

European Communities

EUROPEAN PARLIAMENT

Working Documents

1974-1975

10 December 1974

DOCUMENT 394/74

Report

drawn up on behalf of the Committee on Public Health and the Environment

on the proposal from the Commission of the European Communities to the Council (Doc. 238/74) for a directive on the ~~the~~ approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations

Rapporteur : Mr. Karl-Heinz WALKHOFF

PE 38.755/fin.

1.2.2

English Edition

By letter of 5 September 1974, the President-in-Office of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations.

On 14 October 1974, the European Parliament referred this proposal to the Committee on Public Health and the Environment as the committee responsible and to the Legal Affairs Committee and the Committee on Economic and Monetary Affairs for their opinions.

On 21 October 1974, the Committee on Public Health and the Environment appointed Mr Walkhoff rapporteur.

It considered this proposal at its meetings of 18 November and 2 December 1974. At the latter meeting, the committee adopted the motion for a resolution and the explanatory statement unanimously with one abstention.

The following were present: Mr Della Briotta, chairman; Mr Jahn, vice-chairman; Mr Jakobsen, vice-chairman; Mr Walkhoff, rapporteur; Mr Adams, Mr Albertsen, Mr Antoniozzi, Lord Bessborough, Mr de heer Cipolla, Mrs Fenner, Mr Gibbons, Mr Martens, Mr Willi Müller, Mr Noè, Mr Nyborg, Mr Rosati, Mr Springorum.

The opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs are attached.

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The Committee on Public Health and the Environment hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 238/74),
 - having regard to the report of the Committee on Public Health and the Environment and the opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (Doc. 394/74);
1. Considers the Commission's proposed directive a useful and necessary instrument for achieving better, more effective protection of public health and the environment;
 2. Endorses the Commission's view that this proposed directive represents a necessary complement to existing directives in the field of dangerous substances and preparations;
 3. Therefore welcomes the fact that the Commission, having regard to the dangers of certain substances for public health and the environment, has drawn up this proposed directive with a view to complete harmonization;
 4. Urges the Commission also to investigate whether the procedure for adapting the annex to the directive in the light of technical progress, namely through the Committee on Dangerous Substances, represents the ideal situation for ensuring the smooth functioning required both to eliminate technical barriers to trade and to protect public health and the environment;

¹ OJ No C 126, 17 October 1974, p. 33

5. Demands once again that dangerous substances and preparations intended for export to third countries be clearly labelled as such, so that an effective check may be kept on whether the provisions of the Community directive are being observed.
6. Requests the Commission to examine as soon as possible other dangerous substances and preparations and, where appropriate, to include them in the annex to this directive;
7. Notes with satisfaction that this proposed directive meets, within the time-limits set, a demand formulated both in the programme of action on the environment and in the Council resolution on industrial policy;
8. Requests the Commission, pursuant to Article 149, second paragraph, of the EEC Treaty, to make the following amendments to its proposal;
9. Requests its appropriate committee to check carefully whether the Commission of the European Communities adopts the European Parliament's amendments to its proposal and, if necessary, to report on this matter;
10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

Council directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations

Preamble and recitals unchanged

Article 1

(1) Without prejudice to the implementation of other relevant Community provisions, this directive is concerned with restricting the marketing and use of certain dangerous substances and preparations in the Member States of the Community, and in particular those which present characteristics of ecotoxicity.

(2) This directive does not apply to:

(a) the carriage of dangerous substances and preparations by rail, road, inland waterway, sea or air;

(b) dangerous substances and preparations exported to non-member countries;

(c) substances and preparations in transit and subject to customs inspection, provided that they undergo no processing.

Article 1

(1) Without prejudice to the implementation of other relevant Community provisions, this directive is concerned with restricting the marketing and use of certain dangerous substances and preparations in the Member States of the Community, and in particular those which are harmful to public health and which present characteristics of ecotoxicity.

(2) This directive does not apply to:

(a) the carriage of dangerous substances and preparations by rail, road, inland waterway, sea or air;

(b) dangerous substances and preparations for export to non-member countries that are labelled differently;

(c) substances and preparations in transit and subject to customs inspection, provided that they undergo no processing.

Article 1 (3), Articles 2, 3, 4, and 5 and annex unchanged.

¹For complete text, see OJ No C 126, 17 October 1974, p. 33

EXPLANATORY STATEMENTINTRODUCTION

1. This proposal for a directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations must be seen as an essential complement to the earlier directive on the classification, packaging and labelling of dangerous substances¹, last amended by the Council directive of 21 May 1973² and by the Council directive of 4 June 1973 on dangerous preparations used as solvents³.
2. The provisions operative in the various Member States in this field differ from one another and thus hinder the free movement of goods; it is therefore necessary to harmonize the legal provisions of the various Member States.
3. The directives already existing at Community level to guarantee the free movement of goods and ensure protection of human health and the environment do not form an adequate basis for the introduction of general restrictions on the marketing or use of dangerous substances and preparations.

PURPOSE

4. The purpose of this proposal is to adopt a directive containing general provisions applying to those sectors not covered by other directives. The Commission mentions in this context: the composition of petrol (lead content), the sulphur levels of fuels, lead and cadmium in ceramics and dangerous substances in paints and varnishes.
5. Such a directive must also offer the advantage of allowing more rapid and effective implementation in the European Community of restrictions recommended or adopted by other international organizations.
6. A further purpose of this proposed directive is to attain the following objectives of the Treaty establishing the Community:
 - improved protection of the life and health of the general public;
 - guaranteed free movement of goods in the Community.

Yet another purpose of the proposed directive is to help protect the environment and to help maintain and improve the quality of human life.

¹ OJ No. 196, 16.8.1967, p.1

² OJ No.L167, 25.6.1973, p.1

³ OJ No.L189, 11.7.1973, p.7

DISCUSSION

- General

7. A restrictive directive of this kind was already provided for in the Council resolution of 17 December 1973 on industrial policy, in which in Annex 2 (d) point 8, the Commission was requested to submit to the Council before 1 January 1975 a proposal for a directive restricting the use of dangerous substances and preparations¹.

8. Chapter 4 B of the programme of action on the environment adopted by the Council on 22 November 1973 also requires that, before 31 December 1974, 'a study be carried out on problems connected with the approval of certain dangerous substances and preparations', and 'a proposal for a directive on the composition of paints and varnishes' (in particular, restrictions on the use of certain substances such as PCBs) be submitted to the Council².

9. The Committee on Public Health and the Environment consequently notes that the Commission submitted this proposal to the Council in good time.

10. The Committee on Public Health and the Environment was appointed as the committee responsible for considering this document, and has to study above all its public health and environmental aspects. The committees asked for opinions are the Legal Affairs Committee and the Committee on Economic and Monetary Affairs.

The Legal Affairs Committee discussed this proposal at its meeting of 25 October last, when it unanimously concluded that the proposal presented no problems of a legal nature.

In its opinion, the Committee on Economic and Monetary Affairs points out that, if further delays are to be avoided, elimination of technical barriers to trade will require a streamlined procedure to ensure effective intervention and control by the institutions of the Community, and that it is therefore desirable that action programmes to eliminate technical barriers to trade should be presented in a legally binding form setting out the principles.

The Committee on Economic and Monetary Affairs also expects the Commission to submit systematically outline directives in accordance with Article 100 of the EEC Treaty for the individual sectors defined in such an action programme and to lay down the implementing provisions pursuant to Article 155 of the EEC Treaty on its own responsibility.

¹OJ No. C117, 31.12.1973, p.9

²OJ No. C112, 20.12.1973, p.18-19

The Committee on Public Health and the Environment fully endorses this opinion and considers that, likewise in the interests of public health and protection of the environment, streamlined procedure and effective control by the institutions of the Community are essential.

In its explanatory memorandum the Commission also states that, in order to leave open the possibility of extending the scope of the directive to other dangerous substances and preparations and of determining or amending the restrictive provisions, a simple and rapid procedure is necessary (Doc. 238/74, p.3). The Commission proposes that the Committee on Dangerous Substances be consulted to this end.

11. In this directive, the Commission has opted for complete harmonization. This was because of the danger that these substances and preparations can present to human beings and the fact that they may pollute the environment. Complete harmonization means that existing national provisions will be replaced by Community provisions. From the point of view of protecting public health and preserving the environment, our committee approves this solution.

- The directive as such

12. Article 1 defines the scope of application of this directive and what is excluded from it. Paragraph 1 (1) of this Article states that this directive is concerned with substances 'which present characteristics of ecotoxicity'.

Your committee would propose that this phrase be replaced by: 'which are harmful to public health and which present characteristics of ecotoxicity', thus laying greater stress on the considerable importance of this directive for the protection of both the environment and public health.

13. Paragraph 2 of Article 1 states that this directive does not apply to 'dangerous substances and preparations for export to non-member countries'.

In similar cases, your committee has always demanded - and been supported in this by Parliament - that products intended for export to third countries be labelled differently. There have to be measures to prevent evasion of the directive by the manufacturing and storing of products not really intended for third countries (See ORTH report, Doc. 321/74).

Your committee therefore proposes that this phrase be amended in the usual manner to read as follows: 'dangerous substances and preparations for export to non-member countries and labelled differently'.

14. Article 2 requires Member States to take all necessary measures to ensure that the dangerous substances and preparations listed in the Annex cannot be put on the market or used except for purposes of research or analysis, unless otherwise stated in the restrictive provisions.

15. Article 3 lays down that the amendments required to adapt the annex in the light of technical progress shall be adopted in accordance with the procedure laid down in Article 8c of the Council directive of 27 June 1967, as last amended by the directive of 21 May 1973¹.

Under this procedure the Commission representative submits to the Committee on Dangerous Substances a draft document on the measures to be taken. The Committee then delivers an opinion on this draft within a time-limit to be fixed by the chairman according to the urgency of the problem in question.

The Committee shall act by a majority of 41 votes, the votes of Member States being weighted in accordance with the provisions of Article 148 (2) of the Treaty.

The Commission then adopts the proposed measures if it agrees with the Committee's opinion.

If this is not the case, or if no opinion has been delivered, the Commission shall forthwith submit to the Council a proposal concerning the measures to be adopted. The Council shall act by a qualified majority.

If within three months after the proposal is submitted to the Council, the latter has taken no decision, the proposed measures shall be adopted by the Commission.

16. Articles 5 and 6 are common to all directives. It is noteworthy that the proposed time-limits, namely 1 January 1976 for the publication and 1 October 1976 for the application of these provisions, fall within the time-limits laid down both in the programme of action on the environment and the resolution on industrial policy.

17. At present the Annex features only one substance, polychlorinated biphenyls (PCB's). Polychlorinated biphenyls are chemical products the use of which may jeopardize human health and the environment. Paragraph 4 of the explanatory memorandum gives a few examples to demonstrate the high toxicity of PCB's and, in particular, their persistence: once employed, they are practically impossible to eliminate. In view of the accidents which have already occurred with these substances and in view of the effects they have been observed to have

¹OJ No L167, 25.6.1973, p.2

on the environment, priority has been given to studying the need for and possibility of concerted action to control the use of PCB's.

18. The restrictive conditions laid down for PCB's are the same as those laid down by the Council of the Organization for Economic Cooperation and Development (OECD) on 13 February 1973.

19. The Annex contains only one substance because, as the Commission states in its explanatory memorandum, certain substances will be covered by special directives indicating how they are to be restricted and because the Commission was not in possession of sufficient scientific data to decide upon immediate restrictions on a Community-wide scale.

20. The use of PCB's will continue to be allowed in 'closed systems', i.e. where the PCB's are recoverable. They may, for example, be used in transformers, large capacitors, heat transfer systems, hydraulic equipment and vacuum pumps because they are recoverable and because they are not dispersed into the environment while being used. PCB's may no longer be used in packaging materials, herbicides, etc.

CONCLUSION

21. The Committee on Public Health and the Environment welcomes this proposal for a directive aimed at restricting the use of dangerous substances and preparations in the interests of public health and environmental protection.

Your committee hopes that the Commission will as soon as possible add new substances and preparations harmful to health and the environment to the polychlorinated biphenyls figuring at present in the Annex and it consequently urges that research in this field be expedited.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Letter from the chairman of the Legal Affairs Committee, dated 25 October 1974, to the chairman of the Committee on Public Health and the Environment

Dear Mr Della Briotta,

At its meeting of 25 October 1974, the Legal Affairs Committee studied briefly the proposal from the Commission of the European Communities to the Council for a directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations (Doc. 238/74); it came to the unanimous conclusion that this proposal did not give rise to any problems of a legal nature.

As mentioned in Article 3 of the proposal, the directive of 27 June 1967 concerning the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances¹ was last amended by the directive of 21 May 1973^{2,3}:

The above-mentioned directive of 21 May 1973 established the 'Committee on Dangerous Substances' for the adaptation to technical progress of directives concerning the removal of technical barriers to trade in the field of dangerous substances and preparations. This committee is composed of representatives from the Member States and is chaired by a Commission representative. The operating procedure for such committees is laid down in Article 8c of the directive. The European Parliament delivered an opinion on this matter at its sitting of 14 June 1972⁴ on the basis of a report drawn up by Mr BOURDELLES on behalf of the former Committee on Social Affairs and Public Health (Doc. 53/72).

In the accompanying opinion drawn up by Mr BERMANI, the Legal Affairs Committee at the time raised no objections of a legal nature to the establishment of the Committee on Dangerous Substances.

(Sgd) Dr W. J. SCHUIJT

Present: Mr SCHUIJT, chairman; Mr BERMANI, vice-chairman; Mr D'ANGELOSANTE, Mr De KEERSMAEKER, Mr LAUTENSCHLAGER, Mr LUCIUS, Lord MANSFIELD, Mr MEMMEL, Mr OUTERS, Mr RIVIEREZ, Mr SCELBA, Mr SPRINGORUM and Mr VERNASCHI.

¹OJ No. 196, 16 August 1967, page 1.

²OJ No. L 167, 25 June 1973, page 1.

³The Dutch version of Article 3 erroneously states that the directive of 27 June 1967 was last amended by the directive of 22 March 1971.

⁴OJ No. C 70, 1 July 1972, page 45.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from Mr LANGE, chairman of the Committee on Economic and Monetary Affairs, dated 4 November 1974, to Mr DELLA BRIOTTA, chairman of the Committee on Public Health and the Environment.

Dear Mr Della Briotta,

On 4 October 1974, the Committee on Economic and Monetary Affairs was requested to deliver an opinion on the proposal for a directive on the approximation of the laws of the Member States restricting the marketing and use of certain dangerous substances and preparations (Doc. 238/74).

On 25 October 1974, the committee adopted the following opinion:

With reference to earlier reports and opinions and to the report by Mr Karl MITTERDORFER on the elimination of technical barriers to trade (PE 38.551/fin.), scheduled to be submitted at the November part-session, the Committee on Economic and Monetary Affairs would point out to the committee responsible that, if new delays are to be avoided, the elimination of technical barriers to trade will require a more streamlined procedure than hitherto - one which at the same time allows effective intervention and control by the Community institutions.

Action programmes for the elimination of technical barriers to trade should therefore be presented in a legally binding form containing a definition of basic principles. The Commission should in future systematically propose outline directives, in accordance with Article 100 of the EEC Treaty, for the individual sectors defined in such an action programme and lay down on its own responsibility implementing provisions pursuant to Article 155 of the EEC Treaty. Care should be taken to ensure that within each individual sector a similar harmonization procedure is applied.

Member States should be required to notify the Commission in good time of any measures which could be harmonized. Business organizations in the Member States should refrain from taking measures which could result in the creation of technical barriers to trade.

Subject to these reservations regarding the current procedure for eliminating technical barriers to trade, the Committee on Economic and Monetary Affairs unanimously approves the proposed directive.

Yours sincerely,

(sgd) Karl MITTERDORFER
rapporteur

Erwin LANGE

The following were present: Mr LANGE, chairman; Mr NOTENBOOM, vice-chairman; Mr MITTERDORFER, rapporteur; Mr ARTZINGER, Mr BURGBACHER, Mr CARPENTIER, Mr CIFARELLI, Mr COUSTE, Mr FLAMIG, Mr van der HEK, Mr HOUGARDY, Mr KATER, Mr LEENHARDT, Mr Brøndlund NIELSEN and Mr NORMANTON.

