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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 444 final.

Brussels, 29 July 1976.

Proposal for a
COUNCIL DIRECTIVE

prohibiting the placing on the market and the use of plant
protection products containing certain active substances

(submitted to the Council by the Commission)

COM(76) 444 final.

Proposal for a Council Directive prohibiting the placing on the market and use of plant protection products containing certain active substances.

Explanatory Memorandum

I. General Introduction

The following proposal for a Directive concerns prohibition of the marketing and use of certain plant protection products containing active substances whose use is hazardous to human or animal health or is unduly harmful to the environment.

It essentially complements the parallel proposal for a Council Directive concerning the placing of EEC-accepted plant protection products on the market. The latter envisages the creation of the type of an "EEC-accepted" plant protection product which may be placed freely on the market throughout the Community. Under its provisions, however, Member States would remain free to regulate and, in particular, prohibit the marketing and use within their own territory of plant protection products, other than EEC-accepted products, in accordance with national provisions.

Such prohibitions introduced by Member States often differ and, where these differences are not due to special local conditions, in particular different ecological conditions, they constitute obstacles to trade.

On the other hand, the lack of certain prohibitions may expose the Community as a whole to risks to human or animal health or to the environment.

It is necessary therefore to provide, through this Directive, the means whereby such national prohibitions and restrictions may be harmonised at Community level. In a first stage, it covers plant protection products containing certain mercury or organo-chlorine active substances. These substances have been the subject of extensive study in recent years (1), their use is now generally recognised to be undesirable in agriculture and has already been prohibited, or otherwise discontinued, in some Member States.

This proposal also represents a contribution to the Communities' environmental policy as envisaged in the Programme of Action of the European Communities on the Environment (2).

II. Notes on individual Articles

Article 1

This Article defines the scope of the Directive which concerns prohibition of the placing on the market and use of certain plant protection products.

Article 2

This Article defines certain terms used in the Directive, notably that of "plant protection product", which is the same as that used in the complementary proposal concerning "EEC-acceptance".

Article 3

This Article requires Member States to ensure that plant protection products containing one or more of the active substances listed in the Annex (column 1) may neither be placed on the market nor used.

Article 4

This Article grants Member States a limited right, either for a fixed period or for a period presently not yet fixed, to permit, by way of derogation, the marketing or use of otherwise prohibited products for specific uses (column 2 of the Annex), particularly where such uses are indispensable on ecological grounds.

(1) See, for example "The use of mercury and alternative compounds as seed dressings" published by FAO and WHO, 1974 and "Conséquences écologiques de l'application des techniques modernes de production en agriculture", Informations internes sur l'agriculture, N° 137, November 1974, published by the Commission of the European Communities

(2) OJ N° C 112, 20/12/1973

It must be emphasised that Member States may avail themselves of these limited derogations but are not obliged to do so. Further, it is intended that all these derogations will be subject to frequent review with a view to phasing them out as soon as less hazardous replacement treatments become available.

Article 5

This Article excludes plant protection products intended for research or analytical purposes or for export to third countries, since the latter generally have their own regulations.

Article 6

Under the provisions of this Article, amendments to the Annex made necessary by the development of scientific and technical knowledge are to be adopted through the procedure of the Standing Committee on Plant Health. It also establishes the criteria for inclusion of further active substances in the Annex, i.e. hazard to human or animal health or unreasonable adverse influence on the environment.

Article 7

This is a special derogation authorising Member States temporarily to permit the marketing and use of certain prohibited plant protection products when faced with an unpredictable threat to crop production, which cannot be contained by other means. A typical case would be a serious attack of a novel pest resistant to other plant protection products.

Article 8

This Article lays down the procedure of the Standing Committee on Plant Health in the context of this Directive. It corresponds to earlier Commission proposals in similar cases.

III. Consultation of Interested Parties

This Proposal for a Directive has been drawn up with the assistance of government experts on agriculture, public health and the environment, and after consultation of the industrial and consumer organisations concerned. In preparing it account has also been taken of existing international recommendations in this field.

IV. Consultation of the European Parliament and the Economic and Social Committee

The European Parliament and the Economic and Social Committee must be consulted in accordance with Article 100 of the Treaty, since the implementation of this Directive involves the amendment of legislation in one or more Member States.

Proposal for a Council Directive prohibiting the placing on the market and use of plant protection products containing certain active substances.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof ;

Having regard to the proposal from the Commission ;

Having regard to the Opinion of the European Parliament ;

Having regard to the Opinion of the Economic and Social Committee ;

Whereas plant production has a very important place in the European Communities ;

Whereas the yield from that production is continually being affected by harmful organisms and weeds and whereas it is absolutely essential to protect plants against these risks to prevent a fall in yields and thereby help to assure the availability of supplies ;

Whereas one of the most important methods of protecting plants and plant products and of increasing the productivity of agriculture is to use plant protection products ;

Whereas the effects of these plant protection products may not be wholly favourable for plant production and their use may involve risks for man and the environment since, in the main, they are toxic substances or preparations having dangerous effects ;

Whereas in the case of certain plant protection products these risks are so great that their use can no longer be wholly or partially tolerated ;

Whereas a number of Member States have therefore not only regulated the marketing of plant protection products but have also introduced, for certain plant protection products, restrictions or prohibitions of use covering also their marketing ;

Whereas these provisions differ in the various Member States and result in obstacles to trade which directly affect the establishment and functioning of the common market ;

Whereas it is therefore desirable to eliminate these obstacles by aligning the relevant provisions laid down in the Member States by law, regulation or administrative provision;

Whereas it therefore seems justified, as a basic principle, to introduce prohibitions of the use of all plant protection products containing active substances which, even when properly applied for the purpose intended, give rise to danger to human or animal health or to unreasonable adverse influence on the environment ;

Whereas for some of these plant protection products national derogations may, however, be permitted to a limited extent for those uses where, for ecological reasons, there is a particular need and where there exists a lesser risk than in the case of their other previous uses.

Whereas even these derogations should be phased out as soon as less hazardous treatments become available ; whereas time limits are therefore set for some of the derogations ;

Whereas, on the other hand, it is necessary to grant Member States a limited right to suspend temporarily, on their own authority, prohibitions of use in the event of an unpredictable danger which threatens plant production and cannot be contained by other means ;

Whereas the Directive excludes plant protection products intended for research and analytical purposes ;

Whereas, moreover, it ^{is} not appropriate to apply Community provisions to plant protection products intended for export to third countries, because in general these countries have their own regulations ;

Whereas the implementation of this Directive and the adaptation of its Annex to the development of technical and scientific knowledge necessitates a close cooperation between the Commission and Member States ; whereas the procedure of the Standing Committee on Plant Health offers a suitable basis for this ;

HAS ADOPTED THIS DIRECTIVE :

Article 1

This Directive concerns prohibition of the placing on the market and use of plant protection products containing certain active substances.

Article 2

For the purposes of this Directive the following definitions shall apply :

1. Plant protection products

Active substances and preparations containing one or more active substances intended :

1.1 to destroy organisms harmful to plants or plant products or to protect them from such organisms, in so far as such substances or preparations are not defined in the following provisions,

1.2 to influence the life processes of plants, other than as a nutrient,

1.3 to preserve plant products, in so far as they are not subject to special Council or Commission provisions on preservatives,

1.4 to destroy undesired plants, or

1.5 to destroy parts of plants or to prevent undesired growth of plants.

2. Substances

Chemical elements and their compounds, as they occur naturally or by manufacture.

3. Preparations

Mixtures or solutions composed of two or more substances, or of micro-organisms or viruses used as plant protection products.

4. Active substances

Substances, micro-organisms and viruses, having general or specific action.

4.1 against harmful organisms, or

4.2 on plants, parts of plants or plant products.

5. Plants

Live plants and live parts of plants, including fresh fruit and seed.

6. Plant products

Products, in the unprocessed state or having undergone only simple preparation such as milling, drying, or pressing, derived from plants, but excluding plants themselves as defined in 5.

7. Harmful organisms

Pests of plants or of plant products, belonging to the animal or plant kingdoms, and viruses.

8. Animals

Animals belonging to species normally nourished and kept or consumed by man.

9. Placing on the market

Any handing over, whether in return for payment or free of charge.

Article 3

Member States shall ensure that plant protection products containing one or more of the active substances listed in the Annex may neither be placed on the market nor used.

Article 4

- (1) By way of derogation from Article 3, Member States are authorised to permit the placing on the market or use within their territory of certain plant protection products containing one or more of the active substances listed in the Annex in the cases set out in

column 2 of the Annex, provided that the time limits laid down in column 3 are observed.

- (2) Member States shall inform the other Member States and the Commission of any implementation of paragraph 1.

Article 5

The Directive shall not apply to plant protection products intended for

- a) purposes of research or analysis, or
- b) export to third countries.

Article 6

- (1) Amendments to the Annex made necessary by the development of scientific and technical knowledge shall be adopted in accordance with the procedure laid down in Article 8.
- (2) An active substance shall be included in the Annex if, even when properly applied for the purpose intended, its use gives rise to
 - a) danger to human or animal health, or
 - b) unreasonable adverse influence on the environment.

Article 7

- (1) If it appears necessary because of an unpredictable danger threatening plant production, which cannot be contained by other means, to use in a Member State a plant protection product containing one or more of the active substances listed in the Annex, the Member State in question may temporarily permit the placing on the market and use of such product for a maximum period of 60 days and shall immediately inform the other Member States and the Commission thereof.
- (2) It shall be established without delay in accordance with the procedure laid down in Article 8 whether and, if so, under what conditions the action taken by the Member State pursuant to paragraph (1) may be continued or repeated.

Article 8

- (1) Where the procedure laid down in this Article is to be followed, matters shall be referred without delay by the Chairman, either on his own initiative or at the request of a Member State, to the Standing Committee on Plant Health set up by the Council Decision of ..., hereinafter called the "Committee".
- (2) Within the Committee, the votes of the Member States shall be weighted as provided in Article 148 (2) of the Treaty. The Chairman shall not vote.

- (3) The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its Opinion on such measures within a time limit set by the Chairman according to the urgency of the matters. Opinions shall be adopted by a majority of forty-one votes.
- (4) The Commission shall adopt the measures and implement them forthwith where they are in accordance with the Opinion of the Committee. Where they are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay propose to the Council the measures to be adopted. The Council shall adopt the measures by a qualified majority.
If the Council has not adopted any measures within three months of the proposal being submitted to it, the Commission shall adopt the proposed measures and implement them forthwith.

Article 9

- (1) The Member States shall not later than 1 January 1978 bring into force the laws, regulations and administrative provisions necessary to comply with the provisions of this Directive and its Annex. They shall forthwith inform the Commission thereof.
- (2) On notification of this Directive Member States shall inform the Commission, in time to enable it to put forward its comments, of all draft laws, regulations or administrative provisions which they contemplate adopting in the field covered by this Directive.

Article 10

This Directive is addressed to the Member States.

ANNEX

(1)	(2)	(3)
Description of the active substance or group of active substances	Uses permitted in accordance with Article 4	Period of authorisation
1. mercuric oxide	as a canker paint on fruit trees	
2. other inorganic mercury compounds		
3. alkyl mercury compounds	(a) dipping of bulbs and seed potatoes (b) treatment of basic and pre-basic cereal seed, except maize	
4. alkoxyalkyl and aryl mercury compounds	(a) as a canker paint on fruit trees (b) dipping of bulbs and seed potatoes (c) seed treatment of cereals, beet, flax and rape	
5. aldrin	soil treatment against <i>Otiorrhyncus</i> in nursery stock, strawberries, ornamentals and vines	until 31 December 1979
6. chlordane		
7. dieldrin	soil treatment against <i>Otiorrhyncus</i> in nursery stock, strawberries, ornamentals and vines	until 31 December 1979
8. DDT		
9. endrin	as a miticide on cyclamen and on strawberry propagating material	until 31 December 1979
10. HCH containing less than 99.0 % of the gamma-isomer		
11. heptachlor		
12. hexachlorobenzene		