

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 21 March 1991

amending for the ninth 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

(91/173/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Whereas measures should be adopted with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers on which the free movement of goods, persons, services and capital is ensured;

Whereas both pentachlorophenol (CAS No 87-86-5) and its compounds are substances that are dangerous to man and the environment, and in particular the aquatic environment; whereas the use of those substances should be regulated;

Whereas restrictions which have already been imposed by certain Member States on the use of marketing of the abovementioned substances or of preparations containing

those substances directly affect the establishment and operation of the internal market; whereas it is therefore necessary to approximate the laws of the Member States in this field and, consequently, to amend Annex I to Directive 76/769/EEC ⁽⁴⁾, as last amended by Directive 89/678/EEC ⁽⁵⁾;

Whereas the Commission will be developing a coordinated Community strategy regarding the placing on the market and use of chemical products used for the preservation of wood; whereas this strategy will be based on information supplied to it by the Member States and in particular on the assessment of the risks for man and the environment while taking into account the various problems posed by wood preservation in the Member States;

Whereas currently Community legislation concerning the possible adoption by Member States of more stringent restrictions on the use of the substances and preparations in question at the workplace remains unaffected by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

⁽¹⁾ OJ No C 117, 4. 5. 1988, p. 14.

⁽²⁾ OJ No C 291, 20. 11. 1989, p. 58 and OJ C 48, 25. 2. 1991.

⁽³⁾ OJ No C 208, 8. 8. 1988, p. 55.

⁽⁴⁾ OJ No L 262, 27. 9. 1976, p. 201.

⁽⁵⁾ OJ No L 398, 30. 12. 1989, p. 24.

23. Pentachlorophenol
(CAS No 87-86-5)
and its salts and esters

shall not be used in a concentration equal to or greater than 0,1 % by mass in substances or preparations placed on the market.

By way of exception, this provision shall not apply to substances and preparations intended for use in industrial installations not permitting the emission and/or discharge of pentachlorophenol (PCP) in quantities greater than those prescribed by existing legislation :

(a) in the treatment of wood.

However, treated wood may not be used :

- inside buildings whether for decorative purposes or not whatever their purpose (residence, employment, leisure) ;
- for the manufacture of containers intended for growing purposes and any re-treatment and the manufacture of packaging which may come into contact with or other materials which may contaminate raw, intermediate and/or finished products intended for human and/or animal consumption and any re-treatment ;

(b) in the impregnation of fibres and heavy-duty textiles not intended in any case for clothing or for decorative furnishings ;

(c) as a synthesizing and/or processing agent in industrial processes ;

(d) by way of special exception, Member States may on a case-by-case basis, authorize on their territory specialized professionals to carry out in situ and for buildings of cultural, artistic and historical interest, or in emergencies, a remedial treatment of timber and masonry infected by dry rot fungus (*Serpula lacrymans*) and cubic rot fungi.

These exceptions shall be re-examined in the light of developments in knowledge and techniques not more than three years after the implementation of the Directive.

In any case :

(a) Pentachlorophenol used alone or as a component of preparations employed within the framework of the above exceptions must have a total hexachlorodibenzoparadioxin (H_6CDD) content below four parts per million (ppm) ;

(b) these substances and preparations may not :

- be placed on the market except in packages of 20 litres or more ;
- be sold to the general public.

Without prejudice to the implementation of other Community provisions concerning the classification, packaging and labelling of dangerous substances and preparations, the packaging of such preparations should be marked clearly and indelibly:

"Reserved for industrial and professional use".

In addition, this provision shall not apply to waste covered by Directives 75/442/EEC and 78/319/EEC.

Article 2

1. Member States shall communicate to the Commission before 31 December 1991 the text of the main provisions of national law which they adopt in the field covered by this Directive.
2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1992. They shall inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 21 March 1991.

For the Council

The President

G. WOHLFART
