COMMISSION DIRECTIVE 2001/90/EC

of 26 October 2001

adapting to technical progress for the seventh time Annex I to Council 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 (creosote)

(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 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 [1], as last amended by Directive 2001/41/EC of the European Parliament and of the Council [2], and in particular Article 2a thereof, introduced by Council Directive 89/678/EEC [3],

Whereas:

(1) Directive 94/60/EC of the European Parliament and of the Council of 20 December 1994 amending for the 14th 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 [4] places certain restrictions on the marketing and use of creosote.

(2) A recent study [5] has concluded that creosote has a greater potential to cause cancer than previously thought.

(3) The study was referred to the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) for peer review [6] and the CSTEE concluded that the study was well designed and that there is scientific evidence to support the opinion and there is a cancer risk to consumers from creosote with a benzo-a-pyrene (BaP) content of less than 0,005 % by mass and/or from wood containing such creosote, and that the magnitude of the risk gives clear reasons for concern.

(4) An analysis of the advantages and drawbacks of further restrictions on the marketing and use of creosote [7] has concluded among other things, that the majority of industrial use creosote within the Community already contains less than 0,005 % BaP by mass and has indicated that the health risks from such creosote and/or wood containing such creosote are likely to be low in industrial applications.

(5) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [8] will harmonise the authorisation of biocides at a European level and Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products [9] requires wood preservatives to be evaluated as a priority in the review programme established under Directive 98/8/EC. Pending harmonisation of rules under Directive 98/8/EC the restrictions on creosote need to be adapted to technical progress.

(6) This Directive is without prejudice to 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 work [10] laying down minimum requirements for the protection of workers and its individual Directives within the meaning of Article 16(1) of that Directive, 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 [11] 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 [12].

(7) 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,

[1] OJ L 262, 27.9.1976, p. 24.
[2] OJ L 194, 18.7.2001, p. 36.
[3] OJ L 398, 30.12.1989, p. 24.
[4] OJ L 365, 31.12.1994, p. 1.
[5] Dermal carcinogenicity study of two coal tar products by chronic epicutaneous application in male CD-1 mice (78 weeks), final report made by the Fraunhofer Institute of Toxicity and Aerosol Research (Hanover, Germany).
[6] Opinion on cancer risk to consumers from creosote containing less than 50 ppm benzo-[a]-pyrene and/or from wood treated with such creosote and estimation of respective magnitude, expressed at the eighth CSTEE plenary meeting. Brussels, 4 March 1999. *Internet*: http://europa.eu.int/comm/food/fs/sc/sct/out29-en.html
[7] Analysis on the advantages and drawbacks of restrictions on the marketing and use of creosote, Risk and Policy Analysts Limited, (Norfolk, United Kingdom).
[8] OJ L 123, 24.4.1998, p. 1.
[9] OJ L 228, 8.9.2000, p. 6.
[10] OJ L 183, 29.6.1989, p. 1.
[11] OJ L 196, 26.7.1990, p. 1.
[12] OJ L 131, 5.5.1998, p. 11.