

# COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE  
ON THE COLLECTION, REGENERATION  
AND/OR DESTRUCTION OF POLYCHLORINATED  
BIPHENYLS (PCB's)

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(submitted to the Council by the Commission)

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REGENERATION AND/OR DESTRUCTION OF  
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Explanatory Memorandum

1. In General

This proposal for a directive comes within the scope of the Programme of action of the European Communities on the environment of 22 November 1973<sup>1)</sup>. It constitutes one of the urgent measures to be taken in view of the well known toxicity to living organisms and the non-degradability of the substances in question.

The Council of the O.E.C.D. adopted, at its 315<sup>th</sup> meeting on 13 February 1973, a Decision of the O.E.C.D. Council on protection of the environment by control of polychlorinated biphenyls. In this decision, the Member States of the O.E.C.D. undertake to take every appropriate measure to reduce to a minimum the dispersion of PCB in the environment, in particular by restricting the use of these substances to closed systems and by monitoring their treatments.

Under the agreement of 5 March 1973 on information for the Commission and for the Member States with a view to possible harmonization throughout the Communities of urgent measures concerning the protection of the environment<sup>2)</sup>, the French Government has forwarded to the Commission a preliminary draft on "Conditions of use of polychlorinated biphenyls".

The Commission has informed the French Government of its intention to present to the Council, within the period laid down by the agreement on information, a proposal for a directive on this subject.

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1) O.J. No C 112, 20 December 1973.

2) O.J. No C 9, 15 March 1973.

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On 26 August 1974, the Commission forwarded to the Council a proposal for a directive on the harmonization of the laws, regulations and administrative provisions of the Member States relating to restriction of the sale and use of certain dangerous substances and preparations. This proposal for a directive already covers the conditions of use of PCB.

The aim of the present proposed directive is to cover the conditions of collection, regeneration and destruction of PCB and thus to supplement the control of these substances in order to avoid any dispersal in the environment.

There are no specific laws on collection, regeneration and/or destruction of PCB in force in the Member States.

In view of the legal situation as it exists in the Member States, it seems evident that the Treaty has not provided the necessary powers to obtain the objectives of the Treaty in relation to this proposed directive. In these circumstances it is necessary to invoke Article 235 as the legal basis for the proposed directive.

## 2. Comments on specific articles

### Article 1

Polychlorinated biphenyls available commercially consist of the mixture of isomers which results from the various modes of substitution of chlorine into the parent compound, biphenyl. They can be mixed with polychlorinated terphenyls.

### Article 2

This article states the general principles for elimination of all dispersal of PCB's.

### Article 3

Paragraph 1 of this article refers to the setting up of an appropriate collection system for recovery of waste products either to be regenerated under controlled conditions or to be destroyed in suitable furnaces.

Paragraph 2 of this article covers the uses of PCB's in systems designed as to permit their recovery and authorized by the proposal for a Council Directive on the approximation of the laws, regulations and administrative provisions of Member States relating to restriction of the sale and use of certain dangerous substances and preparations. The main systems contemplated here are transformers, large condensers, heat-exchange systems (except in plant for treatment of foodstuffs for human consumption, animal feedingstuffs and pharmaceutical and veterinary products) and hydrolic systems used in mining machinery.

#### Article 4 and 5

These provisions, requiring creating bodies or enterprises to be set up or appointed and the obligation for the consumer to apply to them, ensure that the treatment of PCB will be carried out in an appropriate manner and with the necessary plant.

These provisions form the basis for subsequent inspections. Nothing specific is stated regarding the nature of these bodies or enterprises to leave Member States free to adapt to local and national situations.

For example, article 4 does not preclude the manufacturer or importer of PCB from being appointed as the enterprise responsible for the collection, regeneration and/or destruction of these substances.

Participation by the owners or holders of PCB's in the costs of treatment complies with the principle known as "polluter pays".

#### Article 6

This provision guarantees that each country will create the conditions necessary for organizing the various stages of PCB treatment while allowing the Member States the widest possible scope for action.

### 3. Consultations with the European Parliament and the Economic and Social Committee

The opinion of the European Parliament is required pursuant to Article 235 of the Treaty of Rome.

The Economic and Social Committee should also be consulted.

## II

*(Preparatory Acts)*

## COMMISSION

Proposal for a Council Directive on the collection, regeneration and/or destruction of polychlorinated biphenyls (PCB's)

*(Submitted to the Council by the Commission on 13 February 1975)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas PCB's present hazards, which are widely recognized as being harmful to human health and the environment; whereas these substances must therefore be controlled at each stage of their use;

Whereas Regulations relating to collection, regeneration and/or destruction of PCB's are necessary in order to attain within the framework of the common market the objectives of the Community in the fields of improvement of living conditions, harmonious development of economic activities throughout the Community and continuous and balanced expansion; whereas the necessary powers have not been provided in the Treaty;

Whereas the programme of action of the European Communities on the environment, approved by the Council of the European Communities and the representatives of the Governments of the Member States, meeting within the Council, in the declaration of 22 November 1973 <sup>(1)</sup>, recognizes the need for

Community action with respect to wastes whose treatment, for reasons of toxicity and non-degradability, requires solutions transcending the national framework;

Whereas the Council Directive of . . . . . on the approximation of the laws, regulations and administrative provisions of the Member States relating to restriction of the sale and use of certain dangerous substances and preparations already restricts the use of these substances to certain categories of applications;

Whereas the Council Directive of . . . . relates to the disposal of wastes in general; whereas it is necessary to create for particularly dangerous wastes special arrangements offering every guarantee that human health and the environment will be safeguarded against harmful effects from these wastes or from uncontrolled abandonment or dumping; whereas PCB constitutes such a case;

Whereas, in order to avoid as far as possible the risks of dispersion into the environment, it is desirable that the Member States take the necessary measures to make mandatory the clearing and collection of waste PCB's or of PCB's in equipment no longer in use where the design of this equipment permits recovery of such PCB's;

Whereas provision should also be made for the setting up or designation by the Member States of one or more bodies or undertakings to be responsible for the collection, regeneration and/or destruction of PCB's; whereas anyone in possession of PCB's which

<sup>(1)</sup> OJ No C 112, 20. 12. 1973.

he wishes to dispose of must hold them at the disposal of such bodies or undertakings,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

For the purposes of this Directive 'PCB's' means polychlorinated biphenyls or mixtures containing polychlorinated biphenyls and polychlorinated terphenyls.

*Article 2*

The Member States shall take the necessary measures to prohibit the uncontrolled discharge, dumping and deposit of PCB's and of objects and equipment containing them.

*Article 3*

1. The Member States shall take the necessary measures to ensure that the collection, regeneration or destruction of waste PCB's, or of PCB's contained in objects or equipment no longer in use takes place under conditions which preclude any risk or harm to human health and the environment.

2. The Member States shall take the necessary measures to make compulsory the clearing and collection of waste PCB's, and of PCB's contained in equipment no longer in use where such equipment is so designed as to permit their recovery.

*Article 4*

For the purposes of Articles 2 and 3 of this Directive, each Member State shall set up or designate one or more competent bodies or undertakings to be responsible for the collection, regeneration and/or destruction of PCB's.

*Article 5*

1. Anyone in possession of PCB's which he wishes to dispose of shall hold them at the disposal of the bodies or undertakings referred to in Article 4.

2. He shall bear that portion of the treatment costs which those bodies or undertakings are unable to recoup by utilization or disposal of the waste PCB's.

*Article 6*

The Member States shall lay down the special provisions with which those in possession of PCB's and the bodies or undertakings responsible for the collection, regeneration and/or destruction of PCB's must comply pursuant to Articles 2 and 3.

*Article 7*

Every three years each Member State shall compile a report on the position as to PCB treatment in its territory and shall forward it to the Commission. The Commission shall forward it to the other Member States.

*Article 8*

The Member States shall bring into force the measures necessary to comply with this Directive within 24 months of its notification and shall forthwith inform the Commission thereof.

*Article 9*

Following notification of this Directive, the Member States shall inform the Commission, in sufficient time for it to submit its comments, of all proposed laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

*Article 10*

This Directive is addressed to the Member States.