

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 548 final - SYN 224

Brussels, 10 November 1989

Proposal for a
COUNCIL DIRECTIVE

amending for the tenth 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

(presented by the Commission)

Explanatory memorandum

1. Aim of the Directive

This is the restriction of the marketing and use of certain dangerous substances and preparations.

It will contribute to:

- improved protection of man and of environment,
- improved functioning of the internal market through the imposition of the same restrictions throughout this area without internal frontiers.

2. Factors taken into consideration

The following factors were taken into consideration when the proposal for a Directive was being drawn up:

- cadmium pollution poses a complex and difficult problem since it is a "multimedia" form of pollution, affecting all environmental sectors. Cadmium may be emitted into the environment at numerous points in the production, manufacturing, use and waste disposal processes. Some twenty legal acts concerning cadmium have been published in the Official Journal: clear evidence of the importance attached to it;
- in April 1987 the Commission presented to the Council an action programme on environmental pollution by cadmium. In response to that Communication, on 25 January 1988 the Council adopted Resolution 88/C 30/01 on a Community action programme to combat environmental pollution by cadmium. The Resolution stresses the major elements of the strategy for cadmium control in the interests of the protection of health and the environment. These elements concern the limitation of the uses of cadmium to cases where suitable alternatives do not exist, stimulation of research and development, collection and recycling of products containing cadmium, for example batteries, and development of a strategy designed to reduce cadmium input in soil;
- measures to restrict the use of cadmium taken individually by the Member States. These may constitute barriers to trade and have a direct effect on the establishment and operation of the internal market;
- scientific and technical data on the existence of substitutes less hazardous both for man and the environment.

3. Comments on the proposed restrictions

Cadmium and its compounds are substances that are dangerous for man and the environment; it is therefore necessary to regulate their marketing.

This proposal for a Directive falls within the context of Council Directive 76/769/EEC. The following principles were incorporated in the drafting:

- the ban on the use of cadmium affects three areas of application - pigments, stabilizers and plating - but the purpose of the ban differs in each case.

In the case of pigments, polymers (basic products) are covered. The Directive contains a list of polymers which may no longer be coloured by pigments containing cadmium.

In the case of stabilizers, products or articles are covered.

In the case of cadmium-plating, sectors or applications are covered.

By a process of elimination, any substance not included in the lists is permitted;

- the date for putting the Directive into effect may vary according to product. Some manufacturers need time to adapt their production to these conditions;
- in certain circumstances, notably for reasons of safety and reliability, it may be essential to use cadmium. A general derogation clause is provided for that reason;
- the Directive is not applicable in certain cases, notably where other directives contain further special provisions;
- implementation of the Combined Nomenclature (Council Regulation (EEC) No 2658/87 of 23 July 1987, as amended, on the tariff and statistical nomenclature and on the Common Customs Tariff: OJ L 256, 7.9.1987).

It has emerged in many cases from discussions with national experts that the definition of the products or applications covered by the Directive poses a very thorny problem. To overcome that it is proposed to include with the products or applications, where possible, the corresponding CN code number.

The CN code numbers corresponding to the proposed definition are therefore indicated in brackets after each product or application. The CN subheadings are Community subdivisions to the harmonized system nomenclature. The first six digits of the code numbers relate to the harmonized system nomenclature, while the next two digits identify the CN subheadings required.

With a view to establishing an operative system, a recital concerning technical and technological progress in relation to substitutes for cadmium and its compounds has been included in the proposal. This reference to progress, which meshes with the context of Council Resolution 88/C 30/01, is set out in Article 2 of the proposal.

4. Conformity with the Treaty

As is clear from section 3 above, this proposal is intended to afford a high level of protection for both persons and the environment and is therefore in conformity with Article 100A (3) of the Treaty.

The proposal does not call for any special provisions of the kind referred to in Article 8c of the Treaty.

5. Consultation of the sector concerned

The proposal for a Directive was drawn up in consultation with a group of national experts on public health and environmental protection as well as representatives of the various sectors of industry concerned.

6. Consultation of the European Parliament and the Economic and Social Committee

In compliance with Article 100A of the Treaty, the cooperation procedure with the European Parliament is applicable. The Economic and Social Committee has to be consulted.

Proposal for a
COUNCIL DIRECTIVE

amending for the tenth 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.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100_a thereof,

Having regard to the proposal from the Commission,¹

In cooperation with the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

¹ O J No

² O J No

³ O J No

Whereas measures should be adopted for the progressive establishment of the internal market by 31 December 1992; whereas the internal market is an area without internal frontiers in which the free circulation of goods, persons, services and capital is guaranteed;

Whereas the Council Resolution of 25 January 1988⁴ invites the Commission to pursue without delay the development of specific measures for a Community action programme to combat environmental pollution by cadmium; whereas human health also has to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented;

Whereas the restrictions on the use of cadmium and its compounds laid down by this Directive take into account the current state of knowledge and techniques regarding substitutes; whereas it would be advisable to reassess the situation in the light of the development of knowledge and techniques;

Whereas restrictions already adopted by certain Member States on use and marketing of the above mentioned substances or preparations containing them have a direct effect on the establishment and functioning of the internal market; whereas it is therefore necessary to approximate the laws of the Member States in this field and thus to amend the Annex to Council Directive 76/769/EEC⁵, as last amended by Directive / /EEC⁶,

HAS ADOPTED THIS DIRECTIVE:

⁴ OJ No C 30, 4.2.1988, p.1.

⁵ OJ No L 262, 27.9.1976, p.201.

⁶ OJ No L

Article 1

Annex I to Directive 76/769/EEC is hereby amended as set out in the Annex hereto.

Article 2

Owing to the development of knowledge and techniques in respect of substitutes for cadmium, the Council shall reassess the situation within seven years of adoption of this Directive on the basis of a report drawn up by the Commission.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 June 1991 and shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission no later than 31 December 1990 the text of the basic provisions of national law which they adopt in the field covered by this Directive.
3. The provisions adopted pursuant to paragraph 1 shall make express reference to this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels

For the Council

The following point is hereby added to Annex I to Directive 76/769/EEC:

"Cadmium (CAS No. 7440-43-9) and its compounds

1.1. Shall not be used to give colour to finished products manufactured from the substances and preparations listed below.

Such finished products, whatever their use or intended final purpose, shall not be placed on the market if their cadmium content (expressed as Cd metal) exceeds 0.01 % by weight.

- polyvinyl chloride (PVC)	(3904 10) (3904 21)	} (*)
	(3904 22)	
- polyurethane (PUR)	(3909 50)	
- low-density polyethylene (ld PE), with the exception of low-density polyethylene used for the production of coloured masterbatch	(3901 10)	
- cellulose acetate (CA)	(3912 11) (3912 12)	
- cellulose acetate butyrate (CAB)	(3912 11) (3912 12)	
- epoxy resins	(3907 30)	

1.2. Shall also be covered by this provision from (five years from adoption of this Directive) :

a) the finished products manufactured from the following substances and preparations :

- melamine - formaldehyde (MF) resins	(3909 20)	} (*)
- urea - formaldehyde (UF) resins	(3909 10)	
- unsaturated polyesters (UP)	(3907 91)	
- polyethylene terephthalate (PET)	(3907 60)	
- polybutylene terephthalate (PBT)		
- transparent/general-purpose polystyrene	(3903 11) (3903 19)	
- acrylonitrile methylmethacrylate (AMMA)		
- cross-linked polyethylene (VPE)		
- high-impact polystyrene		
- polypropylene (PP)	(3902 10)	

(*) Council Regulation (EEC) No 2658/87 of 23 July 1987, on the tariff and statistical nomenclature and on the common customs tariff: OJ No L 256, 7.9.1987, p.1.

b) paints

(3208) (3209)

(*)

However, if the paints have a high zinc content, their residual concentration of cadmium should be as low as possible and at all events not exceed 0,1 % by weight.

1.3. However, this provision shall not apply to products to be coloured for safety reasons.

2.1. Shall not be used to stabilize the finished products listed below manufactured from polymers or copolymers of vinyl chloride

Such finished products shall not be placed on the market if their cadmium content (expressed as Cd metal) exceeds 0.01 % by weight.

- packaging materials (bags, containers, bottles, lids) (3923 29 10) (3920 41) (3920 42)
- office or school supplies (3926 10)
- fitting for furniture, coachwork or the like (3926 30)
- articles of apparel and clothing accessories (including gloves) (3926 20)
- floor and wall coverings (3918 10)
- impregnated, coated, covered or laminated textile fabrics (5903 10)
- imitation leather and morocco-leather goods (4202)
- gramophone records (8524 10)
- tubes and pipes and their fittings (3917 23)
- swing doors
- vehicles for road transport (interior, exterior, underbody)
- coating of steel sheet used in construction or in industry
- insulation for electrical wiring

(*)

This provision shall enter into force on (three years from the adoption of this Directive).

2.2. However, this provision shall not apply to finished products using stabilizers with cadmium for safety reasons.

3. Within the meaning of this Directive, cadmium plating means any deposit or coating of metallic cadmium on a metallic surface.

3.1. Shall not be used for plating metallic products or components of the products used in the sectors/applications listed below.

Such cadmium-plated finished products or components of these products shall not be placed on the market where they are used in :

a) equipments and machinery for :

- food production

(8210)

(8417 20)

(8419 81)

(8421 11)

(8421 22)

(8422)

(8435) (8437) (8438)

(8476 11)

- agriculture

(8419 31)

(8424 81)

(8432) (8433)

(8434) (8436)

- cooling and freezing

(8418)

- printing and book-binding

(8440)

(8442)

(8443)

(*)

b) equipment and machinery for the production of :

- household goods (7321)
- (8421 12)
- (8450)
- (8509)
- (8516)
- furniture (8465) (8466)
- (9401) (9402)
- (9403) (9404)
- sanitaryware (7324)
- central heating and (7322)
- air conditioning plant (8403) (8404)
- (8415)

(*)

or in the products manufactured in the sectors listed under b).

3.2. Shall be covered by this provision from (five years from adoption of this Directive) products or components of products intended for use in:

a) equipment and machinery for the production of :

- paper and board (8419 32)
- (8439)
- (8441)
- textiles and clothing (8444)
- (8445) (8447)
- (8448) (8449) (8451)
- (8452)

(*)

b) equipment and machinery for the production of :

- industrial handling (8425) (8426) (8427)
- (8428)
- (8429)
- (8430)
- (8431)
- road and agricultural vehicles (chapter 87)
- rolling stock (chapter 86)
- vessels (chapter 89))

(*)

or in the products manufactured in the sectors listed under b).

M

3.3. However, this provision shall not apply to:

- products and components of the products used in the aerospace, mining, offshore and in nuclear sectors whose applications require high safety standards and in safety devices in road and agricultural vehicles, rolling stock and vessels;

- electrical contacts in any sector of use on account of the reliability required of the apparatus on which they are installed."

Impact on competitiveness and employment

I. Principle grounds for introducing the measure

In the framework of Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations, a proposal for a Directive has been prepared by the Commission with the aim of limiting the use of cadmium.

This proposal for a directive must be regarded in the perspective of :

- the other existing European legislations to control the input of cadmium in the environment
- the communication presented by the Commission to the Council in April 1987 for a proposed action programme on environmental pollution by cadmium (COM (87) 165 final).
- The Council Resolution of 25 January 1988 (88/C30/01 of 4/2/88) which invites the Commission to continue without delay the elaboration of specific measures concerning and Community action programme to combat environmental pollution by cadmium.

The Council Resolution also underlines the major elements of a strategy for cadmium control in the interests of the protection of human health and the environment. These elements are the limitation of the uses of cadmium where suitable alternatives do not exist, the stimulation of research and development; the collection and recycling of products containing cadmium.

- an existing legislation in Denmark which is in force since 1st January 1984 and prohibits the manufacture and importation of products containing cadmium.
- a project of decree in the Netherlands concerning cadmium prohibition in products notified to the Commission in the framework of Directive 83/189/EEC on 26 April 1987. This project has been already published in the Netherlands official journal but the law is not effectively enforced.

II. Characteristics of the firms concerned

The directive is trying to put in balance the industrial areas where the use of cadmium is essential and the potential risks for the environment. The obvious first step, in order to define some realistic restrictions on the limitation of cadmium and its compounds, was to look at the distribution of cadmium users and to make a distinction between the major areas and the less important ones.

The available data has allowed us to see the proportion of cadmium end-uses in the European countries. Plating and pigments have the same order of percentage (24-29 %) whereas stabilizers represent the half of that percentage (12 %). The part occupied by batteries represents nearly 1/3 of the total cadmium consumed. However the batteries are being investigated separately in the frame of another directive and therefore would not be tackled in the present directive.

On the basis of the above data only the three following sectors :

- pigments
- stabilizers
- plating

have been tackled by the present proposal for a Directive.

Are there regional concentrations

The laws of prohibition on cadmium already adopted by some Member States had as result to close their markets to goods coming from other member States.

At the door of the Internal Market of 1992 such situations could be harmful and therefore the Commission has decided to make all the necessary efforts to harmonize the legislations of the member States in this field. This would have a positive impact to the industry concerned all over Community.

III. Direct obligations on firms

All the products which appear in the lists covered by this Directive must satisfy its provisions, from the date of its entry into force.

Prohibitions on application of cadmium would result to a consequent need for alternatives. This could have a number of cost implications, the most obvious of which but by no means the most significant is the direct cost of new formulations for these alternatives. Other factors must also be considered notably the performance characteristics of the alternatives and its harmlessness to man and the environment.

However, it is the view of the EEC industry concerned that it is feasible that practical substitutes to cadmium for most of the use areas covered by the proposal exist or are already employed.

In all the three sectors mentioned above intensive research has led to the development of substitutes which could be considered as equivalent to cadmium.

Furthermore at the present time and in the three sectors concerned the major substitution would appear to have already taken place.

IV. Obligations which may be imposed indirectly on firms by local authorities.

The directive will be applied in each Member States on the basis of the transposition of its provisions into national law local authorities may impose additional requirements only if these do not adversely affect the trade of the products concerned and on the basis of paragraph d) of the Article 100 A of the Single European Act.

V. Are there any special measures applicable to small and medium - sized firms ?

No. These firms in the three sectors concerned (pigments/stabilizers/plating) should also comply with the provisions provided for under the directive. However, despite of the fact that the directive bans the marketing of specific products containing cadmium a transition period of 3-5 years has been granted to allow industry and more particular SME and PME to adapt their manufacturer process to the new conditions.

VI. What is the likely effect

- on the competitiveness of undertakings ?

The powerful advantage given by the directive to the European Industry concerned as regards the harmonization of the legislations concerning restrictions on the uses of cadmium is that after the date of entry into force of the directive it will no longer be possible to impede the free movement of the products which do not appear in the lists of banned products on the internal market.

However this directive does not apply to exports of products containing cadmium to Third countries.

On the other hand any EEC legislation treats imports into the Community in an identical manner to EEC production and this also allows the European industry to compete fairly with those trading nations who export to the Community market.

There is currently a reliable method to detect the presence of cadmium in products.

- on employments

As for employment the effects of such restrictions are very difficult to quantify and would vary according to the applications involved. It is however noticeable that the implementation of the directive should result in a general improvement in the competitiveness of the European Industry concerned with a consequent beneficial effect on the labour market.

VII. Have both sides of industry been consulted ?

Industry's concern regarding the prohibition of uses of cadmium was tackled with attention. Useful contacts have been taken with the representatives of industries concerned by the project in order to discuss the critical industrial areas which could be affected by such a directive. The approach adopted was to discuss the restrictions on the application of cadmium on a case by case basis allowing a more complete description of the industrial sectors involved. The result was the establishment of lists of banned products accepted by both sides.

A group of national experts was also directly and actively involved in the preparation of this proposal.

17

ISSN 0254-1475

COM(89) 548 final

DOCUMENTS

EN

05

Catalogue number : CB-CO-89-538-EN-C

ISBN 92-77-55053-8

Office for Official Publications of the European Communities
L-2985 Luxembourg