

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.

⁽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>

- (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,

⁽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.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby adapted to technical progress as set out in the Annex hereto.

Article 2

1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof. They shall apply these provisions by at the latest 30 June 2003.

2. 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 day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 October 2001.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

Annex I to Directive 76/769/EEC, point 32 is replaced by the following:

<p>32. Substances and preparations containing one or more of the following substances:</p> <p>(a) creosote EINECS No 232-287-5 CAS No 8001-58-9</p> <p>(b) creosote oil EINECS No 263-047-8 CAS No 61789-28-4</p> <p>(c) distillates (coal tar), naphthalene oils EINECS No 283-484-8 CAS No 84650-04-4</p> <p>(d) creosote oil, acenaphthene fraction EINECS No 292-605-3 CAS No 90640-84-9</p> <p>(e) distillates (coal tar), upper EINECS No 266-026-1 CAS No 65996-91-0</p> <p>(f) anthracene oil EINECS No 292-602-7 CAS No 90640-80-5</p> <p>(g) tar acids, coal, crude EINECS No 266-019-3 CAS No 65996-85-2</p> <p>(h) creosote, wood EINECS No 232-419-1 CAS No 8021-39-4</p> <p>(i) low temperature tar oil, alkaline EINECS No 310-191-5 CAS No 122384-78-5</p>	<p>1. May not be used in the treatment of wood. Furthermore, wood so treated may not be placed on the market</p> <p>2. However by way of derogation:</p> <p>(i) Relating to the substances and preparations: these may be used for wood treatment in industrial installations or by professionals covered by Community legislation on the protection of workers for <i>in situ</i> retreatment only if they contain:</p> <p>(a) benzo-a-pyrene at a concentration of less than 0,005 % by mass</p> <p>(b) and water extractable phenols at a concentration of less than 3 % by mass.</p> <p>Such substances and preparations for use in wood treatment in industrial installations or by professionals:</p> <p>— may be placed on the market only in packaging of a capacity equal to or greater than 20 litres,</p> <p>— may not be sold to consumers.</p> <p>Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations shall be legibly and indelibly marked "For use in industrial installations or professional treatment only".</p> <p>(ii) Relating to wood treated in industrial installations or by professionals according to (i) which is placed on the market for the first time or retreated in-situ: this is permitted for professional and industrial use only, e.g. on railways, in electric power transmission and telecommunications, for fencing, for agricultural purposes (e.g. stakes for tree support) and in harbours and waterways.</p> <p>(iii) Relating to wood having been treated with substances listed in point 32(a) to (i) before this Directive applies: the prohibition in point 1 on the placing on the market shall not apply where this is placed on the second-hand market for re-use</p> <p>3. However, treated wood referred to under point 2(ii) and (iii) may not be used:</p> <p>— inside buildings, whatever their purpose,</p> <p>— in toys,</p> <p>— in playgrounds,</p> <p>— in parks, gardens, and outdoor recreational and leisure facilities where there is a risk of frequent skin contact,</p> <p>— in the manufacture of garden furniture such as picnic tables,</p> <p>— for the manufacture and use and any re-treatment of:</p> <p>— containers intended for growing purposes,</p> <p>— packaging that may come into contact with raw materials, intermediate or finished products destined for human and/or animal consumption,</p> <p>— other materials which may contaminate the products mentioned above.'</p>
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