

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 316 final - SYN 119

Brussels, 21 June 1989

## AMENDMENT TO THE PROPOSAL FOR A COUNCIL DIRECTIVE

amending for the eight 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 pursuant to the third paragraph of Article 149  
of the EEC Treaty)

**EXPLANATORY NOTE**

At its sitting on 17 March 1989 the European Parliament delivered an opinion on the Commission proposal set out in document COM(88) 7 final of 1 February 1988.

This proposal takes account of the amendments requested by the European Parliament where the Commission has been able to accept them.

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In the light of the opinion delivered in the first reading under the cooperation procedure by the European Parliament<sup>(1)</sup> on the proposal sent by the Commission to the Council for a Council Directive amending for the eight time Directive 76/769/EEC<sup>(2)</sup>, the Commission has decided to amend the abovementioned proposal as follows:

1. The following shall be added to the fourth recital:

"whereas ILO (International Labour Organisation) Convention 136 and ILO Recommendation 144 lay down provisions on protection against hazards arising from benzene;"

2. The following shall be added to the fifth recital:

"whereas present Community legislation concerning the possible adoption by the Member States of more stringent restrictions on the use of the substances and preparations in question at the workplace is unaffected by this Directive;"

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(1) OJ n°

(2) OJ C 43, 16.2.1988, p. 9

3. The following shall be added to the sixth recital:

"whereas ILO Convention 13 regulates the use of white lead in paints;"

4. Article 1 (3)(b) shall be replaced by the following:

"(b) substances and preparations for use in industrial processes in which, under existing legislation, benzene may not be emitted;"

5. The following shall be added to Article 1 (4), point 19:

"(b) as a wood preservative;"

6. Article 1 (4), point 20, shall be amended and extended to read as follows:

"(c) or for use as a wood preservative.

This ban does not apply to solutions of inorganic salts of the CCA (copper-chromium-arsenic) type employed in industrial installations using vacuum or pressure to impregnate wood.

Furthermore, the Member States may authorize in their territory the use of DFA (dinitrophenol-fluoride-arsenic) preparations for the in situ impregnation of wooden poles carrying overhead lines. Such preparations shall be employed by professionals using vacuum or pressure."

**ANNEX**Commission position on non-adopted amendments

Amendment No 4 introducing a recital 9(a) worded as follows:

"Whereas it will also be necessary to adopt rules restricting the marketing and use of certain dangerous substances and preparations in respect of:

- dangerous waste not covered by the rules laid down in the Council Directive of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (79/831/EEC),
- new substances with properties and potential danger similar to those of substances already covered by Directive 76/769/EEC and the directives amending it, for example certain substitutes for PCB."

**Commission position**

Such an amendment is unacceptable as a new recital as it does not introduce any legal provision into the proposal for a Directive.

Amendment No 5 introducing a recital (9)b worded as follows:

"Whereas, in addition, a procedure must be laid down so that in future PCB and PCT concentrations can be determined uniformly throughout the Community."

**Commission position**

This is unacceptable in this proposal as it results in duplication of effort. It provides for the laying down of a Community method of analysis for the determination of PCB and PCT concentrations. Such a method of measurement is already provided for in the proposal for a Council Directive (doc 88/559/final SYN 161 of 16 January 1988).

Amendments No 6 and No 12 must be considered together for a better approach to the problem. Amendment No 6 is a recital justifying amendment No 12, the prohibition of DBBT.

**Amendment No 6**

"Whereas since the prohibition on the use of PCB and PCT (COM(85)467) substitute products have been developed, for example DBBT, which cause the same environmental problems as PCB and whose use and marketing have already been prohibited in one Member State; whereas it also seems necessary to approximate the legal provisions of the Member States with regard to this substance;

**Amendment No 12**

"23. Dibromobenzyltoluene  
Tetrachlorobenzyltoluene  
Dichlorobenzyltoluene (DBBT)

shall be prohibited as substances or as constituents of preparations placed on the market."

**Commission position**

Although the introduction of these two amendments is commendable and understandable, the Commission cannot accept them as it has undertaken to consider the matter in a broader context.

In November 1988, the Netherlands authorities notified the Commission of a draft Order prohibiting the marketing of DBBT, UNILEC 121 and UNILEC 141 (notification 88/0112/NL). In its reply of 6 February 1989 to the Netherlands authorities, the Commission announced that it intended to propose a directive restricting the marketing and use of all three substances.

Amendment No 10 introduces a derogation from Article 1(4), point 21, which reads as follows:

"This prohibition shall not apply to light metal or aluminium boat hulls or to other aluminium or light metal components, such as the engines and propulsion gear of boats, which enter the water."

#### **Commission position**

The amendment is unacceptable as there are substitutes for the specific protection of aluminium and aluminium-based light alloy boat hulls, namely paints based on copper, nylon or a polymer of the same type.

Commission of the European Communities

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