

DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

DECISION No 455/2009/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 May 2009

amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of dichloromethane

(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,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) The risks posed to human health by dichloromethane (DCM) in paint strippers have been assessed in several studies ⁽³⁾ which have concluded that risk reduction measures are required throughout the Community to reduce the risks posed to human health during the application of DCM at industrial, professional and consumer levels. The results of those studies have been evaluated by the Commission's Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE — later renamed the Scientific Committee on Health and Environmental Risks (SCHER)) which has confirmed that exposure to DCM released from paint strippers is of concern for human health.

⁽¹⁾ OJ C 77, 31.3.2009, p. 29.

⁽²⁾ Opinion of the European Parliament of 14 January 2009 (not yet published in the Official Journal) and Council Decision of 23 April 2009.

⁽³⁾ Methylene chloride: Advantages and drawbacks of possible market restrictions in the EU. TNO-STB study finalised in November 1999, http://ec.europa.eu/enterprise/chemicals/studies_en.htm; Effectiveness of vapour retardants in reducing risks to human health from paint strippers containing dichloromethane by ETVAREAD expert group. Final report published in April 2004, http://ec.europa.eu/enterprise/chemicals/studies_en.htm; Impact assessment of potential restrictions on the marketing and use of dichloromethane in paint stripper. RPA study finalised in April 2007, http://ec.europa.eu/enterprise/chemicals/studies_en.htm

(2) In order to achieve a high level of health protection for all use categories (industrial, professional and general public), the marketing and use of paint strippers containing DCM should be restricted.

(3) Paint strippers containing DCM are used by members of the general public at home to remove paints, varnishes and lacquers both indoors and outdoors. The safe use of DCM by them cannot be ensured by training or monitoring. Therefore, the only measure effective in eliminating the risks arising for the general public from paint strippers containing DCM is a ban, with respect to the general public, on the marketing, supply and use of such paint strippers.

(4) In order to ensure a proportionate enforceability of the phase-out along the supply chain of paint strippers containing DCM, different dates to prohibit the first placing on the market and the final supply to the general public and professionals should be fixed.

(5) As the general public may have, despite the ban, access to paint strippers containing DCM through the distribution chain intended for industrial and professional users, a warning phrase should be included on the product.

(6) The fatalities registered in Europe for industrial and professional uses over the last 18 years are mainly attributed to inadequate ventilation, inappropriate personal protective equipment, the use of inadequate tanks and overexposure to DCM. Therefore restrictions should be imposed to control and reduce the risks involved in industrial and professional uses.

(7) Professionals are generally covered by worker protection legislation. However, many professional activities are often conducted on customers' premises which often do not have all the appropriate measures to manage, control and reduce the risks to health. Moreover, self-employed workers are not covered by Community worker protection legislation and they would need adequate training before removing paint with paint strippers containing DCM.

- (8) The placing on the market of paint strippers containing DCM and their use by professionals should therefore be banned in order to protect their health and to reduce the number of fatalities and non-fatal accidents. Nevertheless, where the replacement of DCM is deemed to be particularly difficult or inappropriate, Member States should be able to allow further use of DCM by approved professionals. Member States should be responsible for granting and monitoring such a derogation, which should be based on compulsory training with specific requirements. However, employers and self-employed workers should by preference avoid the use of DCM by replacing it with a chemical agent or process which, under its conditions of use, presents no risk, or a lower risk, to the health and safety of workers.
- (9) The number of fatalities and non-fatal accidents registered during industrial activities is an indication of inadequate compliance with workplace legislation applicable to workers using DCM. Exposure to DCM remains high and further risk reduction measures should apply to workers in industrial installations. Preventive measures to minimise exposure and to ensure compliance, where technically possible, with relevant occupational exposure limits should be adopted, such as effective ventilation of the workplace, measures to minimise evaporation of DCM from strip tanks, measures for the safe handling of DCM in strip tanks, appropriate personal protective equipment and adequate information and training.
- (10) Personal protective equipment should comply with Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment ⁽¹⁾.
- (11) 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 ⁽²⁾ should therefore be amended accordingly.
- (12) This Decision is without prejudice to 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 work ⁽³⁾ and individual Directives based thereon, in particular Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (codified version) ⁽⁴⁾ 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) ⁽⁵⁾,

HAVE ADOPTED THIS DECISION:

Article 1

Annex I to Directive 76/769/EEC is hereby amended in accordance with the Annex to this Decision.

Article 2

This Decision shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Strasbourg, 6 May 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J. KOHOUT

⁽¹⁾ OJ L 399, 30.12.1989, p. 18.

⁽²⁾ OJ L 262, 27.9.1976, p. 201.

⁽³⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁴⁾ OJ L 158, 30.4.2004, p. 50.

⁽⁵⁾ OJ L 131, 5.5.1998, p. 11.

ANNEX

In Annex I to Directive 76/769/EEC, the following entry is added:

<p>(58) Dichloromethane CAS No: 75-09-2 EC No: 200-838-9</p>	<p>(1) Paint strippers containing dichloromethane in a concentration equal to or greater than 0,1 % by weight shall not be:</p> <ul style="list-style-type: none"> (a) placed on the market for the first time for supply to the general public or to professionals after 6 December 2010; (b) placed on the market for supply to the general public or to professionals after 6 December 2011; (c) used by professionals after 6 June 2012. <p>For the purposes of this entry:</p> <ul style="list-style-type: none"> (i) "professional" means any natural or legal person, including workers and self-employed workers undertaking paint stripping in the course of their professional activity outside an industrial installation; (ii) "industrial installation" means a facility used for paint stripping activities. <p>(2) By way of derogation from paragraph 1, Member States may allow on their territories and for certain activities the use, by specifically trained professionals, of paint strippers containing dichloromethane and may allow the placing on the market of such paint strippers for supply to those professionals.</p> <p>Member States making use of this derogation shall define appropriate provisions for the protection of the health and safety of those professionals using paint strippers containing dichloromethane and shall inform the Commission thereof.</p> <p>Those provisions shall include a requirement that a professional shall hold a certificate that is accepted by the Member State in which that professional operates, or provide other documentary evidence to that effect, or be otherwise approved by that Member State, so as to demonstrate proper training and competence to safely use paint strippers containing dichloromethane.</p> <p>The Commission shall prepare a list of the Member States that have made use of the derogation in this paragraph and make it publicly available over the Internet.</p> <p>(3) A professional benefiting from the derogation referred to in paragraph 2 shall operate only in Member States which have made use of that derogation.</p> <p>The training referred to in paragraph 2 shall cover as a minimum:</p> <ul style="list-style-type: none"> (a) awareness, evaluation and management of risks to health, including information on existing substitutes or processes, which under their conditions of use are less hazardous to the health and safety of workers; (b) use of adequate ventilation; (c) use of appropriate personal protective equipment that complies with Directive 89/686/EEC. <p>Employers and self-employed workers shall by preference replace dichloromethane with a chemical agent or process which, under its conditions of use, presents no risk, or a lower risk, to the health and safety of workers.</p> <p>The professional shall apply all relevant safety measures in practice, including the use of personal protective equipment.</p> <p>(4) Without prejudice to other Community worker protection legislation, paint strippers containing dichloromethane in concentrations equal to or greater than 0,1 % by weight may be used in industrial installations only if as a minimum the following conditions are met:</p>
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- (a) effective ventilation in all processing areas, in particular for the wet processing and the drying of stripped articles: local exhaust ventilation at strip tanks supplemented by forced ventilation in those areas, so as to minimise exposure and to ensure compliance, where technically feasible, with relevant occupational exposure limits;
 - (b) measures to minimise evaporation from strip tanks comprising: lids for covering strip tanks except during loading and unloading; suitable loading and unloading arrangements for strip tanks; and wash tanks with water or brine to remove excess solvent after unloading;
 - (c) measures for the safe handling of dichloromethane in strip tanks comprising: pumps and pipework for transferring paint stripper to and from strip tanks; and suitable arrangements for safe cleaning of tanks and removal of sludge;
 - (d) personal protective equipment that complies with Directive 89/686/EEC comprising: suitable protective gloves, safety goggles and protective clothing; and appropriate respiratory protective equipment where compliance with relevant occupational exposure limits cannot be otherwise achieved;
 - (e) adequate information, instruction and training for operators in the use of such equipment.
- (5) Without prejudice to other Community provisions concerning the classification, labelling and packaging of substances and mixtures, by 6 December 2011 paint strippers containing dichloromethane in a concentration equal to or greater than 0,1 % by weight shall be visibly, legibly and indelibly marked as follows:
- “Restricted to industrial use and to professionals approved in certain EU Member States – verify where use is allowed.”