



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.2.2004
COM(2004) 98 final

2004/0036 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

relating to restrictions on the marketing and use of certain polycyclic aromatic hydrocarbons in extender oils and tyres (twenty-seventh amendment of Council Directive 76/769/EEC)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND CONTEXT

Certain polycyclic aromatic hydrocarbons (PAH) are classified as carcinogenic, mutagenic and reprotoxic substances. Benzo(a)pyrene (BaP) can be a qualitative and quantitative marker for the presence of PAHs. BaP is classified as carcinogenic, mutagenic and reprotoxic category 2 in the framework of Directive 67/548/EEC, and it can pose unacceptable risks to human health or the environment. Furthermore, PAHs are regarded as Persistent Organic Pollutants under the UN ECE Protocol on Persistent Organic Pollutants (the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants) and are subject to obligation to reduce total annual emissions.

PAHs can be constituents in oils. Some of these oils are used as extender oils in the production of tyres. The extender oil is incorporated into the rubber matrix and remains there locked in the rubber of the final tyre. Consequently, the extender oil can also be present in the tyre debris. Technical processes allow the content of certain PAHs in extender oils to be reduced to low limits. Tyre producers have been willing to work towards a high level of protection of health and the environment by phasing out high aromatic extender oils.

The Commission proposes to restrict the placing on the market and use of extender oils and tyres containing certain PAHs above certain thresholds, and furthermore to preserve and to improve the conditions for the functioning of the Internal Market.

The proposed Directive would therefore introduce harmonised provisions on the placing on the market and use of certain PAHs in extender oils and tyres.

2. JUSTIFICATION FOR PROPOSAL

What are the objectives of the proposal in relation to the Community's obligations?

The objective to reduce the emission of tyre debris that contains carcinogens into the environment to an acceptable level, and to control the possible risks to health and the environment can only be ensured by restricting the marketing and use of PAH-rich extender oils and tyres produced with these oils.

The aim of the proposal is to preserve the Internal Market. When Member States adopt national provisions restricting the marketing and use of dangerous substances and preparations there will be obstacles to trade because of differences in legislation between Member States. The Draft Proposal aims to improve the conditions for the functioning of the Internal Market, while at the same time ensuring a high level the protection of health and the environment.

What are the courses of action available to the Community?

The only course of action available is to make a proposal for an amendment to Directive 76/769/EEC providing for harmonised rules on the marketing and use of PAH-rich extender oils and tyres produced with these oils.

Are uniform rules necessary? Is it not sufficient to establish targets to be implemented by Member States?

The proposed amendment establishes uniform rules for the circulation of extender oils and tyres containing certain PAHs. It also guarantees a high level of protection of human health and the environment. The proposed amendment is the only way to meet these goals. Targets would be insufficient.

3. RATIONALE OF THE PROPOSAL

The proposed amendment would extend Annex I to Directive 76/769 by adding the substances PAHs. Marketing and use of PAHs in extender oils and tyres would thus be restricted.

4. COSTS AND BENEFITS

4.1. Costs

The proposed Directive presents a technical challenge to the industry for maintaining the safety characteristics of some tyres at an adequate level. Tyre producers have agreed voluntarily to phase out PAH-rich extender oils in order to provide a high level of protection of health and the environment, provided the safety performance of the tyres can be maintained. Some oil producers have already developed PAH-low extender oils, and the production of PAH-rich extender oils is declining. Measures should be taken to guarantee that suppliers can meet the demand. The adoption of the present draft Directive would send a clear signal to both the oil producers and the tyre producers that PAH-low extender oils will become the standard within a given period of time.

4.2. Benefits

The benefits of the proposal are to establish an Internal Market as well as to provide a high level of protection to human health and the environment. The proposed restriction will ensure that PAH-rich extender oils and tyres produced with these oils are phased out. The production of high-grade PAH-low extender oil would increase the competitiveness of the European Industries concerned.

5. PROPORTIONALITY

The Directive will yield benefits in terms of providing a high level of protection to human health and the environment. This will be achieved at little cost.

6. CONSULTATIONS PERFORMED IN PREPARING THE DRAFT DIRECTIVE

Advice on the preparation of the proposal was sought through meetings involving experts from Member States, the European Association of the Rubber Industry (BLIC), the Oil Companies' European Organisation (CONCAWE), and the European Car Industry. The European Consumers' Organisation BEUC has also been invited to give comments.

7. CONFORMITY WITH THE TREATY

This proposal is intended to preserve the Internal Market and at the same time ensure a high level of protection to health and the environment. It is therefore in conformity with Article 95(3) of the Treaty.

8. EUROPEAN PARLIAMENT AND ECONOMIC AND SOCIAL COMMITTEE

In compliance with Article 95 of the Treaty, the Codecision Procedure with the European Parliament is applicable. The Economic and Social Committee has to be consulted.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

relating to restrictions on the marketing and use of certain polycyclic aromatic hydrocarbons in extender oils and tyres (twenty-seventh amendment of Council Directive 76/769/EEC)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the opinion of the European Economic and Social Committee ²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

Whereas:

- (1) Tyres are produced by using extender oils that may contain various levels of not intentionally added polycyclic aromatic hydrocarbons (PAHs). During the production process PAHs can be incorporated into the rubber matrix. Therefore, they can be present in various amounts in the final product.
- (2) Benzo(a)pyrene (BaP) can be a qualitative and quantitative marker for the presence of PAHs. BaP and other PAHs have been classified as carcinogenic, mutagenic and toxic to reproduction. In addition, due to the presence of these PAHs, several extender oils as such have been classified as carcinogenic, mutagenic and toxic to reproduction.
- (3) The CSTEE has confirmed the scientific findings which identify the adverse health effects of PAHs.
- (4) The emission of BaP and other PAHs into the environment should be reduced as much as possible. In order to provide a high level of protection to human health and the environment and to contribute to the reduction of total annual emissions of PAHs as required in the 1998 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants, it therefore appears necessary to restrict the placing on the market and the use of BaP and certain other PAHs in extender oils and tyres.

¹ OJ C xx.

² OJ C xx.

³ OJ C xx.

- (5) 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 preparations⁴ should therefore be amended accordingly.
- (6) Without prejudice to the requirements of other European provisions, this Directive covers passenger car tyres⁵, light and heavy truck tyres⁶, agricultural tyres⁷ and motorcycle tyres⁸.
- (7) In order to meet the necessary safety requirements and in particular to ensure that tyres have a high degree of wet grip performance, a transitory period is necessary during which tyre producers will develop and test new types of tyres produced without high aromatic extender oils. According to the information presently available, the development and testing work will take a considerable amount of time, as producers will have to perform numerous series of test runs before the necessary high level of wet grip performance of the new tyres can be guaranteed. Therefore, the Directive should be applied to economic operators from 1 January 2009, except with regard to racing tyres, to which the Directive should apply from 1 January 2012. Concerning air craft tyres no realistic date for the application of this Directive can be set because of the specific safety requirements of such tyres. However, the date from which this Directive should apply to those tyres can be set in accordance with Article 2a of Directive 76/769/EEC.
- (8) The adoption of harmonised test methods is necessary for the application of this Directive as regards the content of PAHs in extender oils and tyres. The adoption of such test methods should not delay the entry into force of this Directive. The test method should preferably be developed at European or international level, where appropriate by the European Committee for Standardisation (CEN) or by the International Organisation for Standardization (ISO). The Commission may publish references to the relevant CEN or ISO standards or establish such methods in accordance with Article 2a of Directive 76/769/EEC, where necessary.
- (9) This Directive does not affect the Community legislation laying down minimum requirements for the protection of workers, such as 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 work⁹, and individual directives based thereon, 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 [Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC]¹⁰ 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 (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)¹¹,

⁴ OJ L 262, 27.9.1976, p. 201 as amended.

⁵ Council Directive 92/23/EEC, OJ L 129, 15.5.1992, p. 95 as amended.

⁶ Council Directive 92/23/EEC, OJ L 129, 15.5.1992, p. 95 as amended.

⁷ UN/ECE Regulation 106

⁸ Directive 97/24/EC of the European Parliament and the Council, OJ L 226, 18.8.1997, p. 1 as amended.

⁹ OJ L 183, 29.6.1989, p. 1.

¹⁰ OJ L 196, 26.7.1990, p. 1 as amended.

¹¹ OJ L 131, 5.5.1998, p.11.

HAVE 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 laws, regulations and administrative provisions necessary to comply with this Directive by xx xx 200x [*one year after the date of its entry into force*] at the latest. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 January 2009, with the exception of racing tyres for official sports events for which those provisions shall apply from 1 January 2012.

When Member States adopt those provisions, the provisions 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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX

The following point [XX] is added to Annex I of Directive 76/769/EEC:

[XX]. Polycyclic-aromatic hydrocarbons (PAH) 1. Benzo(a)pyrene (BaP) CAS No. 50-32-8 2. Benzo(e)pyren (BeP) CAS No. 192-97-2 3. Benzo(a)anthracene (BaA) CAS No. 56-55-3 4. Chrysen (CHR) CAS No. 218-01-9 5. Benzo(b)fluoranthene (BbFA) CAS No. 205-99-2 6. Benzo(j)fluoranthene (BjFA) CAS No. 205-82-3 7. Benzo(k)fluoranthene (BkFA) CAS No. 207-08-9 8. Dibenzo(a,h)anthracene (DBAhA) CAS No. 53-70-3	(1) Extender oils may not be placed on the market and used for the production of tyres, if they contain more than 1 mg/kg BaP, or more than 10 mg/kg of the sum of all listed PAHs. (2) Furthermore, the tyres may not be placed on the market if they contain extender oils exceeding the limits indicated in paragraph 1. (3) By way of derogation, paragraphs 1 and 2 shall not apply to the placing on the market for, and use in air craft tyres. However, the date from which this Directive shall apply to air craft tyres can be set in accordance with Article 2a of Directive 76/769/EEC.
---	---