



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.4.2004
COM(2004) 320 final

2004/0111 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**relating to restrictions on the marketing and use of toluene and trichlorobenzene
(twenty-eighth amendment of Council Directive 76/769/EEC)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND CONTEXT

Toluene is used as a raw material in the production of benzene and a host of other chemicals (e.g. benzoic acid, nitrotoluenes, tolyl diisocyanates, as well as dyes, pharmaceuticals, food additives, plastics, etc.). Due to its solvent power toluene can be present in consumer products, including household aerosols, paints, varnishes, adhesives, and glues.

Trichlorobenzene (TCB) is predominantly used as an intermediate in the manufacture of herbicides and as a process solvent in closed systems. Besides, TCB has other minor uses as a solvent, a dye carrier and as a corrosion inhibitor.

The risks to the health and environment by toluene and TCB have been assessed under Council Regulation (EEC) 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances¹. The risk assessments identified a need for reducing the risks to health from toluene and TCB. The Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) confirmed the conclusions of the assessment of these substances and the need to reduce risks to health.

The Commission adopted on xx xx 2004 Recommendations in the framework of Regulation (EEC) 793/93 on risk reduction strategies for toluene and TCB providing for restrictions on the marketing and use to control the risks identified.

On the basis of the risk assessments and recommended risk reduction strategies in the framework of Regulation (EEC) 793/93 the Commission proposes to restrict the marketing and use of toluene, TCB, and of preparations containing them.

The proposed Directive would introduce harmonised provisions on the marketing and use of toluene and TCB.

2. JUSTIFICATION FOR PROPOSAL

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

Due to the fact that certain uses of chemicals cannot be controlled under certain conditions, safety for human health can only be ensured by prohibiting such uses of the substances and preparations concerned.

The aim of the proposal is to preserve the Internal Market. When Member States adopt national provisions restricting the marketing and use of dangerous substances and preparations there will be obstacles to trade because of differences in legislation between Member States. The Draft Proposal aims to improve the conditions for the functioning of the Internal Market to the benefit of the protection of people's health and safety.

¹ OJ L 84, 5.4.1993, p. 1.

What are the courses of action available to the Community?

The only course of action available is to make a proposal for an amendment to Directive 76/769/EEC providing for harmonised rules on the use of toluene and TCB.

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

The proposed Directive would establish uniform rules for the circulation of toluene and TCB. It also guarantees a high level of protection of people's health and safety. The proposed amendment to Directive 76/769/EEC is the only way to meet these goals. Targets would be insufficient.

3. RATIONALE OF THE PROPOSAL

The proposed Directive would extend Annex I to Directive 76/769 by adding the substances toluene and TCB. Marketing and use of these substances would thus be restricted.

4. COSTS AND BENEFITS

4.1. Costs

The proposed Directive should pose only minor problems to the industry or trade, as the uses of toluene and TCB are declining in the concerned cases, and companies have already developed alternatives.

4.2. Benefits

The benefits of the proposal are to establish an Internal Market as well as to protect human health and the environment. The proposed ban will ensure that for certain uses which pose a risk to human health or the environment toluene and TCB are no longer on the market.

5. PROPORTIONALITY

The proposed Directive would yield benefits in terms of protecting human health and the environment. This will be achieved at little cost.

6. CONSULTATIONS PERFORMED IN PREPARING THE DRAFT AMENDMENT

Advice on the preparation of the proposal was sought through meetings involving experts from Member States, the European Chemical Industry Council (CEFIC) and Eurométaux. The European Consumers' Organisation BEUC has also been invited to give comments.

7. CONFORMITY WITH THE TREATY

This proposal is intended to preserve the Internal Market and at the same time ensure a high level of protection of human health and the environment. It is therefore in conformity with Article 95(3) of the Treaty.

8. EUROPEAN PARLIAMENT AND EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

In compliance with Article 95 of the Treaty, the Codecision Procedure with the European Parliament is applicable. The European Economic and Social Committee has to be consulted.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**relating to restrictions on the marketing and use of toluene and trichlorobenzene
(twenty-eighth amendment of Council Directive 76/769/EEC)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ²,

Having regard to the opinion of the European Economic and Social Committee ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴,

Whereas:

- (1) The risks posed to health and environment by toluene and trichlorobenzene (TCB) have been assessed under Council Regulation (EEC) 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances⁵. The risk assessment identified a need to reduce those risks, and the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) confirmed that conclusion.
- (2) Commission Recommendation 2004/xx/EC⁶ of [date], adopted within the framework of Regulation (EEC) 793/93, proposed a risk reduction strategy for toluene and TCB, recommending restrictions to limit the risks from certain uses of these chemicals.
- (3) In order to protect health and the environment, it therefore appears necessary that the placing on the market and the use of toluene and TCB should be restricted.
- (4) Council Directive 76/769/EEC of 27 July 1976 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 preparations⁷ should be amended accordingly.

² OJ C xx.

³ OJ C xx.

⁴ OJ C xx.

⁵ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 57, 25.2.2003).

⁶ OJ L x, x 2004, p. x.

⁷ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/21/EC (OJ L 57, 25.2.2004, p. 4).

- (5) The objective of this Directive is to introduce harmonised provisions with regard to toluene and TCB, thus preserving the internal market whilst ensuring a high level of protection of human health and the environment, as required by Article 95 of the Treaty.
- (6) This Directive does not affect the Community legislation laying down minimum requirements for the protection of workers, such as Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁸, and individual directives based thereon, in particular Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)⁹ and Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)¹⁰,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

Article 2

1. Member States shall adopt and publish, by [...] [*one year after the date of its entry into force*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from xx xx 200x [*eighteen months after the entry into force of this Directive*].

When Member States adopt those provisions, the provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

⁸ OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁹ OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).

¹⁰ OJ L 131, 5.5.1998, p. 11.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The following points [XX] to [XX] are added to Annex I of Directive 76/769/EEC:

“[XX]. Toluene CAS No. 108-88-3	May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass in adhesives and spray paints intended for sale to the general public.
[XX]. Trichlorobenzene CAS No. 120-82-1	May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass for all uses except as an intermediate.”