufficient certainty in order to ensure a high level of protection of health, in particular for children.

(3) The use of certain phthalates in toys and childcare articles made of plasticised material or including parts made of plasticised material should be prohibited as the presence of certain phthalates presents or could potentially present risks related to the health of children.

- (9) Children as developing organisms are particularly vulnerable to reprotoxic substances. Therefore, the exposure of children to all practically avoidable sources of emissions of these substances, especially from articles which are put into the mouth by children, should be reduced as far as possible.

(4) The Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), after being consulted by the

⁽⁴⁾ OJ L 217, 5.8.1998, p. 35.

⁽⁵⁾ OJ L 315, 9.12.1999, p. 46. Decision as last amended by Decision 2004/781/EC (OJ L 344, 20.11.2004, p. 35).

⁽⁶⁾ OJ L 228, 11.8.1992, p. 24. Directive repealed by Directive 2001/95/EC of the European Parliament and of the Council (OJ L 11, 15.1.2002, p. 4).

⁽⁷⁾ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/98/EC (OJ L 305, 1.10.2004, p. 63).

⁽¹⁾ OJ C 116 E, 26.4.2000, p. 14.

⁽²⁾ OJ C 117, 26.4.2000, p. 59.

⁽³⁾ Opinion of the European Parliament of 6 July 2000 (OJ C 121, 24.4.2001, p. 410), Council Common Position of 4 April 2005 and Position of the European Parliament of ... (not yet published in the Official Journal).

- (10) During risk assessments and/or within the framework of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾, DEHP, DBP and BBP have been identified as reprotoxic substances and have therefore been classified as reprotoxic, category 2.
- (11) Scientific information regarding DINP, DIDP and DNOP is either lacking or conflicting, but it can not be excluded that they pose a potential risk if used in toys and childcare articles, which are by definition produced for children.
- (12) The uncertainties in the evaluation of exposure to these phthalates, such as mouthing times and exposure to emissions from other sources, require that precautionary considerations be taken into account. Therefore, restrictions on the use of these phthalates for toys and childcare articles and on the placing on the market of such articles should be introduced. However, the restrictions for DINP, DIDP and DNOP should be less severe than the ones proposed for DEHP, DBP and BBP for reasons of proportionality.
- (13) In line with the Commission Communication on the Precautionary Principle, the measures based on this principle should be subject to review in the light of new scientific information.
- (14) The Commission, in cooperation with the Member State authorities responsible for market surveillance and enforcement for toys and childcare articles, and in consultation with the relevant organisations of producers and importers, should monitor the use of phthalates and other substances as plasticisers in toys and childcare articles.
- (15) For the purpose of Directive 76/769/EEC, the term 'childcare article' should be defined.
- (16) The Council, in accordance with paragraph 34 of the Interinstitutional agreement on better law-making ⁽²⁾, should encourage Member States to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.
- (17) The Commission will review the use of the phthalates listed in Annex I to Directive 76/769/EEC in other products when the risk evaluation under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽³⁾ will have been concluded.

⁽¹⁾ OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

⁽³⁾ 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).

- (18) This Directive applies without prejudice to 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 ⁽⁴⁾ 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 ⁽⁵⁾ 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 ⁽⁶⁾,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/769/EEC is hereby amended as follows:

1. The following subparagraph shall be added to Article 1(3):

'(c) "childcare article" means any product intended to facilitate sleep, relaxation, the feeding of children or sucking on the part of children.'

2. Annex I shall be amended as set out in the Annex to this Directive.

Article 2

The Commission shall re-evaluate, by ... ^(*) at the latest, the measures provided for in Directive 76/769/EEC as amended by this Directive in the light of new scientific information on substances described in the Annex to this Directive and their substitutes, and if justified, these measures shall be modified accordingly.

Article 3

1. By ... ^(**) Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these measures from ... ^(***).

⁽⁴⁾ OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

⁽⁵⁾ OJ L 196, 26.7.1990, p. 1. Directive repealed by Directive 2004/37/EC of the European Parliament and of the Council (OJ L 158, 30.4.2004, p. 50).

⁽⁶⁾ OJ L 131, 5.5.1998, p. 11.

^(*) Four years after entry into force of this Directive.

^(**) Six months after entry into force of this Directive.

^(***) Twelve months after entry into force of this Directive.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

...

For the Council

The President

...

ANNEX

The following points shall be added to Annex I to Directive 76/769/EEC:

<p>(XX.) The following phthalates (or other CAS- and Eines numbers covering the substance):</p> <p>bis (2-ethylhexyl) phthalate (DEHP) CAS No 117-81-7 Eines No 204-211-0</p> <p>dibutyl phthalate (DBP) CAS No 84-74-2 Eines No 201-557-4</p> <p>benzyl butyl phthalate (BBP) CAS No 85-68-7 Eines No 201-622-7</p>	<p>Shall not be used as substances or as constituents of preparations, at concentrations of greater than 0,1 % by mass of the plasticised material, in toys and childcare articles.</p> <p>Such toys and childcare articles containing these phthalates in a concentration greater than the limit mentioned above shall not be placed on the market.</p>
<p>(XXa.) The following phthalates (or other CAS- and Eines numbers covering the substance):</p> <p>di-“isononyl” phthalate (DINP) CAS No 28553-12-0 and 68515-48-0 Eines No 249-079-5 and 271-090-9</p> <p>di-“isodecyl” phthalate (DIDP) CAS No 26761-40-0 and 68515-49-1 Eines No 247-977-1 and 271-091-4</p> <p>di-n-octyl phthalate (DNOP) CAS No 117-84-0 Eines No 204-214-7</p>	<p>Shall not be used as substances or as constituents of preparations, at concentrations of greater than 0,1 % by mass of the plasticised material, in toys and childcare articles intended for children under three years of age and which can be placed in the mouth by them.</p> <p>Such toys and childcare articles containing these phthalates in a concentration greater than the limit mentioned above shall not be placed on the market.’</p>

STATEMENT OF THE COUNCIL REASONS

I. INTRODUCTION

The Commission submitted to the Council and to the European Parliament its proposal for amending for the 22nd time Directive 76/769/EEC on 24 November 1999 ⁽¹⁾, based on Article 95 of the EC Treaty.

The European Economic and Social Committee delivered an opinion on 15 February 2000 ⁽²⁾.

The European Parliament completed its first reading and delivered an opinion on 6 July 2000 ⁽³⁾.

On 4 April 2005, the Council adopted its Common Position as set out in Document 5467/05.

II. OBJECTIVE

The draft Directive relates to the marketing and use of toys and childcare articles containing phthalates. In its original form it foresaw prohibition of six different phthalates in toys and childcare articles containing PVC and intended to be put in the mouth by children under the age of three years.

The European Parliament, in its first reading, adopted a resolution on phthalates and toy safety proposing some amendments to the Commission proposal. The main amendments are the following:

- in the case of toys that contain phthalates and are intended for children between the ages of three and six, but which younger children could place in their mouths, warnings must be placed on the packaging and on the toy itself,
- the prohibition should apply to all phthalates and not only to the six contained in the Commission proposal,
- the ban should be extended to all toys, not just toys intended for children under three, and not only toys that are designed to be placed in the mouth. Toys which can be placed in the mouth by children may have concentrations no greater than 0.1 %, rather than 1 % as envisaged in the Commission proposal,
- fragrances may not be added to toys, containing phthalates, which a child can place in its mouth.

On 25 May 2000, the Council examined the file but was not able to reach agreement on a common position.

Meanwhile, the results of new risk assessments had become available, and it seemed desirable to strengthen some of the original provisions, in line with what the European Parliament had concluded. On 24 September 2004, the Council reached a political agreement by unanimity on the draft Directive, amending for the 22nd time Directive 76/769/EEC, as set out in Annex I to Document 12469/04.

III. ANALYSIS OF THE COMMON POSITION AS SET OUT IN DOCUMENT 5467/05

1. General

Though not incorporating all amendments of the European Parliament, the common position broadens considerably the scope of the ban, by replacing labelling with an outright ban and ensures legal certainty by clearly defining the items which fall within the scope of the ban (a definition of childcare article, identical to the one contained in the Toys Decision ⁽⁴⁾, has been added).

⁽¹⁾ OJ C 116 E, 26.4.2000, p. 14.

⁽²⁾ OJ C 117, 26.4.2000, p. 17.

⁽³⁾ OJ C 121, 24.4.2001, p. 410.

⁽⁴⁾ Commission Decision 1999/815/EC (OJ L 315, 9.12.1999, p. 46).

Amendments 1, 3, 4, 6 and 8 have been accepted in principle, though redrafted.

Amendments 18, 2, 5, 11, 24, 7, 17/rev., 16 and 9 have not been deemed acceptable.

2. New elements contained in the Common Position as compared with the Commission proposal

Recitals 3, 4 and 7 have undergone minor drafting changes, mostly of a legal nature. New recitals 6 and 9 to 15 have been added, to indicate that a temporary ban is already in force and to clarify the relationship between the phthalates to be banned, the precautionary principle and the risk assessment procedures.

The definition of 'childcare article' has been introduced in the new Article 1(1).

Article 2 has been redrafted to introduce the obligation for the Commission to review these measures within four years from their entry into force.

Article 3 has been redrafted to comply with the guidelines on drafting legislative texts, and to add the obligation for Member States to notify the transposition measures to the Commission.

In the Annex, the scope of the ban has been clarified, by extending it, for DEHP, DBP and BBP, to all toys and childcare articles; for DINP, DIDP and DNOP, the ban will cover toys and childcare articles intended for children under three years of age and which can be placed in the mouth by them. In both cases, it has been clarified that the concentration limit of 0,1 % of the mass applies to the plasticised material mass, so that in case of items which include both plasticised material and other components, it remains applicable in full to the plasticised part only.

IV. CONCLUSION

The Council, through its Common Position, wishes to move forward in the same direction as the European Parliament, by significantly broadening the scope of the ban, replacing labelling with an outright ban. The Council believes that this will greatly assist towards adopting a permanent ban, subject to a continuous review, leading to an even broader ban, should new scientific evidence arise after its entry into force.
