COUNCIL DIRECTIVE

of 16 May 1983

amending Directive 77/728/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of paints, varnishes, printing inks, adhesives and similar products

(83/265/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

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

Whereas it has been considered desirable that the rules embodied in the separate Directives on preparations and in particular in Directives 73/173/EEC (4), as last amended by Directive 80/781/EEC (5), and 77/728/EEC (6) should be replaced by a single Directive concerning all preparations; whereas it is not yet possible to adopt such a Directive; whereas it is necessary in the meantime to amend Directive 77/728/EEC;

Whereas paints, varnishes, printing inks and adhesives subject to the provisions of Directive 77/728/EEC frequently contain solvents covered by the provisions of Directive 73/173/EEC; whereas, during the transposition of these two Directives into national law, difficulties have appeared in several Member States because different terms describing the same thing have been used in both texts; whereas it is, therefore, necessary to harmonize the text and scope of both Directives as far as possible;

Whereas, in different Articles of Directives 77/728/EEC, account should be taken of the amendments made to Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (7) by Directive 79/831/EEC (8), particularly the newly introduced danger categories 'very toxic' and 'extremely flammable';

Whereas Article 3 of Directive 77/728/EEC contains provisions for classification of the preparations according to the degree of risk; whereas, for the classification of the preparations as toxic or harmful, reference is made *inter alia* to Directive 73/173/EEC; whereas, since the original version of Directive 73/173/EEC made no reference to corrosive and irritant solvents, it was unable to provide any details concerning these categories;

Whereas, now that the scope of Directive 73/173/EEC has been extended to cover corrosive and irritant solvents, Article 3 (3) (c) and (d) of Directive 77/728/EEC should be amended accordingly;

Whereas the wording of the third indent of Article 3 (3) (a) of Directive 77/728/EEC has proved difficult to interpret and should, therefore, be drafted more precisely and supplemented; whereas, for the same reason, additions should be made to the last indent of Article 3 (3) (b), (c) and (d), respectively, of that Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Articles 1 to 11 of Directive 77/728/EEC shall be replaced by the following text:

'*Article 1*

1. This Directive shall concern:

— the classification,

— the packaging,

— the labelling,

(1) OJ No C 156, 25. 6. 1981, p. 8.
(2) OJ No C 125, 17. 5. 1982, p. 148.
(3) OJ No C 310, 30. 11. 1981, p. 31.
(4) OJ No L 189, 11. 7. 1973, p. 7.
(5) OJ No L 229, 30. 8. 1980, p. 57.
(6) OJ No L 303, 28. 11. 1977, p. 23.
(7) OJ No 196, 16. 8. 1967, p. 1.
(8) OJ No L 259, 15. 10. 1979, p. 10.

of preparations intended to be used as:

— paints, varnishes, printing inks, coatings, adhesives, jointing compounds, putties, sealants, undercoats, paint strippers, degreasing agents, artists' colours or release agents,

— preservatives and primers not covered by other Community regulations,

and of dangerous preparations used in the manufacture of the aforesaid products.

2. This Directive shall apply to the preparations listed in paragraph 1 which are placed on the market in the Member States and are classified as dangerous under both Article 2 (2) of Directive 67/548/EEC and Article 3 of this Directive.

3. This Directive shall also apply to the preparations listed in Annex II hereto.

4. The definitions specified in Article 2 of Directive 67/548/EEC shall apply to this Directive, with the exception of those in (1) (c) and (d) and in (2) (k).

Article 2

1. This Directive shall not apply to:

(a) the carriage of dangerous preparations by rail, road, inland waterway, sea or air;

(b) preparations for export to third countries;

(c) preparations in transit subjet to customs supervision, provided that they are not altered or treated in any way;

(d) cosmetic preparations coming under Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (1);

(e) additives for foodstuffs and animal feed, fertilizers and pesticides where Community Directives on the classification, packaging and labelling of such preparations are in force, except where the Directives in question refer specifically to this Directive;

(f) substances which are in the form of waste and which are covered by Council Directive 75/442/EEC of 15 July 1975 on waste (2) and Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (3).

2. Articles 5 to 7 of this Directive shall not apply to containers for gaseous preparations which are compressed, liquefied or disolved under pressure, with the exception of aerosols as defined in Article 2 of Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers (4).

(1) OJ No L 262, 27. 9. 1976, p. 169.
(2) OJ No L 194, 25. 7. 1975, p. 39.
(3) OJ No L 84, 31. 3. 1978, p. 43.
(4) OJ No L 147, 9. 6. 1975, p. 40.

Article 3

1. In preparations covered by this Directive, concentrations of the dangerous substances listed in Annex I to Directive 67/548/EEC, whether present as impurities or additives, must be taken into account if they exceed the limits laid down in the following paragraphs.

2. The concentrations expressed below in percentages by weight refer to the total weight of the preparation.

3. (a) Preparations shall be considered toxic if they contain:

— a solvent or mixture of solvents classified as toxic by Directive 73/173/EEC, the percentage of each solvent being calculated in relation to the total weight of the preparation as referred to in paragraph 2 above, or

— one or more of the substances classified as toxic in Annex I to this Directive, in a concentration exceeding the limit value corresponding to the classification 'toxic' for that substance, or

— one or more of the substances listed in neither Annex I to this Directive nor Directive 73/173/EEC, but classified as very toxic or toxic in Annex I to Directive 67/548/EEC and the total concentration of which is in excess of 1 %. Each substance shall be taken into consideration to calculate the total concentration only when its concentration is in excess of 0,2 %.

(b) Preparations shall be considered harmful if they contain:

— a solvent or mixture of solvents classified as harmful by Directive 73/173/EEC, the percentage of each solvent being calculated in relation to the total weight of the preparation as referred to in paragraph 2 above, or

— one or more of the substances classified as harmful in Annex I to this Directive, in a concentration falling within the limit values corresponding to the classification 'harmful' for that substance, or

— one or more of the substances listed in neither Annex I to this Directive nor Directive 73/173/EEC but classified as harmful in Annex I to Directive 67/548/EEC and the total concentration of which is in excess of 10 %. Each substance shall be taken into consideration to calculate the total concentration only when its concentration is in excess of 1 %.

(c) Preparations shall be considered corrosive if they contain:

— a solvent or mixture of solvents classified as corrosive by Directive 73/173/EEC, the percentage of each solvent being calculated in relation to the total weight of the preparation as referred to in paragraph 2, or

— one or more of the substances classified as corrosive in Annex I to this Directive in a concentration exceeding the limit values corresponding to the classification 'corrosive' for that substance, or

— one or more of the substances listed in neither Annex I to this Directive nor Directive 73/173/EEC but classified as corrosive in Annex I to Directive 67/548/EEC and the total concentration of which is in excess of 5 %. Each substance shall be taken into consideration to calculate the total concentration only when its concentration is in excess of 1 %.

(d) Preparations shall be considered irritant if the contain:

— a solvent or mixture of solvents classified as irritant by Directive 73/173/EEC, the percentage of each solvent being calculated in relation to the total weight of the preparation as referred to in paragraph 2, or

— one or more of the substances classified as irritant in Annex I to this Directive in a concentration falling within the limit values corresponding to the classification 'irritant' for that substance, or

— one or more of the substances listed in neither Annex I to this Directive nor Directive 73/173/EEC but classified as irritant in Annex I to Directive 67/548/EEC and the total concentration of which is in excess of 5 %. Each substance shall be taken into consideration to calculate the total concentration only when its concentration is in excess of 2 %.

(e) Preparations shall be considered oxidizing if they contain:

— one or more of the substances classified as oxidizing in Annex I to this Directive, in a concentration exceeding the limit values corresponding to the classification 'oxidizing' for that substance, or

— one or more of the substances not listed in Annex I to this Directive but classified as oxidizing in Annex I to Directive 67/548/EEC