Making available on the market and use of biocidal products

2009/0076(COD) - 11/08/2011 - Commission communication on Council's position

The Commission accepted in full, in part or in principle 193 of the 309 amendments adopted by the European Parliament in its first reading. Around half of these 193 amendments are already reflected, at least in part, in the common position.

The Commission accepted amendments, either fully or in principle or in part, relating to modifications to the definition of biocidal products, the scope of derogations under exclusion criteria, the extension of the scope of the Union authorisation, the criteria for low-risk biocidal products and the provisions on treated articles.

A certain number of amendments (11 in total) were rejected by the Commission but incorporated in the Council's position in full, in part or in principle. These amendments mainly concern reduced time limits for the inclusion and renewal of inclusion of candidates for substitution as well as other active substances and shorter deadlines for certain tasks to be carried out by the European Chemicals Agency. While the Commission rejected them on grounds that they would increase the administrative and regulatory burden by adding to the workload of the Agency, Member States and economic operators without clear benefits in terms of improved levels of protection, the Council considered them acceptable.

The Commission considers that the common position does not alter the key objectives of the proposal and can thus support it. Nevertheless, the Commission considers that certain aspects of the text should be improved and would be happy to work with the other institutions in order to make such improvements. In particular, with regard to the procedures for the establishment of Maximum Residue Levels, the wording of the common position is not compatible with Regulation (EC) No 470/2009 and this inconsistency should be addressed as a priority.

The Commission made two declarations :

1) Comitology: in a spirit of compromise, the Commission will not stand against a qualified majority vote in favour of the Presidency text. However, the Commission would underline that it does not share the views of the Council that the measures for the approval of active substances and for rules on fees payable to the European Chemicals Agency are of an implementing nature and thus fall under Article 291 TFEU. As regards both these matters, the Commission is of the view Article 290 (delegated acts) is the appropriate procedure given that they entail measures of general application which would modify or supplement the non-essential elements of the Regulation.

2) Resource implications: the extension of the scope of the Union authorisation together with additional tasks allocated to the European Chemicals Agency, the shorter deadlines and the increased frequency of renewals for active substances will necessarily result in a significant increase in the workload of the Agency and the Commission. At the same time, the workload for national authorities will be reduced as a result of a wider scope of Union authorisation. In light of the increased workload, the Agency and the Commission will need additional financial and human resources to ensure effective implementation of the Regulation. In view of this, the Commission calls on the Council to address these requirements under the new financial perspectives.

To take account of the resource implications resulting from the changes introduced by the Council and the Parliament in the first reading, including the need to adjust the fee system as a way to reduce the impact

on the Union budget, the Commission has prepared a revised financial statement which is attached to the Communication.

The total amount of operational appropriations is estimated at **EUR 9.108 million in commitment appropriations** until 2013 (EUR 2.756 million in 2012 and EUR 6.352 million in 2013).

Expenditure for 2012 is based on the subsidy to ECHA from the date of adoption onwards. Some preparatory measures are also financed in 2011 and 2012 under the LIFE Programme (budget line 07 03 07) for an estimated amount of EUR 1.5 million.

In light of the additional tasks allocated to the Agency and the time needed to prepare all aspects of its future work as well as the fact that the legislative process is taking longer than initially anticipated, the Commission considers it **necessary to postpone the date of applicability of the proposed regulation to 1 September 2013** with the exception of provisions which allow the Commission and the Agency to take preparatory steps (e.g. delegated/implementing acts, guidance documents).