

COMMISSION DIRECTIVE 2003/2/EC
of 6 January 2003
relating to restrictions on the marketing and use of arsenic (tenth adaptation to technical progress
to Council Directive 76/769/EEC)
(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 Commission Directive 2002/62/EC⁽²⁾ and in particular Article 2(a) thereof, introduced by Council Directive 89/678/EEC⁽³⁾,

Whereas:

- (1) Council Directive 89/677/EEC⁽⁴⁾ amending for the eighth time Directive 76/769/EEC places certain restrictions on the marketing and use of arsenic.
- (2) A risk assessment and an analysis of advantages and drawbacks of further restrictions on arsenic in certain wood preservatives⁽⁵⁾ were carried out in the framework of a review of Community legislation concerning the use of arsenic compounds for wood preservation following the accession of Austria, Finland and Sweden to the European Union in 1995.
- (3) The risk assessment was referred to the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) for peer review⁽⁶⁾ and the CSTEE concluded that the main risks had been identified correctly. These risks included those to human health from the disposal of wood treated with wood preservatives containing copper, chrome and arsenic (CCA) and in particular risks to children's health from the use of CCA-treated wood in playground equipment. A risk to the aquatic environment in certain marine waters was also identified.
- (4) The CSTEE further advised that in the light of a serious knowledge gap in relation to arsenic-treated wood in

landfills it would be advisable to exercise caution by limiting the use of arsenic-based wood preservation to those situations where it is absolutely necessary.

- (5) In a further consideration of the health effects of arsenic⁽⁷⁾ the CSTEE has concluded that the substance is both genotoxic and a well known carcinogen, and that it may be appropriate to consider that no threshold exists for carcinogenic effect.
- (6) Waste CCA-treated wood has been classified as hazardous waste pursuant to Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EC on hazardous waste⁽⁸⁾ as last amended by Council Decision 2001/573/EC⁽⁹⁾.
- (7) 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⁽¹⁰⁾ lays down provisions for harmonising the authorisation of biocides at Community 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⁽¹¹⁾ requires wood preservatives to be evaluated as a priority in the review programme established under Directive 98/8/EC. Arsenic has been identified and notified as an active substance within the time limit set out in Regulation (EC) No 1896/2000. A complete dossier for evaluation of arsenic as an existing substance will have to be presented by 28 March 2004.
- (8) With regard to the risk assessment and taking account of the precautionary principle, pending harmonisation of rules under Directive 98/8/EC or a Decision pursuant to Article 6(3) of Regulation (EC) No 1896/2000, it is necessary to adapt the restrictions on arsenic in Directive 76/769/EEC to technical progress. This Directive does not apply to CCA-treated wood already in place.

⁽¹⁾ OJ L 262, 27.9.1976, p. 201.

⁽²⁾ OJ L 183, 12.7.2002, p. 58.

⁽³⁾ OJ L 398, 30.12.1989, p. 24.

⁽⁴⁾ OJ L 398, 30.12.1989, p. 19.

⁽⁵⁾ Assessment of the Risks to Health and to the Environment of Arsenic in Wood Preservatives and of the Effects of Further Restrictions on its marketing and use, 1998.

⁽⁶⁾ http://europa.eu.int/comm/food/fs/sc/sct/out18_en.html.

⁽⁷⁾ http://europa.eu.int/comm/food/fs/sc/sct/out106_en.html.

⁽⁸⁾ OJ L 226, 6.9.2000, p. 3.

⁽⁹⁾ OJ L 203, 28.7.2001, p. 18.

⁽¹⁰⁾ OJ L 123, 24.4.1998, p. 1.

⁽¹¹⁾ OJ L 228, 8.9.2000, p. 6.

- (9) This Directive should apply without prejudice to Community legislation laying down minimum requirements for the protection of workers, in particular, 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 ⁽¹⁾, 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) ⁽²⁾, as last amended by Directive 1999/38/EC ⁽³⁾ and Council Directive 98/24/EC of 7 April 1998 on the protection of workers from chemical agents at work (14th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ⁽⁴⁾.
- (10) 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 I to Directive 76/769/EEC is hereby amended as set out in the Annex to this Directive.

Article 2

Member States shall adopt and publish the provisions necessary to comply with this Directive by 30 June 2003 at the latest. They shall forthwith inform the Commission thereof. They shall apply these provisions by 30 June 2004 at the latest.

When Member States adopt those provisions, they 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.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 6 January 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 183, 29.6.1989, p. 1.

⁽²⁾ OJ L 196, 26.7.1990, p. 1.

⁽³⁾ OJ L 138, 1.6.1999, p. 66.

⁽⁴⁾ OJ L 131, 5.5.1998, p. 11.

ANNEX

Annex I to Directive 1976/769/EEC, point 20 is replaced by the following:

<p>'20. Arsenic compounds</p>	<p>1. May not be used as substances and constituents of preparations intended for use:</p> <p>(a) To prevent the fouling by micro-organisms, plants or animals of:</p> <ul style="list-style-type: none"> — the hulls of boats, — cages, floats, nets and any other appliances or equipment used for fish or shellfish farming, — any totally or partly submerged appliances or equipment; <p>(b) in the preservation of wood. Furthermore, wood so treated may not be placed on the market;</p> <p>(c) however, by way of derogation:</p> <p>(i) Relating to the substances and preparations in the preservation of wood: these may only be used in industrial installations using vacuum or pressure to impregnate wood if they are solutions of inorganic compounds of the copper, chromium, arsenic (CCA) type C. Wood so treated may not be placed on the market before fixation of the preservative is completed.</p> <p>(ii) Relating to wood treated with CCA solutions in industrial installations according to point (i): this may be placed on the market for professional and industrial use provided that the structural integrity of the wood is required for human or livestock safety and skin contact by the general public during its service life is unlikely:</p> <ul style="list-style-type: none"> — as structural timber in public and agricultural buildings, office buildings, and industrial premises, — in bridges and bridgework, — as constructional timber in freshwater areas and brackish waters e.g. jetties and bridges, — as noise barriers, — in avalanche control, — in highway safety fencing and barriers, — as debarked round conifer livestock fence posts, — in earth retaining structures, — as electric power transmission and telecommunications poles, — as underground railway sleepers. <p>Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, all treated wood placed on the market shall be individually labelled "For professional and industrial installation and use only, contains arsenic". In addition, all wood placed on the market in packs shall also bear a label stating "Wear gloves when handling this wood. Wear a dust mask and eye protection when cutting or otherwise crafting this wood. Waste from this wood shall be treated as hazardous by an authorised undertaking".</p> <p>(iii) Treated wood referred to under points (i) and (ii) may not be used:</p> <ul style="list-style-type: none"> — in residential or domestic constructions, whatever the purpose, — in any application where there is a risk of repeated skin contact, — in marine waters, — for agricultural purposes other than for livestock fence posts and structural uses in accordance with point (ii), — in any application where the treated wood may come into contact with intermediate or finished products intended for human and/or animal consumption. <p>2. May not be used as substances and constituents of preparations intended for use in the treatment of industrial waters, irrespective of their use.'</p>
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