

## COMMISSION DIRECTIVE 2004/98/EC

of 30 September 2004

## amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of pentabromodiphenyl ether in aircraft emergency evacuation systems for the purpose of adapting its Annex I to technical progress

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

emergency cases for a few seconds, and only in the rare event that the material is burning.

Having regard to the Treaty establishing the European Community, and

(5) Considering the limited application of pentaBDE in aircraft emergency evacuation systems and the negligible contribution to the overall risks posed by that article to health and the environment, it is justified to permit pentaBDE to be placed on the market and used for that specific purpose.

Having regard to Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of dangerous substances and preparations <sup>(1)</sup>, and in particular Article 2a thereof,

(6) Given the complexity of the substitution process and the authorisation regulations for aircraft emergency systems, and the serious socio-economic implications, a time limited derogation is justified for articles essential for evacuation situations. Permitting the use of pentaBDE in aircraft emergency evacuation systems would maintain aircraft safety by preventing the use of older emergency systems.

Whereas:

(1) Pentabromodiphenyl ether (pentaBDE) is used as a brominated flame retardant in order to protect plastics, fabrics and other articles against fire.

(7) Directive 76/769/EEC should therefore be amended accordingly.

(2) On the basis of a risk assessment pursuant to Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances <sup>(2)</sup> it was considered necessary to restrict the placing on the market and use of pentaBDE, and the substance was therefore added to Annex I to Directive 76/769/EEC.

(8) This Directive should apply without prejudice to Community legislation laying down minimum requirements for the protection of workers, in particular 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 <sup>(3)</sup>, and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) <sup>(4)</sup>.

(3) Recently, new information has become available showing that pentaBDE is used in specific fabrics for aircraft evacuation slides and slide-rafts and cannot be replaced by suitable alternatives due to the extensive safety testing and regulatory requirements.

(4) Emissions from such slides into the environment and exposure of humans cannot be expected, except in

(9) The measures provided for in this Directive are in accordance with the opinion of the Committee for the adaptation to technical progress of the Directives on the removal of technical barriers to trade in dangerous substances and preparations,

<sup>(1)</sup> OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/96/EC (OJ L 301, 28.9.2004, p. 51).

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

<sup>(3)</sup> OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(4)</sup> OJ L 158, 30.4.2004, p. 50.

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex I to Directive 76/769/EEC is amended in accordance with the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by 1 January 2005 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2005 at the latest.

When Member States adopt those provisions, these shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 30 September 2004.

*For the Commission*

Olli REHN

*Member of the Commission*

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ANNEX

Annex I to Directive 76/769/EEC, is amended as follows:

In the second column of point 44, entitled diphenylether, pentabromo derivative C<sub>12</sub>H<sub>5</sub>Br<sub>5</sub>O, a new paragraph 3 is added:

'3. By way of derogation, until 31 March 2006 paragraphs 1 and 2 shall not apply to aircraft emergency evacuation systems.'

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