

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 570 final

Brussels, 14.12.1994

94/0287 (COD)

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
amending for the sixteenth time Council 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. Introduction and context

All Member States, with the exception of Italy, Greece and Luxembourg, and the Community, are Contracting Parties to the Convention for the Prevention of Marine Pollution from Land-Based Sources (1974 Paris Convention). The executive body of the Paris Convention (PARCOM) can adopt programmes and measures to eliminate and reduce pollution of the marine environment of the North-East Atlantic. The 1974 Paris Convention officially provides for recommendations and (binding) decisions to lay down joint programmes and measures.

PARCOM Decision 92/4 of 22nd September 1992, on the Phasing Out of the Use of Hexachloroethane in the Secondary Aluminium Industry and Primary Aluminium Industry with Integrated Foundries, supported by all Member States that are a Contracting Party and supported ad referendum (i.e. under reserve of the Internal Community procedures), by the Community, would phase out the use of hexachloroethane (HCE) in the aluminium industry by 31st December 1996. PARCOM Decision 93/1 of June 1993, on the Phasing Out of all Uses of Hexachloroethane (HCE) in the Non-Ferrous Metal Industry, would phase out the use of HCE in other non-ferrous metal industries, with exemptions for three magnesium alloys which are subject to review in 1996. This second decision was adopted with reserves of Germany, the United Kingdom and, therefore, of the Community.

In the absence of further action, PARCOM 92/4 would be applied by nine Member States and PARCOM 93/1 by seven Member States. Clearly the result would be a fragmented Internal Market for HCE and a level of protection of the marine environment of the North-East Atlantic lower than agreed upon in the framework of Paris Convention.

2. Justification for proposal and considerations of subsidiarity

What are the objectives of the proposal in relation to the Community's obligations ?

Action is required to preserve the Internal Market and to protect the environment both of which are Community obligations.

Does the initiatives arise out of an exclusive Community competence or a shared competitiveness ?

The specific type of action needed-that is, action to preserve the Internal Market for a dangerous substance-falls within the exclusive competence of the Community. This

competence was established by Council 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.

What are the causes of action available to the Community ?

The only course of action available is a proposal for an amendment to Directive 76/769 - the sixteenth amendment - providing for harmonized rules on the use of HCE which correspond to the two PARCOM Decisions.

Are uniform rules necessary ? Is it not sufficient to establish targets to be implemented by Member States ?

The proposed 16th Amendment establishes uniform rules for the circulation of HCE, these being necessary to protect the unity of the Union market. It also provides for the high level of environmental protection prescribed by the PARCOM Decisions and should ensure respect by the Union of its PARCOM responsibilities. The proposed 16th amendment is the only way of meeting these three objectives. Targets would be insufficient.

Consolidation of Directive 76/769/EEC

The Commission presented on 23rd September 1991 a proposal to consolidate Directive 76/769 (SEC (91) 1608 final/2) and this proposal is still pending before the Council. The Commission intends to present, in the near future and conforming to Article 189 A paragraph 2 of the EC Treaty, a proposal to amend its consolidation proposal so as to include the amendments and adaptations adopted since 23rd September 1991 as well as the text of the present proposal for a 16th amendment.

3. Rationale of the Proposal

The effect of the proposed 16th Amendment would be to transpose PARCOM Decisions 92/4 and 93/1 into Community law without any substantial change. Thus the temporary derogation for small aluminium foundries provided by PARCOM 92/4 is implicit in the date of entry into force of the proposed Directive. Furthermore the exemption for the magnesium alloys AZ81 , AZ91 and AZ92 provided by PARCOM 93/1 is included explicitly.

Departures from the PARCOM Decisions, such as provision for more exemptions, are avoided for the following reasons :

- they would create legal problems for Union Members who are party to PARCOM and who supported the PARCOM Decisions;
- more exemptions would conflict with the requirement under Art. 100 A § 3 for a high level of protection;

- they would create trade barriers with non-Union parties to PARCOM

4. Costs and Benefits

4.1 Costs

HCE has been used mainly for the degassing of molten metals, notably aluminium and magnesium alloys. Other less important uses are in smoke generation for military purposes and in fireworks.

Use has decreased in recent years as metal processors moved to other less environmentally damaging methods of degassing. These include nitrogen degassing (through tablets or gas purge), addition of primary molten metal and vacuum operation.

Only one company in the Union, Atochem in France, is known to be still producing HCE. Output is thought to amount to a few thousand tonnes per year worth perhaps 2 millions ECU/year.

The main users of HCE are aluminium manufacturers and processors and manufacturers of magnesium alloys. HCE is now completely phased out in the Union primary aluminium industry (manufacture) and only small quantities are used in the secondary aluminium industry (remelting). This trend has accelerated with rising unit costs of HCE associated with lower sales volumes. The main aluminium use remaining is in small foundries. A considerable amount of HCE is still used in making various magnesium alloys. The proposed 16th Amendment as mentioned above, takes account of the special situation of small aluminium foundries and manufacturers of magnesium alloys by allowing for a temporary derogation and for exemptions, respectively.

Enquiries carried out in one of the large Member States showed that only one user company was likely to suffer financially from the proposed 16th Amendment. If this finding is generalised throughout the Union the costs to HCE users combined should not exceed 100,000 ECU/year.* The cost, if any, to the single HCE producer is unknown.

It can be concluded, nevertheless, that the overall costs to industry of the 16th Amendment are likely to be modest.

4.2 Benefits

The risk analysis for the 16th Amendment was performed by PARCOM in developing PARCOM Decisions 92/4 and 93/1.

HCE is one of the substances included in LIST (1)-the Black List-of Council Directive 76/464/EEC on pollution caused by certain dangerous substances in the aquatic environment. Emission limits and quality objectives have been set by some Member States, individually, and may in the future be fixed for the Union overall.

Not only is HCE itself a cause for concern in the aquatic environment. Its use in the production and processing of non-ferrous metals leads to the release of other dangerous substances. These include certain chlorophenols and hexachlorobenzene, also damaging to the aquatic environment, and dioxins, some of which are among the most toxic substances known.

The effect of the 16th Amendment will be to replace HCE by substitutes, such as nitrogen, which are environmentally benign. The limitations proposed, therefore, should provide a significant contribution to protection of the North East Atlantic environment.

5. Proportionality

The 16th Amendment would afford worthwhile benefits in terms of environmental protection and these benefits would be achieved at modest cost. The proposal solves the problems posed by HCE while going no further than what PARCOM has judged to be necessary.

6. Consultations Performed in preparing the draft 16th Amendment

Advice on the preparation of the proposal was sought in a series of 3 meetings of experts from Member States and industry. Industry, represented by the European Aluminium Association and by the Association Européenne des Métaux, whilst favouring more exemptions to the ban, did not oppose the proposal.

One large Member State maintains a reserve on the basis that it favours more exemptions.

7. Conformity with the Treaty

It is clear from the foregoing that this proposal is intended to afford a high level of protection for the environment and is therefore in conformity with Article 100 A § 3 of the Treaty.

The proposal does not call for any special provisions of the kind referred to in Article 7c of the treaty.

It is in conformity with Article 3b.

8. Consultation of the European Parliament and the economic and Social Committee

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

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THE EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189b of the Treaty⁽³⁾,

Whereas Article 7a of the Treaty establishes an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas all Member States, with the exception of Greece, Italy and Luxembourg, are contracting Parties to the Convention for the Prevention of Marine Pollution against pollution from Land-Based Sources (1974 Paris Convention); whereas the Paris Commission, the executive body of the Paris Convention, considers hexachloroethane and the substances that can be formed as a result of its application as substances of which pollution should be eliminated, according to Article 4.1a of the Paris Convention; whereas at the Ministerial Meeting of the Oslo and Paris Commissions on 22 September 1992 the Community supported ad referendum PARCOM Decision 92/4 on the phasing out of the use of hexachloroethane in the secondary aluminium industry and in the primary aluminium industry with integrated foundries; whereas at the fifteenth meeting of the Oslo and Paris Commissions on 14-19 June 1993 the Community supported with a reserve PARCOM Decision 93/1 on the phasing out of hexachloroethane in the non-ferrous metal industry;

Whereas the Paris Commission has prepared proposals for decisions at the request of all Ministers responsible for the protection of the North Sea environment and the rivers entering the North Sea and of the Member of the European Commission responsible for environmental protection when participating in the Third International Conference on the Protection of the North Sea in The Hague on 7 and 8 March 1990;

(1) OJ No
(2) OJ No
(3) OJ No

Whereas the limitations required of Member States on the placing on the market of hexachloroethane for use in the non-ferrous metals industries directly affect the completion and functioning of the internal market; whereas it is therefore necessary to approximate the laws of the Member States in this field and consequently amend Annex I to Council Directive 76/769/EEC⁽⁴⁾, as last amended by Directive 94/.../EC⁽⁵⁾;

Whereas, according to the scope and effects of the proposed action, the Community measures envisaged by this Directive are not only necessary but also indispensable for the attainment of the stated objectives and that these objectives cannot be achieved by Member States individually, and that furthermore their attainment at Community level is already provided for by Directive 76/769/EEC,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

Article 2

Member States shall bring into force and publish the laws, regulations and administrative provisions necessary to comply with this Directive by They shall immediately inform the Commission thereof. They shall apply these provisions from

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁽⁴⁾ OJ No L 262, 27.9.1976, p. 201.

⁽⁵⁾ OJ No L

ANNEX

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

"xx Hexachloroethane
CAS No 67-72-1
EINECS No 2006664

May not be used in the manufacturing or processing of non-ferrous metals

By way of derogation, Member States may allow on their territories the use of hexachloroethane for grain refining in the production of the magnesium alloys AZ 81, AZ 91 and AZ 92."

FINANCIAL STATEMENT
SECTION 1 : FINANCIAL IMPLICATIONS

1. Title of operation
Proposal for a sixteenth amendment to Directive 76/769/EEC
2. Budget heading involved
Article B5-300 : completing the internal market
For Part A, see section 2
3. Legal basis
- Article 100a of the Treaty
4. Description of operation
 - 4.1 Specific objective of operation
The proposed operation involves :
 - Restricting the use of hexachloroethane in the manufacture and processing of non-ferrous metals.
 - 4.2 Duration
This is a "one-off" operation
 - 4.3 Target population
Industrialists
5. Classification of expenditure
Not applicable
6. Type of expenditure
None
Unlike many previous amendments to Directive 76/769/EEC, the sixteenth amendment does not require standardisation work to be performed by CEN.
7. Financial impact on appropriations for operations
None
8. What anti-fraud measures are planned ?
None

SECTION 2 : ADMINISTRATIVE EXPENDITURE

No new administrative expenditure is foreseen. Any meetings to be held would take place pursuant to Directive 76/769/EEC in the framework of which the "Technical Progress Committee : Dangerous Substances and Preparations" would be convoked. The estimated expenses for this Directive is made up of 110.000 ECU for meetings of experts (Art. A250) and 12.000 ECU for meetings of the Committee itself (Post A2510 : Expenditure on meetings of committees whose consultation is compulsory in the procedure for drafting Community Legislation).

However, no extra meetings are foreseen.

SECTION 3 : ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

1. The aims of the proposed operation are, firstly, to harmonize restrictions on the use of hexachloroethane in the non-ferrous metals industries so as to avoid creating obstacles to trade, secondly, to provide a high level of protection to the environment and, thirdly, to assure respect by the Commission of its obligations under the PARCOM convention.
2. The general objective is to complete the internal market.
3. Grounds for the operation

Harmonization serves to prevent obstacles to trade, to provide a high level of protection for the environment and to assure respect of the Commissions' legal obligations in PARCOM.
4. Monitoring and evaluation of the operation

The Committee set up under Directive 76/769/EEC will be responsible for monitoring the application of this Directive.

COMPETITIVENESS AND EMPLOYMENT IMPACT ASSESSMENT

I. The Proposal

The current proposal concerns restrictions on the marketing and use of hexachloroethane (HCE). Specifically it would ban the use of HCE in the production and processing of aluminium and, with certain exceptions, in the processing of other non-ferrous metals.

The objectives are, firstly, to protect the unity of the Internal Market (by harmonising the conditions for use of HCE), secondly, to protect the environment and thirdly to see that the Commission meets its obligations under PARCOM.

The proposal takes the form of an amendment (the 16th amendment) to Directive 76/769/EEC, the framework directive to limit the marketing and use of dangerous substances and preparations. It is not a new legislative departure, so that the question of subsidiarity does not arise. As with previous amendments Community intervention is essential to protect the Internal Market, this being impossible to achieve by Member States acting alone.

II. The impact on business

The main businesses to be affected by the measure are the manufacturing and processing of aluminium and of certain other non-ferrous metals, notably magnesium alloys.

Relatively few companies are likely to suffer from the proposed measures. Most have already adopted substitutes for HCE. Companies likely to face difficulties in moving to substitutes are to benefit from temporary exemptions (i.e small foundries) or indefinite derogations (i.e manufacturers of certain magnesium alloys).

Only one Member State, i.e France, still produces HCE. Production, by Atochem, amounts to a few thousand tonnes/year.

III. What will business have to do to comply with the proposal ?

Manufacturers and processors of non-ferrous metals must, with certain exemptions (mentioned above), substitute HCE by an alternative degassing agent e.g inert gas (tablets or inert gas lance), addition of primary aluminium, vacuum operation etc.

IV. Does the proposal contain measures to take account of the specific situation of small and medium sized firms ?

Yes. The proposed Directive, through the inevitable delay before it can enter into force, gives to small foundries the temporary exemption provided by PARCOM Decision 92/4.

V. What economic effects is the proposal likely to have ?

a) Competitiveness

Companies manufacturing and processing non-ferrous metals are unlikely to suffer more by using a substitute than by using HCE. The use of HCE is becoming progressively more expensive as the HCE market shrinks and unit prices rise.

b) Employment

The temporary exemptions and indefinite derogations from the HCE ban, provided by the proposal, will ensure that there is minimal effect on employment.

VI. Consultation

The following industry associations were consulted on preparation of the proposal in a series of three meetings of experts.

INDUSTRY	REPRESENTATIVE ASSOCIATION
Aluminium	European Aluminium Association
Other Non-Ferrous Metals	Association Européenne des Métaux

Industry would have liked to see more exemptions to the proposed ban notably in so far as this concerns magnesium alloys. They thus reflected the concerns of one of the Member States in this regard. Industry did not however oppose the proposal. (More exemptions in the proposal than in the PARCOM Decisions would create legal problems and trade barriers and can not be accepted).

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14

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