

COMMISSION DIRECTIVE 1999/51/EC

of 26 May 1999

adapting to technical progress for the fifth time Annex I to Council Directive 76/769/EEC on the approximations 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 (tin, PCP and cadmium)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/769/EEC of 27 July 1976 on the approximations 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⁽¹⁾, as last amended by Commission Directive 97/64/EC⁽²⁾, and in particular Article 2a thereof, introduced by Council Directive 89/678/EEC⁽³⁾,

(1) Whereas within the framework of the Act of Accession of Austria, Finland and Sweden to the European Union, in particular in Articles 69, 84 and 112 respectively, it is foreseen that during a period of four years from 1 January 1995 certain provisions of Annex I to Directive 76/769/EEC do not apply to Austria, Finland and Sweden and shall be reviewed in accordance with the procedures laid down in the EC Treaty;

(2) Whereas some organostannic compounds, in particular tributyltin (TBT), used for antifouling still pose a risk to the aquatic environment and to human health including possible endocrine disrupting activity; whereas the International Maritime Organisation (IMO) has recognised the risk posed by TBT and the Marine Environment Protection Committee of the IMO has called for a global prohibition of the application of organotin compounds which act as biocides in antifouling systems on ships by 1 January 2003; whereas the provisions on TBT shall be reviewed taking full account of developments in the IMO; whereas antifouling products providing for controlled release of TBT have been developed and these should be used in place of free association paint;

(3) Whereas inland waters and the Baltic Sea are especially sensitive environments; whereas the use of TBT in the inland waters of the Community should be prohibited; whereas, as an interim measure, Austria and Sweden shall be allowed to keep stricter provisions on the use of TBT in these sensitive environments;

(4) Whereas pentachlorophenol (PCP) still poses a risk to health and to the environment despite the restrictions introduced by Directive 76/769/EEC; whereas the use of PCP should be further restricted; whereas, nevertheless, certain uses of PCP are still necessary, for technical reasons, in the oceanic maritime Member States;

(5) Whereas the Council resolution of 25 January 1988 calls for an overall strategy to combat environmental pollution by cadmium, including measures to restrict the use of cadmium and stimulate development of substitutes; whereas the risks posed by cadmium are being assessed under Council Regulation (EEC) No 793/93⁽⁴⁾ and the Commission will review the restrictions on cadmium in light of the results; whereas as an interim measure Sweden and Austria which apply more far reaching restrictions may retain these;

(6) Whereas the Scientific Committee on Toxicity, Ecotoxicity and the Environment issued opinions on organotin compounds and on PCP;

(7) Whereas this Directive does not affect Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC⁽⁵⁾ and in individual directives based thereon, in particular Council Directive 90/394/EEC⁽⁶⁾ and Council Directive 98/24/EC⁽⁷⁾ on protection of health and safety of workers from the risk related to chemical agents at work;

⁽¹⁾ OJ L 262, 27.9.1976, p. 24.

⁽²⁾ OJ L 315, 19.11.1997, p. 13.

⁽³⁾ OJ L 398, 30.12.1989, p. 24.

⁽⁴⁾ OJ L 84, 5.4.1993, p. 1.

⁽⁵⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁶⁾ OJ L 196, 26.7.1990, p. 1.

⁽⁷⁾ OJ L 131, 5.5.1998, p. 11.

- (8) Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee for the adaptation to technical progress of Directives on the removal of technical barriers to trade in dangerous substances and preparations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex 1 to Directive 76/769/EEC is hereby adapted to technical progress as set out in the Annex hereto.

Article 2

1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 29 February 2000 at the latest and shall forthwith inform the Commission thereof. They shall apply these provisions as from 1 September 2000. However, Austria, Finland and Sweden may apply these provisions from 1 January 1999 except where otherwise specified in the Annex.

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 publi-

cation. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 May 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

In Annex I to Directive 79/769/EEC, points 21, 23 and 24 are amended as follows:

1. Point 21 is replaced by the following:

'21. Organostannic compounds

1. May not be placed on the market for use as substances and constituents of preparations when acting as biocides in free association antifouling paint.

2. May not be used as substances and constituents of preparations when acting as biocides to prevent the fouling by microorganisms, plants or animals of:

(a) the hulls of:

— boats of an overall length, as defined by ISO 8666, of less than 25 metres,

— vessels of any length for use predominantly on inland waterways and lakes;

(b) cages, floats, net and any other appliances or equipment used for fish or shellfish farming;

(c) any totally or partly submerged appliance or equipment.

Such substances and preparations

— may be placed on the market only in packages 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 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 vessels of any length for use predominantly on inland waterways and lakes, or on any appliances or equipment used in fish or shellfish farming

Restricted to professional users".

3. The provisions referred to in Section 2(a) and the special labelling provisions of Section 2 are applicable to Sweden and Austria from 1 January 2003 and will be reviewed by the Commission in cooperation with Member States and stakeholders before this date.

4. May not be used as substances and constituents of preparations intended for the use in the treatment of industrial waters.'

2. Point 23 is replaced by the following:

'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 derogation until 31 December 2008 France, Ireland, Portugal, Spain and the United Kingdom may choose not to apply this provision 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 and re-treatment of:
 - (i) containers intended for growing purposes;
 - (ii) packaging that may come into contact with raw materials, intermediate or finished products destined for human and/or animal consumption;
 - (iii) other materials that may contaminate the products mentioned in (i) and (ii);

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

(c) by way of special exception, Member States may on a case-by-case basis, authorise on their territory specialised 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.

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 (HCDD) content of not more than two 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⁽¹⁾ and 91/689/EEC⁽²⁾.

⁽¹⁾ OJ L 194, 25.7.1975, p. 39.
⁽²⁾ OJ L 377, 31.12.1991, p. 20.

3. The following section is added to Point 24 (cadmium) after Section 3:

‘4. Austria and Sweden, which already apply restrictions to cadmium going further than those prescribed in Sections 1, 2 and 3 may continue to apply these restrictions until 31 December 2002. The Commission will review the provisions on cadmium in Annex I to Directive 76/769/EEC before this date in light of the results of risk assessment for cadmium and of development of knowledge and techniques in respect of substitutes for cadmium.’