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COUNCIL DIRECTIVE 1999/38/EC

of 29 April 1999

amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens

(OJ L 138, 1.6.1999, p. 66)

Corrected by:

►**C1** Corrigendum, OJ L 37, 12.2.2000, p. 35 (1999/38)

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COUNCIL DIRECTIVE 1999/38/EC

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amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 118a thereof,

Having regard to 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) ([1]),

Having regard to the proposal from the Commission ([2]), submitted after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

Having regard to the opinion of the Economic and Social Committee ([3]),

Acting in accordance with the procedure referred to in Article 189c of the Treaty ([4]),

(1) Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

(2) Whereas, under the terms of that Article, such Directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

(3) Whereas germ cell mutagens are substances that can cause a permanent change in the amount or structure of the genetic material of a cell resulting in a change in the phenotypic characteristics of that cell, which may be transferred to descendent daughter cells;

(4) Whereas because of their mechanism of action germ cell mutagens are likely to have carcinogenic effects;

(5) Whereas vinyl chloride monomer is classified as a category 1 carcinogen under Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ([5]);

(6) Whereas, for the sake of consistency and clarity, the essential provisions of Council Directive 78/610/EEC of 29 June 1978 on the approximation of the laws, regulations and administrative provisions of the Member States on the protection of the health of workers exposed to vinyl chloride monomer ([6]) should be included in this Directive, without reducing the level of protection of the health and safety of workers;

([1]) OJ L 196, 26.7.1990, p. 1. Directive as amended by Directive 97/42/EC (OJ L 179, 8.7.1997, p. 4).
([2]) OJ C 123, 22.4.1998, p. 21.
([3]) OJ C 284, 14.9.1998, p. 111.
([4]) Opinion of the European Parliament of 22 October 1998 (OJ C 341, 9.11.1998, p. 134), Council Common Position of 22 December 1998 (OJ C 55, 25.2.1999, p. 39) and Decision of the European Parliament of 13 April 1999 (not yet published in the Official Journal).
([5]) OJ L 196, 16.8.1967, p. 1. Directive as last amended by Directive 97/69/EC (OJ L 343, 13.12.1997, p. 19).
([6]) OJ L 197, 22.7.1978, p. 12.

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(7) Whereas Directive 78/610/EEC can be repealed after implementation of this Directive;

(8) Whereas the carcinogenicity of oak and beech dusts has been confirmed in epidemiological studies on workers exposed; whereas it is highly probable that other types of hardwood dust can also cause cancer in humans; whereas therefore the workers concerned are exposed to a serious potential risk of developing cancer;

(9) Whereas the precautionary principle should be applied in the protection of workers' health; whereas therefore Directive 90/394/EEC should be extended to cover all types of hardwood dusts;

(10) Whereas further research is desirable into the carcinogenicity of other wood dusts; whereas the Commission is to bring forward proposals to protect the health of workers where a risk is identified;

(11) Whereas Article 16 of Directive 90/394/EEC makes provision for the establishment of limit values in respect of all those carcinogens for which that is possible, on the basis of the available information, including scientific and technical data;

(12) Whereas it is appropriate to fix such limit values for hardwood dusts; whereas the current limit values for vinyl chloride monomer should be reduced to reflect best minimum standards for technological practices which reflect feasibility factors while maintaining the aim of ensuring the health of workers at work;

(13) Whereas workers must be effectively protected from the risks of developing cancer as a result of occupational exposure to hardwood dusts; whereas the aim of this Directive is not to restrict the use of wood either by replacing it with other materials or by replacing the use of certain types of wood with other types of wood;

(14) Whereas compliance with the minimum requirements on protection of the health and safety of workers from the specific risk related to carcinogens is intended not only to ensure the health and safety protection of each individual worker but also to provide a level of minimum protection for all workers in the Community;

(15) Whereas a consistent level of protection from the risks related to carcinogens has to be established for the Community as a whole, whereas that level of protection has to be set by a framework of general principles to enable Member States to apply the minimum requirements consistently;

(16) Whereas the amendments contained in this Directive constitute a practical aspect of the realisation of the social dimension of the internal market;

(17) Whereas, pursuant to Decision 74/325/EEC [1], the Advisory Committee on Safety, Hygiene and Health Protection at Work is to be consulted by the Commission with a view to drawing up proposals in this field,

[1] OJ L 185, 9.7.1974, p. 15. Decision as last amended by the 1994 Act of Accession.

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HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 90/394/EEC is hereby amended as follows:

1. Article 1(4) shall be replaced by the following:

   '(4) As regards asbestos, which is dealt with by Directive 83/477/EEC (*) the provisions of this Directive shall apply when they are more favourable to health and safety at work.

   (*) OJ L 263, 24.9.1983, p. 25. Directive as last amended by Directive 98/24/EC (OJ L 131, 5.5.1998, p. 11).';

2. in Article 2, the following point shall be inserted after (a):

   '(aa) "mutagen" means:

   (i) a substance which meets the criteria for classification as a category 1 or 2 mutagen set out in Annex VI to Directive 67/548/EEC;

   (ii) a preparation composed of one or more substances referred to in (i) where the concentration of one or more of the individual substances meets the requirements for concentration limits for the classification of a preparation as a category 1 or 2 mutagen set out in either:

   — Annex I to Directive 67/548/EEC, or

   — Annex I to Directive 88/379/EEC where the substance or substances do not appear in Annex I to Directive 67/548/EEC or appear in it without concentration limits;';

3. ►C1 In Article 1(1), Article 3(1), (2), first and second subparagraphs, ◄ and (4), Article 5(5)(c), (d), (e) and (j), Article 6(a) and (b), Article 10(1), introductory wording, and point (a), Article 11(2), ►C1 Article 14(3) and (8), Article 16(1) Article 17(2) and Annex II, point 1, the word 'carcinogens' shall be replaced by 'carcinogens or mutagens'; ◄

4. in Article 2(b), Article 4(1), Article 5(2) and (5), heading and point (a), the word 'carcinogen' shall be replaced by 'carcinogen or mutagen';

5. in Annex I the following section shall be added:

   '5. Work involving exposure to hardwood dusts (1).;

   (1) A list of some hardwoods is to be found in Volume 62 of the Monographs on the Evaluation of Carcinogenic Risks to Humans "Wood Dust and Formaldehyde", published by the International Agency for Research on Cancer, Lyon 1995;';

6. in Annex III, Part A shall be replaced by the following:

   'A. LIMIT VALUES FOR OCCUPATIONAL EXPOSURE

Name of agent	EINECS (1)	CAS (2)	Limit values		Notation	Transitional measures
			mg/m³ (3)	ppm (4)		
Benzene	200-753-7	71-43-2	3,25 (5)	1 (5)	Skin (6)	Limit value: 3 ppm (= 9,75 mg/m³) until three years after date in Article 2(1) of Directive 97/42/EC (*)
Vinyl chloride monomer	200-831	75-01-4	7,77 (5)	3 (5)	—	—

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Name of agent	EINECS (1)	CAS (2)	Limit values		Notation	Transitional measures
			mg/m³ (3)	ppm (4)		
Hardwood dusts	—	—	5,0 (5) (7)	—	—	—

(1) EINECS: European Inventory of Existing Chemical Substances.

(2) CAS: Chemical Abstract Service Number.

(3) mg/m³ = milligrams per cubic metre of air at 20 °C and 101,3 kPa (760 mm mercury pressure).

(4) ppm = parts per million by volume in air (ml/m³).

(5) Measured or calculated in relation to a reference period of eight hours.

(6) Substantial contribution to the total body burden via dermal exposure possible.

(7) Inhalable fraction; if hardwood dusts are mixed with other wood dusts, the limit value shall apply to all wood dusts present in that mixture.

(*) OJ L 179, 8.7.1997, p. 4.'

Article 2

Directive 78/610/EEC shall be repealed with effect from 29 April 2003.

Article 3

On the basis of the latest available scientific data, the Commission may within two years of the date of the adoption of this Directive, submit a proposal to the Council for the adoption of revised limit values for vinyl chloride monomer and hardwoods dusts in accordance with Article 118a of the Treaty.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 29 April 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

Article 5

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

Article 6

This Directive is addressed to the Member States.