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Council Directive 91/338/EEC of 18 June 1991 amending for the 10th 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

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COUNCIL DIRECTIVE of 18 June 1991 amending for the 10th 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 (91/338/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a 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 measures for the progressive establishment of the internal market should be adopted over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the Council resolution of 25 January 1988 (4) invites the Commission to pursue without delay the development of specific measures for a Community action programme to combat environmental pollution by cadmium; whereas human health also has to be protected and an overall strategy that in particular restricts the use of cadmium and stimulates research into substitutes should therefore be implemented;

Whereas advances are being made in knowledge and techniques regarding substitutes; whereas it would therefore be advisable systematically to reassess the situation in the light of the results of the scientific and technical studies provided for in the said resolution;

Whereas polyvinyl chloride (PVC) may not be coloured using cadmium-based pigments; whereas, for certain particular applications, the use of a cadmium-based stabilizer is still necessary in the current state of technology;

Whereas restrictions already adopted by certain Member States on the use and marketing of the abovementioned substances or preparations containing them have a direct effect on the establishment and functioning of the internal market; whereas it is therefore necessary to approximate the laws of the Member States in this field and to amend Annex I to Directive 76/769/EEC (5), as last amended by Directive 89/678/EEC (6), accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby amended as set out in the Annex hereto. However, the new provisions shall not apply to products containing cadmium which are already covered by other Community legislation.

Article 2

Owing to the development of knowledge and techniques in respect of substitutes less dangerous than cadmium and its compounds, the Commission shall, in consultation with the Member States, reassess the situation for the first time within three years of the date referred to in Article 3 (1) and subsequently at regular intervals in accordance with the procedure laid down in Article 2a of Directive 76/769/EEC.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1992. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 4

This Directive is addressed to the Member States. Done at Luxembourg, 18 June 1991. For the Council

The President

G. WOHLFART

(1) OJ No C 8, 13. 1. 1990, p. 8 and amendment communicated 26 November 1990. (2) OJ No C 260, 15. 10. 1990, p. 92 and OJ No C 129, 20. 5. 1991. (3) OJ No C 112, 7. 5. 1990, p. 1. (4) OJ No C 30, 4. 2. 1988, p. 1. (5) OJ No L 262, 27. 9. 1976, p. 201. (6) OJ No L 398, 30. 12. 1989, p. 24.

ANNEX

The following substances are added to Annex I to Directive 76/769/EEC:

'24. Cadmium (CAS No 7440-43-9)

and its compounds 1.1. May not be used to give colour to finished products manufactured from the substances and preparations listed below. - polyvinyl chloride (PVC) [3904 10] [3904 21] [3904 22] - polyurethane (PUR) [3909 50] - low-density polyethylene (ld PE), with the exception of low-density polyethylene used for the production of coloured masterbatch [3901 10] (1) - cellulose acetate (CA) [3912 11] [3912 12] - cellulose acetate butyrate (CAB) [3912 11] [3912 12] - epoxy resins [3907 30] In any case, whatever their use or intended final purpose, finished products or components of products manufactured from the substances and preparations listed above coloured with cadmium may not be placed on the market if their cadmium content (expressed as Cd metal) exceeds 0,01 % by mass of the plastic material. 1.2. Section 1.1 also applies from 31 December 1995 for: (a) finished products manufactured from the following substances and preparations: - melamine - formaldehyde (MF) resins [3909 20] - urea - formaldehyde (UF) resins [3909 10] - unsaturated polyesters (UP) [3907 91] - polyethylene terephthalate (PET) [3907 60] - polybutylene terephthalate (PBT) - transparent/general-purpose polystyrene [3903 11] [3903 19] (1) - acrylonitrile methylmethacrylate (AMMA) - cross-linked polyethylene (VPE) - high-impact polystyrene - polypropylene (PP) [3902 10] (b) paints [3208] [3209] However, if the paints have a high zinc content, their residual concentration of cadmium must be as low as possible and at all events not exceed 0,1 % by mass. 1.3. However, Sections 1.1 and 1.2 do not apply to products to be coloured for safety reasons. 2.1. May not be used to stabilize the finished products listed below manufactured from polymers or copolymers of vinyl chloride: - packaging materials (bags, containers, bottles, lids) [3923 29 10]

[3920 41] [3920 42] - office or school supplies [3926 10] - fittings for furniture, coachwork or the like [3926 30] - articles of apparel and clothing accessories (including gloves) [3926 20] - floor and wall coverings [3918 10] - impregnated, coated, covered or laminated textile fabrics [5903 10] - imitation leather [4202] (1) - gramophone records [8524 10] - tubes and pipes and their fittings [3917 23] - swing doors - vehicles for road transport (interior, exterior, underbody) - coating of steel sheet used in construction or in industry - insulation for electrical wiring

(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 256, 7. 9. 1987).

In any case, whatever their use or intended final purpose, the placing on the market of the above finished products or components of products manufactured from polymers or copolymers of vinyl chloride, stabilized by substances containing cadmium is prohibited, if their cadmium content (expressed as Cd metal) exceeds 0,01 % by mass of the polymer. These provisions enter into force on 30 June 1994. 2.2. However, Section 2.1 does not apply to finished products using cadmium-based stabilizers for safety reasons. 3. Within the meaning of this Directive, "cadmium plating" means any deposit or coating of metallic cadmium on a metallic surface. 3.1. May not be used for cadmium plating metallic products or components of the products used in the sectors/applications listed below. (a) equipment and machinery for: - food production [8210] [8417 20] [8419 81] [8421 11] [8421 22] [8422] [8435] [8437] [8438] [8476 11] - agriculture [8419 31] (1) [8424 81] [8432] [8433] [8434] [8436] - cooling and freezing [8418] - printing and book-binding [8440] [8442] [8443] (b) equipment and machinery for the production of: - household goods [7321] [8421 12] [8450] [8509] [8516] - furniture [8465] [8466] [9401] [9402] (1) [9403] [9404] - sanitary ware [7324] - central heating and air conditioning plant [7322] [8403] [8404] [8415] In any case, whatever their use or intended final purpose, the placing on the market of cadmium-plated products or components of such products used in the sectors/applications listed in (a) and (b) above and of products manufactured in the sectors listed in (b) above is prohibited.

(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 256, 7. 9. 1987).

3.2. The provisions referred to in Section 3.1 are also applicable from 30 June 1995 to cadmium-plated products or components of such products when used in the sectors/applications listed in (a) and (b) below and to products manufactured in the sectors listed in (b) below: (a) equipment and machinery for the production of: - paper and board [8419 32] [8439] [8441] - textiles and clothing [8444] (1) [8445] [8447] [8448] [8449] [8451] [8452] (b) equipment and machinery for the production of: - industrial handling equipment and machinery [8425] [8426] [8427] [8428] [8429] [8430] [8431] (1) - road and agricultural vehicles [chapter 87] - rolling stock [chapter 86] - vessels [chapter 89] 3.3. However, Sections 3.1 and 3.2 do not apply to: - products and components of the products used in the aeronautical, aerospace, mining, offshore and nuclear sectors whose applications require high safety standards and in safety devices in road and agricultural vehicles, rolling stock and vessels, - electrical contacts in any sector of use, on account of the reliability required of the apparatus on which they are installed.'

(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 256, 7. 9. 1987).