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COUNCIL DIRECTIVE

of 21 December 1989

amending for the eighth 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

(89/677/EEC)

(OJ L 398, 30.12.1989, p. 19)

Corrected by:

► **C1** Corrigendum, OJ L 250, 23.9.1999, p. 14 (89/677)



COUNCIL DIRECTIVE

of 21 December 1989

amending for the eighth 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

(89/677/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 for the progressive establishment of the internal market over the period up to 31 December 1992 have to be adopted; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed;

Whereas, despite the ban on the marketing of certain ornamental objects intended to produce effects of light and comprising glass receptacles containing dangerous liquids as defined by Directive 67/548/EEC ⁽⁴⁾, as last amended by Directive 86/431/EEC ⁽⁵⁾, objects presenting the same hazards are still being marketed for use in games for one or more participants, sometimes with an ornamental function;

Whereas there should be a review of the content (0,01 % by weight — 100 ppm) of PCB/PCT in preparations, including waste oils; whereas, in Council Directive 87/101/EEC of 22 December 1986 amending Directive 75/439/EEC on the disposal of waste oils ⁽⁶⁾, this content was set at 0,005 % by weight;

Whereas benzene (CAS No 71-34-2) is a toxic substance likely to affect the central nervous and hematopoietic systems and to cause cancer and in particular leukaemia; whereas this substance is classified as carcinogen category I in Directive 67/548/EEC; whereas ILO (International Labour Organization) Convention 136 and ILO Recommendation 144 lay down provisions on protection against hazards arising from benzene;

Whereas the following substances: 2-naphthylamine (CAS No 91-59-8), 4-nitrodiphenyl (CAS No 92-93-3), 4-aminodiphenyl (CAS No 92-67-1) and benzidine (CAS No 92-87-5) may cause cancer and in particular cancer of the urinary system; whereas these substances are classified as carcinogens category I in Directive 67/548/EEC; whereas although, within the Community, they are now produced only in minimal, supervised quantities intended exclusively for research, they may nevertheless be present in the form of impurities in other substances or preparations;

Whereas, apart from the specific measures applying solely to workplaces, the laying down of a maximum concentration limit and a limit on the use of these substances as such or as constituents of preparations would help to present the incidence of cancer at work and protect consumers;

⁽¹⁾ OJ No C 43, 16. 2. 1988, p. 9.

⁽²⁾ OJ No C 96, 17. 4. 1989, p. 190, and OJ No C 256, 9. 10. 1989, p. 70.

⁽³⁾ OJ No C 175, 4. 7. 1988, p. 10, and OJ No C 337, 31. 12. 1987, p. 7.

⁽⁴⁾ OJ No 196, 16. 8. 1967, p. 1.

⁽⁵⁾ OJ No L 247, 1. 9. 1986, p. 1.

⁽⁶⁾ OJ No L 42, 12. 2. 1987, p. 43.

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Whereas lead compounds in general, and in particular lead salts that are readily soluble in the stomach, are dangerous to health; whereas compounds of this type are still occasionally used as pigment for certain decorative paints; whereas their use in such cases should be regulated; whereas ILO Convention 13 regulates the use of white lead in painting;

Whereas certain anti-fouling preparations applied as protective coatings to boat hulls and/or underwater equipment have harmful effects on living aquatic organisms as a result of the use of certain chemical compounds and in particular arsenic, mercury and tin compounds; whereas, in order better to protect the environment, the use of such compounds in preparations of this type should be regulated;

Whereas not only di- μ -oxo-di-n-butylstanniohydroxyborane ($C_8H_{19}BO_3S_n$, CAS No 75113-37-0) but also its decomposition/degradation products are substances that are dangerous to man and to the environment, and in particular the aquatic environment; whereas the use of those substances should be regulated;

Whereas limitations on use or marketing already adopted by certain Member States in respect of the substances referred to above or of preparations containing them have a direct incidence on the establishment and functioning of the internal market; whereas it is therefore necessary to approximate the legislative provisions of the Member States in this field, and consequently to amend Annex I to Directive 76/769/EEC ⁽¹⁾, as last amended by Directive 85/610/EEC ⁽²⁾;

Whereas present 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 is unaffected by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby amended as follows:

1. in point 1 of the left-hand column, '0,01 %' appearing in the third indent is replaced by '0,005 %';
2. point 3 is replaced by the following:

<ol style="list-style-type: none"> 3. Liquid substances or preparations, which are regarded as dangerous according to the definitions in Article 2 (2) and the criteria in Annex VI, Part II.D to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾, as last amended by Directive 86/431/EEC ⁽²⁾. 	<p>May not be used in:</p> <ul style="list-style-type: none"> — ornamental objects intended to produce light or colour effects by means of different phases, for example in ornamental lamps and ashtrays, — tricks, jokes, — games for one or more participants, or any object intended to be used as such, even with ornamental aspects.
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⁽¹⁾ OJ No 196, 16. 8. 1967, p. 1.

⁽²⁾ OJ No L 247, 1. 9. 1986, p. 1.;

3. the following is added to point 5 (benzene) in the right-hand column:

⁽¹⁾ OJ No L 262, 27. 9. 1976, p. 201.

⁽²⁾ OJ No L 375, 31. 12. 1985, p. 1.

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‘May not be used in concentrations equal to, or greater than, 0,1% by mass in substances or preparations placed on the market.

However, this provision shall not apply to:

- (a) motor fuels which are covered by Directive 85/210/EEC;
- (b) substances and preparations for use in industrial processes not allowing for the emission of benzene in quantities in excess of those laid down in existing legislation;
- (c) waste covered by Directives 75/442/EEC ⁽¹⁾ and 78/319/EEC ⁽²⁾.

⁽¹⁾ OJ No L 194, 25. 7. 1975, p. 39.

⁽²⁾ OJ No L 84, 31. 3. 1978, p. 43.;

4. the following points are added:

‘13. 2-naphthylamine
CAS No 91-59-8
and its salts

May not be used in concentrations equal to or greater than 0,1 % by weight in substances and preparations placed on the market.

14. Benzidine
CAS No 92-87-5
and its salts

However, this provision shall not apply to waste containing one or more of these substances and covered by Directives 75/442/EEC and 78/319/EEC.

15. 4-nitrobiphenyl
CAS No 92-93-3

16. 4-aminobiphenyl
CAS No 92-67-1
and its salts

Such substances and preparations may not be sold to the general public. Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such preparations shall be legible and indelibly marked as follows: “Restricted to professional users.”

17. Lead carbons:
— neutral anhydrous carbonate
PB CO₃
CAS No 598-63-0
— ►C1 trilead-bis(carbonate)-dihydroxide ◀
2 Pb CO₃ Pb(OH)₂
CAS No 1319-46-6

May not be used as substances and constituents of preparations intended for use as paints, except for the restoration and maintenance of works of art and historic buildings and their interiors, where Member States wish to authorize this on their territory, in accordance with the provisions of ILO Convention 13 on the use of white lead in paint.

18. Lead sulphates
PbSO₄ (1:1)
CAS No 7446-14-2
Pb_x SO₄
CAS No 15739-80-7

May not be used as substances and constituents of preparations intended for use as paints, except for the restoration and maintenance of works of art and historic buildings and their interiors, where Member States wish to authorize this on their territory, in accordance with the provisions of ILO Convention 13 on the use of sulphates of lead in paint.

19. Mercury compound

May not be used as substances and constituents of preparations intended for use:

- (a) to prevent the fouling by micro-organisms, plants or animals of:
 - the hulls of boats,

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20. Arsenic compounds

- cages, floats, nets and any other appliances or equipment used for fish or shellfish farming,
 - any totally or partly submerged appliances or equipment;
- (b) in the preservation of wood;
- (c) in the impregnation of heavy-duty industrial textiles and yarn intended for their manufacture;
- (d) in the treatment of industrial waters, irrespective of their use.

1. May not be used as substances and constituents of preparations intended for use:

- (a) to prevent the fouling by micro-organisms, plants or animals of:
- the hulls of boats,
 - cages, floats, nets and any other appliances or equipment used for fish or shellfish farming,
 - any totally or partly submerged appliances or equipment;
- (b) in the preservation of wood.

In this case, the 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.

In addition, Member States may authorize on their territory the use of preparations of the DFA (dinitrophenol — fluoride — arsenic) type for the retreatment *in situ* of wooden poles already in place and supporting overhead cables. Such preparations must be employed by professionals using vacuum or pressure.

2. May not be used as substances and constituents of preparations intended for use in the treatment of industrial waters, irrespective of their use.

21. Organostannic compounds

1. May not be used as substances and constituents of preparations intended for use to prevent the fouling by micro-organisms, plants or animals of:

- (a) the hulls of boats of an overall length, as defined by ISO 8666, of less than 25 metres;
- (b) cages, floats, nets and any other appliances or equipment used for fish or shellfish farming;
- (c) any totally or partly submerged appliances or equipment.

Such substances and preparations

- may be placed on the market only in packagings of a capacity equal to or greater than 20 litres,
- may not be sold to the general public but only to professional users.

Without prejudice to the application of

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- other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such preparations shall be legible and indelibly marked as follows:
- “Not to be used on boats of an overall length of less than 25 metres or on any appliances or equipment used in fish or shellfish farming.”
- “Restricted to professional users.”
2. May not be used as substances and constituents of preparations intended for use in the treatment of industrial waters, irrespective of their use.
22. di- μ -oxo-di-n-butylstanniohydroxyborane
($C_8H_{19}BO_3S_n$, CAS No 75113-37-0)
(DBB)
- Shall be prohibited in a concentration equal to or greater than 0,1% in substances and constituents of preparations placed on the market. However, this provision shall not apply to this substance (DBB) or preparations containing it if these are intended solely for conversion into finished products, among which this substance will no longer feature in a concentration equal to or greater than 0,1%.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months after the date of its adoption. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission not later than 18 months after the adoption of this Directive the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive is addressed to the Member States.