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EUROPEAN PARLIAMENT

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A3-0088/91

**II

RECOMMENDATION

of the Committee on the Environment, Public Health and Consumer Protection

on the **COMMON POSITION** established by the Council with a view to the adoption of a directive amending for the eleventh time 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 (C3-0063/91 - SYN 239)

Rapporteur: Mrs Ursula SCHLEICHER

DOC EN\RR\107185
 A Series: Reports — B Series: Motions for Resolutions, Oral Questions — C Series: Documents received from other Institutions (e.g. Consultations)

PE 148.260/fin.

Or. DE.

*	= Consultation procedure requiring a single reading
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**II	= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment
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**I	= Cooperation procedure (first reading)
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***	= Parliamentary assent which requires the votes of a majority of the current Members of Parliament
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At its sitting of 10 October 1990 the European Parliament delivered its opinion at first reading on the Commission proposal for a Council directive amending for the eleventh time 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.

At the sitting of 21 February 1991 the President of Parliament announced that the common position had been received and referred to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible.

At its meeting of 25 February 1991 the Committee on the Environment, Public Health and Consumer Protection appointed Mrs Schleicher rapporteur.

At its meetings of 25 February and 5 April 1991 it considered the common position and the draft recommendation.

At the latter meeting it adopted the following recommendation unanimously.

The following took part in the vote: Collins, chairman; Schleicher, vice-chairman and rapporteur; Scott-Hopkins, vice-chairman; Alber, Amendola, Bjornvig, de la Camara Martinez, Caudron (for Bombard), Ceci, Chanterie, Ib Christensen (for Canavarro pursuant to Rule 111(2)), Diez de Rivera Icaza, Di Rupo, Duarte Cendan (for Bowe), Friedrich (for Douste-Blazy pursuant to Rule 111(2)), Gaibisso, Green, Guidolin, Hadjigeorgiou (for Banotti), Carolin Jackson, Kuhn, Langenhagen (for Florenz), Lannoye (for Monnier-Besombes), Llorca Vilaplana, Nordmann (for Pimenta), Oomen-Ruijten, Pollack, Pompidou (for Fitzsimons), Santos (for Partsch), Llewellyn Smith, Valverde Lopez, Veil, Vernier and Vittinghoff.

The recommendation was tabled on 5 April 1991.

The deadline for tabling amendments to the common position or proposals to reject is 12 noon on Thursday, 11 April 1991.

A

RECOMMENDATION

(Cooperation procedure: second reading)

on the common position established by the Council
with a view to the adoption of a directive amending for the eleventh time
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
(COM(89) 0065 final)¹

The Committee on the Environment, Public Health and Consumer Protection,

- having regard to the common position of the Council (C3-0063/91 - SYN 239),

Recommends that the European Parliament amend the common position as follows:

Common position of the Council

Amendments

(Amendment No. 1)

Recital 9a (new)

Whereas substitutes for use as hydraulic fluids in mining that satisfy all the provisions of the Sixth Luxembourg Report on requirements and tests for non-flammable hydraulic fluids for hydrostatic and hydrokinetic transmission and steering in mining operations, particularly the fire test and the thermal decomposition test, are not currently available in all Member States owing to varying national interpretations of the Luxembourg Report; whereas the only other solution in these cases is to convert the technology in question, which for technical and economic reasons requires a transitional period or derogations; whereas, in the light of the requirement both to reduce the risk to the environment and to increase the safety of miners, the Luxembourg Report should be amended in order to permit the use as hydraulic fluids (e.g. on a polyglycol basis) in all Member States of the fluids currently being tested as substitutes;

¹ OJ No. C 24, 1.2.1990, p. 20

(Amendment No. 2)
Annex I, point 25, right-hand column

As from (+) the marketing and use of this substance and of preparations and products containing it shall be prohibited. By way of exception this provision shall not apply:

- (1) In the case of plant and machinery already in service on ... (+) until such plants and machinery is disposed of. However, as from ... (+) Member States may, on grounds of health protection and environmental protection, prohibit within their territory the use of such plant or machinery before it is disposed of;

(+) Three years after the date of adoption of this Directive.

As from (+) the marketing and use of this substance and of preparations and products containing it shall be prohibited. By way of exception this provision shall not apply:

- (1) In the case of plant and machinery already in service on ... (+) until such plant and machinery is disposed of or until it reaches the end of its service life, which shall be no later than/19.. (eight years after adoption of this Directive). Disposal plans shall be drawn up to this end;

(+) Three years after the date of adoption of this Directive.

B

EXPLANATORY STATEMENT

The directive amending for the eleventh time 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 is concerned with substitutes for PCB developed over the last decade, and notably Ugilec 121, DBBT and Ugilec 141. Although these substances are less harmful than PCBs, they are nevertheless dangerous because of their ecotoxicity.

The European Parliament, the Council and the Commission agreed from the outset that the marketing and use of Ugilec 121 and DBBT should be banned forthwith.

The Commission's initial idea was to ban the marketing and use of Ugilec 141, the third substance, in transformers, condensers and hydraulic fluid in equipment used in mining after a certain transitional period. This substance has been widely used over the last few years as a substitute for PCB. A transitional period is needed because, as with PCBs, switching to other fluids will lead to substantial waste disposal problems. Like PCB this substance must be disposed of as special waste and the Community has not yet enough capacity to do so.

The common position of the Council and Commission incorporates a number of amendments adopted by the European Parliament which the Commission endorsed at first reading. However, two of the European Parliament's pressing concerns have been ignored.

The Council says in its justification that 'it may be noted that provisions to limit the scope of the derogations in favour of plants already in service have been included in the common position'. This is a root of the problem it means that it will be possible for Member States, if they consider it necessary on grounds of health protection and environmental protection, to have such plants closed down on the expiry of a period of three years from the adoption of the Directive.

On the other hand, plants and machine components containing Ugilec 141 may be marketed for the first time up to three years following the adoption of this Directive. The normal working life of transformers is between 20 and 40 years and between 5 and 15 years for machines and equipment used in coalmining. During this time plants and machines must be serviced, and this includes changing fluids.

If Member States are entitled to have plants closed and machinery withdrawn from use on grounds of health protection and environmental protection on the expiry of a period of three years from the adoption of the directive, considerable variations will arise between the Member States of the European Community. At least one Member State intends to apply the special provision as soon as possible, while other Member States are certain not to invoke it. This means that the relevant plants and machines may continue to operate on the territory of these Member States for a period of up to 40 years and Ugilec 141 will remain in use for the same period of time.

In order to prevent this, the European Parliament had proposed a deadline: eight years after the adoption of the directive no plant or machine component using Ugilec 141 should be allowed to operate in the EC. This amendment was rejected by both the Council and the Commission.

Noting the unanimous decision by the Council on the common position, the European Parliament, acting by a large majority, is reiterating its request to the Council at second reading to set a final deadline for the withdrawal of Ugilec 141.

Parliament considers that this is the only way in which the Council and Commission can honour the commitment to the principle of prevention in environmental protection set out in the 1987 Single Act.

The European Parliament is also deeply dissatisfied at the fact that Member States have been able to interpret the so-called Sixth Luxembourg Report on requirements and tests for non-flammable hydraulic fluids in mining operations in different ways. In order to ensure the safety of miners it is urgently necessary that the requirements concerning the non-flammability of hydraulic liquids be drafted in such a way that they are not open to differing interpretations. Under the present arrangements it has been possible for two Member States, both invoking the Sixth Luxembourg Report, to reach quite different decisions on a given PCB substitute, one banned it, while the other authorized it.

The European Parliament once again urges the Council and Commission to review the requirements laid down in the Sixth Luxembourg Report.

