

Hazardous substances

European Parliament resolution on the draft Commission decision 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 (CMT-2005-151 and CMT-2005-642)

The European Parliament,

- 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 equipment¹,
- having regard to the draft Commission decision 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 of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (CMT-2005-151 and CMT-2005-642),
- having regard to the opinion delivered on 16 March 2005 by the committee referred to in Article 7 of Directive 2002/95/EC,
- having regard to Article 8 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission², and the Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC³,
- having regard to Article 95(3) of the EC Treaty,
- having regard to Rule 81 of its Rules of Procedure,
- A. whereas Article 4(1) of Directive 2002/95/EC restricts the use of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE) in new electrical and electronic equipment put on the market from 1 July 2006 unless exempted under the Annex,
- B. whereas, on 10 December 2004, the committee established under Article 7 of Directive 2002/95/EC voted in favour of a draft Commission Decision to amend the Annex to Directive 2002/95/EC in order to add new exemptions and modify existing ones,
- C. whereas Article 7(3) of Decision 1999/468/EC and point 1 of the Agreement provide that the European Parliament 'is to receive, at the same time as the members of the committees and on the same terms, the draft agendas for committee meetings, the draft implementing measures submitted to the committees... and the results of voting and

¹ OJ L 37, 13.2.2003, p. 19.

² OJ L 184, 17.7.1999, p. 23.

³ OJ L 256, 10.10.2000, p. 19.

summary records of the meetings and lists of the authorities to which the persons designated by Member States to represent them belong',

- D. whereas Parliament received the draft decision by virtue of its right of scrutiny pursuant to Decision 1999/468/EC only on 28 January 2005 and only upon request,
- E. whereas, by that date, Parliament had received almost none of the documents that it should have received in relation to the meetings of the committee for the adaptation to scientific and technical progress of EC legislation on waste in the course of 2004,
- F. whereas the committee responsible in Parliament raised the Commission's non-compliance with Decision 1999/468/EC and the Agreement with the Commission on 3 February 2005; whereas the Commission undertook to start a new comitology procedure and to submit all the missing documents on 16 February 2005,
- G. whereas Parliament received a new draft decision on 25 February 2005,
- H. whereas Article 5(1) of Directive 2002/95/EC allows for amendments necessary to adapt the Annex to scientific and technical progress,
- I. whereas safer alternatives to the hazardous substances covered by Article 4(1) of Directive 2002/95/EC are available or being developed for applications that currently benefit from an exemption,
- J. whereas Article 5(1)(b) of Directive 2002/95/EC provides for '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',
- K. whereas Article 5(1)(b) of Directive 2002/95/EC lays down the only criteria that can be taken into consideration with a view to preparing a draft decision for additional exemptions,
- L. whereas the Commission asserts in recital 2 of its draft decision that the 'use of these hazardous substances in those specific materials and components is still unavoidable',
- M. whereas, pursuant to Article 5(2) of Directive 2002/95/EC, the Commission shall inter alia consult stakeholders before amending the Annex and 'shall provide an account of the information it receives',
- N. whereas scrutiny of the stakeholder consultation revealed the following problems:
 - the burden of proof concerning the validity or non-validity of the requested exemptions was put on the stakeholders and not on the applicant,

- the requests for exemptions have not been made publicly available, which jeopardises Parliament's ability to exercise effective scrutiny, in particular to assess whether the statement in recital 2 of the draft decision is justified,
- cost considerations were included in the stakeholder consultation, although Directive 2002/95/EC does not include cost considerations; whereas the undue consultation about costs raises doubts about the basis of the draft decision,

O. whereas scrutiny of the report commissioned by the Commission to assess the validity of the requests revealed the following problems:

- costs are explicitly considered a criterion for granting exemptions, which runs counter to the provisions of Directive 2002/95/EC; whereas the undue consideration about costs calls into question the validity of the report,
- the major difference between expiry dates providing a clear signal to economic operators and a general review clause which is open by nature is not understood; whereas a general review clause cannot be considered to be equal to clear expiry dates,
- information about currently available substitutes does not fully reflect the actual situation; whereas this calls into question the validity of the report for assessing the criteria of Article 5(1)(b),

P. whereas scrutiny of the draft decision in light of the limited information available from the stakeholder consultation and the report commissioned by the Commission revealed the following problems, in particular with the annex thereto:

- exemptions have been provided where substitutes are available (points 7 (second indent), 10, 12, 13 and 14), contrary to Article 5(1)(b),
- one exemption was extended without any stakeholder consultation (point 8, cadmium in electrical contacts), contrary to Article 5(2),
- the expiry date for point 7 (second indent) of 2010 was removed with no justification,
- no other expiry dates were set by the decision – not even on point 7 (third indent), contrary to the clear mandate in point 10 of the Annex to Directive 2002/95/EC,
- expiry dates suggested on a number of items by the applicants themselves have not been included (points 10, 11, 13 and 14),
- some exemptions have been given a broader scope than requested and/or justified (points 10 and 12), contrary to Article 5(1)(b),
- exemptions have been provided on the basis of unsubstantiated or unquantified technical discussions (points 7 (second indent), 10 and 14), contrary to Article 5(1)(b),

- the erroneous numbering of point 10 of the Annex was reintroduced, although the Commission had undertaken to rectify it following a misleading interpretation of the Directive due to this numbering (point 15),

- Q. whereas Article 8 of Decision 1999/468/EC lays down Parliament's right to adopt a resolution to indicate that the draft implementing measures 'would exceed the implementing powers provided for in the basic instruments',
1. Considers, on the basis of the limited information available, that the Commission has not acted in accordance with Article 5(1), 5(1)(b) and 5(2) of Directive 2002/95/EC and has therefore exceeded the implementing powers provided for in that Directive;
 2. Calls on the Commission to re-examine its draft decision 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 in the light of this resolution, and to ensure that any amendment to the Annex fully respects the provisions of that Directive;
 3. Confirms that subsequent scrutiny of other comitology files has revealed that the Commission's non-compliance with Decision 1999/468/EC and the Agreement in terms of the procedural provisions is not an isolated case;
 4. Calls on the Commission to make a detailed assessment of all cases of non-compliance with Decision 1999/468/EC and the Agreement since the modification of the procedures at the end of 2003, specifying the act and the exact form of non-compliance, and to forward the full assessment to Parliament within 3 months;
 5. Calls on the Commission to respect Parliament's right to information and scrutiny pursuant to Decision 1999/468/EC and the Agreement;
 6. Instructs its President to forward this resolution to the Council and Commission, and the parliaments and governments of the Member States.