II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 9 June 1988

on the protection of workers by the banning of certain specified agents and/or certain work activities (Fourth individual Directive within the meaning of Article 8 of Directive 80/1107/EEC)

(88/364/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118 A 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 the Council adopts, by means of Directives, minimum progressively applicable provisions, with a view towards promoting the improvement, in particular, of the working environment, so as to protect the safety and health of workers;

Whereas the Council resolution of 27 February 1984 on a second programme of action of the European Communities on safety and health at work (4) provides for the development of protective measures for substances recognized as being carcinogenic and other dangerous substances and processes which may have serious harmful effects on health;

Whereas certain differences are revealed by an examination of the measures taken by Member States to protect workers against the risks related to exposure to specified work agents and work activities; whereas, therefore, in the interest of balanced development, these measures should be harmonized and improved as progress is made; whereas this harmonization and improvement should be based on common principles;

Whereas, to this end, Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (5) contains such principles;

Whereas, under the terms of the said Directive, such protection must as far as possible be ensured by measures to prevent exposure or to keep it at as low a level as is reasonably practicable; whereas, also under these terms, for the provision of adequate protection of workers it is necessary to ban in the workplace certain specified agents and/or work activities which can give rise to serious effects on health in cases where use of other means does not make it possible to ensure adequate protection;

Whereas provision should be made in these circumstances to ban certain specified agents and/or certain work activities in the workplace, subject to certain exceptions and derogations;

Whereas representatives of employers and workers have a role to play in the protection of workers;

Whereas these principles need to be applied uniformly and speedily to encourage wherever possible the early developmet of alternative non-dangerous agents and/or work activities,

(1) OJ No C 270, 10. 10. 1984, p. 3.
(2) OJ No C 72, 18. 3. 1985, p. 131.
(3) OJ No C 104, 25. 4. 1985, p. 6.
(4) OJ No C 67, 5. 3. 1984, p. 2.

(5) OJ No L 327, 3. 12. 1980, p. 8.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The purpose of this Directive is to protect workers against risks to their health by means of a ban on certain specific agents and or certain work activities.

The ban which is the subject of this Directive including the Annex is based on the following factors:

— there are serious health and safety risks for workers,

— precautions are not sufficient to ensure a satisfactory level of health and safety protection for workers,

— the ban does not lead to the use of substitute products which may involve equal or greater health and safety risks for workers.

2. This Directive shall not apply to:

— sea transport,

— air transport.

3. This Directive shall not prejudice the right of Member States to apply or introduce, subject to compliance with the Treaty, laws, regulations or administrative provisions ensuring greater protection for workers.

Article 2

For the purposes of this Directive:

(a) 'substances' means chemical elements and their compounds as they occur in the natural state or as produced by industry, including any additives required for the purpose of placing them on the market;

(b) 'agents' means any chemical, physical or biological agents present at work and likely to be harmful to health;

(c) 'preparations' means mixtures or solutions composed of two or more substances;

(d) 'impurities' means substances which are *a priori* present in insignificant amounts in other substances;

(e) 'intermediates' means substances which are formed during a chemical reaction, are converted and therefore disappear by the end of the reaction or process;

(f) 'by-products' means substances which are formed during a chemical reaction and which remain at the end of the reaction or process;

(g) 'waste products' means the remains of a chemical reaction which need to be disposed of at the end of the reaction or process.

Article 3

1. To prevent the exposure of workers to health risks from certain specific agents and/or certain work activities in the cases referred to in Article 1, Member States shall impose a ban in accordance with the procedures laid down in the Annex.

2. The Council, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee, may amend the Annex, in particular to include further agents or activities.

Article 4

In the case of the derogations provided for in the Annex, the Member States shall be obliged to ensure that employers comply with the following procedures and measures:

(a) an employer must take adequate precautions to protect the health and safety of the workers concerned; and

(b) an employer must submit at least the following information to the competent authority:

— the quantities used annually,

— the activities and/or reactions or processes involved,

— the number of workers exposed,

— the technical and organizational measures taken to prevent the exposure of workers.

In addition, the Member States may provide for systems of individual authorizations.

Article 5

1. Workers and/or their representatives in undertakings or establishments shall have access, in accordance with national law, to the documents submitted pursuant to Article 4 in regard to their undertaking or establishment.

2. The documents referred to in paragraph 1 shall contain the information necessary to ensure that workers and/or their representatives in undertakings or establishments are made fully aware of the health and safety risks connected with the agent or work activity to which they are or are likely to be exposed, together with the measures to be taken against such risks.

Article 6

1. Before 1 January 1995 the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report concerning in particular experience gained in the application of this Directive and progress in scientific knowledge and technology.

2. The Council shall re-examine this Directive before 1 January 1996 on the basis of the report referred to in paragraph 1.