

This consultation document is issued jointly by the Department of Trade and Industry (DTI) and the Department for Environment, Food and Rural Affairs (Defra).

***Proposed restrictions on the marketing and use of toluene and trichlorobenzene (TCB).***

This consultation document seeks your views on a proposal for a European Directive that would place restrictions on the marketing and use of toluene and TCB. These proposals have been made in order to limit risks to the consumer and the environment from exposure to these chemicals.

It is proposed that toluene, and adhesives and spray paints containing in excess of 0.1% toluene, be prohibited from being placed on the market for sale to the general public.

It is also proposed that TCB, and preparations containing in excess of 0.1% TCB, be prohibited from being placed on the market for any use except as an intermediate.

This consultation invites your views on these proposals and also asks for your opinions on the likely impact these proposals would have on industry, consumers and the environment if these measures were to be adopted.

Responses to this consultation will help to inform the United Kingdom negotiator when discussions begin at a European level later this year and help in the preparation of a full Regulatory Impact Assessment.

Issued on: 10 September 2004

Respond by: 3 December 2004

Enquiries to: -

- ***Toluene proposals:*** Jan Krefta, Department of Trade and Industry, Bay 565, 1 Victoria Street, London SW1H 0ET.  
Email: [jan.krefta@dti.gsi.gov.uk](mailto:jan.krefta@dti.gsi.gov.uk)
- ***TCB proposals:*** Andrew Scarsbrook, Department for Environment, Food and Rural Affairs, Room 3/E3, Ashdown House, 123 Victoria Street, London SW1E 6DE  
Email: [chemical.management@defra.gsi.gov.uk](mailto:chemical.management@defra.gsi.gov.uk)

## Contents

---

1. Executive Summary
2. The Proposal
3. Draft Regulatory Impact Assessment
4. What happens next?

Annex A: European Commission Proposal COM/2004/320

Annex B: List of Consultees

Annex C: Code of Practice on Consultations

# 1. Executive Summary

---

## ***Purpose of this consultation***

1.1. This consultation document seeks your views on a Proposal<sup>1</sup>, adopted by the European Commission in April 2004, to introduce a Directive which will place certain restrictions on the marketing and use of toluene and trichlorobenzene (TCB). The full Commission Proposal is at Annex A and can be summarized as follows:

- toluene, or adhesives and spray paints containing in excess of 0.1% toluene, will be prohibited from being placed on the market for sale to the general public; and
- TCB, and preparations containing in excess of 0.1% TCB, will be prohibited from being placed on the market for any use except as an intermediate.

1.2. These measures have been proposed because of concerns about:

- acute toxicity and eye irritation in consumers when exposed to toluene vapours as a consequence of repeated use of certain adhesives and spray paints containing this substance; and
- the adverse effect on the environment when exposed to TCB and concerns for consumers indirectly exposed to this substance via the environment.

1.3. Views are invited on all aspects of the proposals. We would be particularly interested in your views on the impact, both monetary and otherwise, these proposals would have on consumers, industry and the environment. A number of specific questions are set out in paragraph 1.14.

## ***How to Respond***

1.4. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

1.5. Please submit your responses by post, email or fax.

### ***a) For responses relating to the toluene proposals:***

Post: Jan Krefta  
Bay 565  
Department of Trade and Industry  
1 Victoria Street

---

<sup>1</sup> COM/2004/320/FINAL dated 28-04-2004.

London SW1H OET

Email: [jan.krefta@dti.gsi.gov.uk](mailto:jan.krefta@dti.gsi.gov.uk)

Fax: 020 7215 0357

*(b) For responses relating to the TCB proposals:*

Post: Andrew Scarsbrook  
Room 3/E3  
Department for Environment, Food and Rural Affairs  
Ashdown House  
123 Victoria Street  
London SW1E 6DE.

Email: [chemical.management@defra.gsi.gov.uk](mailto:chemical.management@defra.gsi.gov.uk)

Fax: 020 7082 8086

- 1.6. A list of those organisations and individuals to whom this consultation document has been sent is given in Annex B and includes, amongst others, manufacturers, the chemical industry, the DIY sector, consumer organisations, trade associations, charities, enforcement authorities, Government Departments and non-Governmental organisations. Please inform us if you know of others who may wish to be involved in this consultation process and would like to receive a copy of this document.

***Closing Date***

- 1.7. Responses must be received by 3 December 2004. Earlier responses would be most welcome and would assist in formulating the Government's stance in advance of negotiations at a European level, which will probably begin in October 2004.

***Confidentiality***

- 1.8. Your response may be made public by the Department of Trade and Industry or the Department for Environment, Food and Rural Affairs. If you do not want all or part of your response, or name, made public, please state this clearly in your response. Any confidentiality disclaimer that may be generated by your organisation's IT system, or included as a general statement in your fax cover sheet, will be taken to apply only to information for which confidentiality has been requested. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet.

***Additional copies***

- 1.9. Additional copies of this document may be made without seeking permission. Electronic versions can be found on the Departments' websites at:

DTI: <http://www.dti.gov.uk/ccp/consultations.htm>

Defra: <http://www.defra.gov.uk/corporate/consult/current.htm>

1.10. Further printed copies of this consultation document may be obtained from the source given at paragraph 1.5(a) above, or from:

Post: DTI Publications Orderline  
ADMAIL Publications  
London SW1W 8YT

 0870 1502 500  
Fax: 0870 1502 333  
Email: [www.dti.gov.uk/publications](http://www.dti.gov.uk/publications)

### ***Help with Queries***

1.11. If you have any questions about the issues discussed in this consultation document, please contact:


(Toluene) Jan Krefta on 020 7215 6723  
[jan.krefta@dti.gsi.gov.uk](mailto:jan.krefta@dti.gsi.gov.uk)

(TCB ) Andrew Scarsbrook on 020 7082 8111  
[chemical.management@defra.gsi.gov.uk](mailto:chemical.management@defra.gsi.gov.uk)

1.12. A copy of the Code of Practice on Consultation is given at Annex C.

1.13. If you wish to comment on, or make a complaint about, the way in which this consultation has been conducted, please contact:

Nick Van Benschoten  
DTI Consultation Co-ordinator  
Room 723  
1 Victoria Street  
London SW1H 0ET

 020 7215 6913  
Email: [nickbenschoten@dti.gsi.gov.uk](mailto:nickbenschoten@dti.gsi.gov.uk)

### ***Consultation Questions***

1.14. The following are general questions that consultees may wish to consider:

(i) ***If you are a manufacturer of adhesives or spray paints***, is toluene a constituent of any of your products that are placed on the market for sale to the general public?

(ii) **If toluene is used as a constituent of such products**, are suitable alternatives to toluene available for use in all those products?

(iii) **If alternatives to toluene are not readily available and products will have to be reformulated**, what would be the implications (financial and otherwise) of this?

(iv) **The proposed restrictions regarding toluene are confined to the substance itself and to adhesives and spray paints containing it**. Do you agree with the scope of this proposal or do you think it should be extended to include, for example, thinners for adhesives and adhesive removers etc?

(v) **The proposed restrictions regarding toluene are confined to prohibitions on marketing for sale to the general public – sales to “professionals” will remain unaffected**. Do you agree with this aspect of the proposals or would it present you with any problems?

(vi) **The proposed restrictions relating to trichlorobenzene will prohibit its use as a substance or as a constituent of preparations unless it is used as an intermediate**. If you are a manufacturer using trichlorobenzene, do you use it for any purpose except as an intermediate?

(vii) **If you do use trichlorobenzene for such purposes**, what would be the implications (financial and otherwise) of the proposed prohibition?

(viii) **For both the toluene and trichlorobenzene an ‘impurity’ limit of 0.1% by mass has been proposed**. Do you think this limit is realistic or would you have difficulty in meeting it?

(ix) Are there any unintended consequences of these proposals that you can identify?

1.15. All comments in relation to the proposed Directive and the proposed Regulatory Impact Assessment are welcome.

## 2. Proposal

---

### *Background to the proposal*

- 2.1 **The Existing Substances Regulation** (EEC 793/93<sup>2</sup>) provides a systematic framework for the evaluation to human health and the environment of substances produced or imported into the European Community in quantities in excess of 10 tonnes per year. The methods for carrying out in-depth risk assessment at Community level are laid down in Commission Regulation EC 1488/94<sup>3</sup>, supported by a technical guidance document.
- 2.2 In the framework of the Existing Substances Regulation, both toluene and TCB were identified as priority substances for evaluation and control. Denmark was the Member State designated “Rapporteur” for these substances and the Danish Environmental Protection Agency carried out risk assessments on both toluene and TCB. Risk Assessment Reports were completed in March 2001 and were subsequently published by the European Commission Joint Research Centre<sup>4</sup>.
- 2.3 The Risk Assessment Reports for both toluene and TCB concluded that further risk reduction measures were needed in addition to those already being applied. These additional measures were considered necessary to provide improved protection from the risks to human health (both workers and consumers) and the environment from these substances.
- 2.4 The European Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) was consulted and considered the Risk Assessment Reports. In their Opinions<sup>5,6</sup> of June and July 2001 they confirmed the conclusions of the assessments and the need to reduce risks to health. In-depth risk reduction strategies for both toluene and TCB were prepared by the Danish Environmental Protection Agency.
- 2.5 In the light of the risk assessments and risk reduction strategies the European Commission issued a Commission Recommendation<sup>7</sup> on 29<sup>th</sup> April 2004, which was adopted by all Member States. In this document the Commission made recommendations as to the strategies for limiting risks.
- 2.6 Amongst other things, this document recommended that a reduction in risks to consumers due to exposure to toluene should be effected by restrictions under the framework of the Marketing and Use Directive 76/769/EEC<sup>8</sup>. Similarly, a

---

<sup>2</sup> Official Journal of the European Communities L 84, 5.4.1993, p.1

<sup>3</sup> Official Journal of the European Communities L161, 29.06.1994, p3

<sup>4</sup> Risk Assessment Reports for toluene and TCB: See ECB website at :- <http://ecb.jrc.it/existing-chemicals>.

<sup>5</sup> CSTEE Opinion(Toluene) [http://europa.eu.int/comm/health/ph\\_risk/committees/sct/docshtml/sct\\_out104\\_en.htm](http://europa.eu.int/comm/health/ph_risk/committees/sct/docshtml/sct_out104_en.htm)

<sup>6</sup> CSTTE Opinion(TCB) [http://europa.eu.int/comm/health/ph\\_risk/committees/sct/documents/out115\\_en.pdf](http://europa.eu.int/comm/health/ph_risk/committees/sct/documents/out115_en.pdf)

<sup>7</sup> Official Journal of the European Communities L199, 7.6.2004, p.41

<sup>8</sup> Official Journal of the European Communities L 262, 27.9.1976, p.201

reduction of risks to consumers and the environment due to TCB should also be effected by restrictions under this Directive.

- 2.7 **The Marketing and Use Directive 76/769/EEC** was adopted to restrict or prohibit the use and the placing on the market of certain chemicals, in order to protect the environment, workers, consumers and public health in Member States. Annex 1 to this Directive lists those chemicals of concern and specifies the restrictions on marketing and use placed upon them. The Annex is regularly updated by the European Commission by adding additional chemicals. Each update, following scientific evidence that the chemical in question can cause harm, is analogous to the introduction of a new stand-alone directive and may impact on the policy areas of several Government Departments.
- 2.8 The responsibility for the proposal concerning TCB lies with the Secretary of State for the Environment, Food and Rural Affairs. DTI and the Health and Safety Executive (HSE) also have an interest. The responsibility for the proposal concerning toluene lies with the Secretary of State for Trade and Industry. Defra and HSE also have an interest.
- 2.9 The proposal, which is the subject of this consultation document, was presented by the European Commission on 28<sup>th</sup> April 2004 and will, if adopted, form the 28<sup>th</sup> amendment to the Marketing and Use Directive. Two further points will be added to Annex 1 of the Directive – one dealing with restrictions on toluene, the other dealing with TCB. These points form Annex A to the proposal document and state:

<b>[XX]. Toluene CAS No. 108-88-3</b>	<b>May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass in adhesives and spray paints intended for sale to the general public.</b>
<b>[XX]. Trichlorobenzene CAS No. 120-82-1</b>	<b>May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass for all uses except as an intermediate.</b>

## **Toluene**

### **Occurrence and use**

- 2.10 Toluene is a high production volume substance, the estimated EU consumption in 1995 being about 2,750kTonnes. Toluene occurs naturally and is a component of crude oil. Most of the refinery streams containing toluene are used as a base or blending feedstock to produce motor gasoline.
- 2.11 Commercial toluene is isolated from refinery streams and much of it is used as an intermediate in the chemical industry to synthesise other chemicals such as benzene, phenol and TNT.
- 2.12 However, due to its excellent solvent properties, toluene is used as solvent for paints, lacquers and gums. Because of this, toluene may be found in products placed on the market for sale to the general public such as paints, adhesives, thinners, degreasers, varnishes, inks and other formulated products requiring a solvent carrier.

### **Risks to human health**

- 2.13 Toluene causes acute toxicity as a consequence of dermal, or inhalation, exposure. The symptoms of acute toxicity include headaches, dizziness, feelings of intoxication, sleepiness and impaired functional performance. Eye irritation can also occur as a consequence of exposure to products containing toluene, such as adhesives and paints.

## ***Trichlorobenzene***

### **Occurrence and use**

- 2.14 TCB is a synthetic chemical and is not found naturally. It has mainly been used in the chemical industry as an intermediate in the manufacture of pesticides, herbicides and higher chlorinated benzenes.
- 2.15 TCB is no longer manufactured in the UK and there is only a low level of usage. It is no longer used in the manufacture of herbicides/pesticides or as a dye carrier, where, in the UK, it has been substituted by other chemicals. In the past it has been used as a dielectric fluid, solvent or heat transfer medium in electrical equipment and may therefore be found in existing electrical equipment. Other uses have included a constituent of metal working fluids and corrosion inhibitor sprays. There is a small usage of TCB in the UK in the manufacture of high performance insulation in wire and cable products.

### **Risks to the environment and human health**

- 2.16 TCB is toxic and a risk to the aquatic and terrestrial environment as a consequence of exposure as a dye carrier and other uses.
- 2.17 For consumers, TCB can cause eye and respiratory tract irritation as a consequence of repeated inhalation and dermal exposure to this substance. It is, however, uncertain whether products containing this substance are, in fact, used

at all by consumers. Nevertheless, there are concerns about human exposure to this substance from the environment, especially via drinking water.

### **3. Draft Regulatory Impact Assessment**

---

#### **Proposal**

1. Proposal for a European Directive which seeks to place certain restrictions on the marketing and use of toluene and trichlorobenzene (TCB) and which will form the 28<sup>th</sup> amendment to the Marketing and Use Directive 76/769/EEC.

#### **Purpose and intended effect of measures**

##### **Objective**

2. The primary aim of the proposed Directive is to reduce the risks of ill-health to consumers as a consequence of exposure to toluene, when using toluene or adhesives and spray paints containing toluene. It also aims to reduce the risks to the environment from TCB and products containing TCB. Additionally, it aims to reduce the risks to human health as a consequence of exposure to trichlorobenzene from the environment, especially via drinking water.

##### **Background**

3. Risk Assessment Reports for both toluene and TCB carried out in the framework of the Existing Substances Regulation (EEC 793/93), concluded that further risk reduction measures were needed in addition to those already being applied. These additional measures were considered necessary to provide improved protection from the risks to human health (both workers and consumers) and the environment from these substances.
4. The European Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) was consulted and considered the Risk Assessment Reports. In their Opinions of June and July 2001 they confirmed the conclusions of the Assessments of the need to reduce risks to health. In-depth risk reduction strategies for both toluene and TCB were prepared by the Danish Environmental Protection Agency.
5. In the light of the Risk Assessments and risk reduction strategies, the European Commission issued a Commission Recommendation on 29<sup>th</sup> April 2004, which was adopted by all Member States. In this document the Commission made recommendations as to the strategies for limiting risks. Amongst other things, this document recommended that a reduction in risks to consumers due to exposure to toluene should be effected by restrictions under the framework of the Marketing and Use Directive 76/769/EEC. Similarly, a reduction of risks to consumers and the environment due to TCB should also be effected by restrictions under this Directive.
6. The proposal was presented by the European Commission on 28<sup>th</sup> April 2004 and will, if adopted, form the 28<sup>th</sup> amendment to the Marketing and Use Directive. Two

further points will be added to Annex 1 of the Directive – one dealing with restrictions on toluene, the other dealing with TCB.

7. Toluene, or adhesives and spray paints containing in excess of 0.1% toluene, will be prohibited from being placed on the market for sale to the general public. TCB, and preparations containing in excess of 0.1% TCB, will be prohibited from being placed on the market for any use except as an intermediate.

### ***Risk Assessment***

8. The primary aim of the proposed Directive is to reduce the risks of ill-health to consumers as a consequence of exposure to toluene, when using toluene or adhesives and spray paints containing toluene. It also aims to reduce the risks to the environment from TCB and products containing TCB. Additionally, it aims to reduce the risks to human health as a consequence of exposure to TCB from the environment, especially via drinking water. If the provisions of the proposed Directive, (if adopted) were not implemented, consumers and the environment would still be at risk from these chemicals.

9. The proposals for TCB are likely to have little adverse impact on industry – the use of this substance in the UK has virtually ceased except for its use in the manufacture of explosives where it is used as an intermediate.

10. Preliminary indications are that the toluene proposals will have little impact on the spray paint sector but that there is some concern in the sector manufacturing adhesives.

### **Options**

11. (i) To fully implement the provisions of the proposed Directive, if adopted by all member States.

(ii) To request industry to adopt voluntary measures.

(iii) To do nothing

12. Option (i). The proposed Directive is consistent with UK policy and practice on these issues. Implementation of the Directive, if adopted, will provide a high level of protection from the risks to human health and the environment from exposure to these hazardous chemicals. It will also provide harmonised rules for the circulation of these substances.

13. Option (ii). This would require industry adherence to voluntary guidelines or targets. However, this would not guarantee as high a level of consumer safety as Option (i). It is likely that some manufacturers would adopt the code while others would not which would necessitate agreeing draft guidelines and the introduction of an effective monitoring system.

14. Option (iii). Failure to implement the Directive, if adopted, will result in infraction proceedings being initiated against the United Kingdom by the European Commission, since Member States have a Treaty obligation to implement all agreed Directives.

Further, this option does not guarantee the level of protection of human health and the environment afforded by Option (i).

### **Benefits**

#### ***Economic***

15. The proposed restrictions on the marketing and use of toluene and TCB will serve to foster the development of safer alternatives to these substances.

16. A reduction in the damage to the environment and to human health will reduce the costs associated with these adverse effects.

#### ***Environmental***

17. The Directive, if adopted, would reduce the risks to the environment from TCB and products containing TCB. Additionally, it would reduce the risks to human health as a consequence of exposure to TCB from the environment, especially via drinking water.

#### ***Social***

18. The Directive, if adopted, would reduce the risks of ill-health to consumers as a consequence of exposure to toluene, when using toluene or adhesives and spray paints containing toluene. It would also reduce the risks to human health as a consequence of exposure to TCB from the environment, especially via drinking water.

### **Costs**

19. Quantification of these costs is being sought through this consultation and by meetings with the relevant industries.

20. The Regulations implementing the provisions of the Directive, if adopted, will be enforced by nominated Enforcement Authorities. There may be small additional costs, yet to be determined, placed on these organisations.

### **Equity and fairness**

21. The overriding factor in the proposed Directive is consumer safety and protection of the environment. The Directive will impact equally across the particular sectors of industry affected and will be implemented in all Member States.

### **Consultation with small business : the Small Firms Impact Test**

Toluene.

22. As part of our initial soundings we contacted the main trade associations in the sector to identify potential costs to their members as a result of the proposals. These were: the British Coatings Federation, The British Adhesives and Sealants Association,

British Aerosol Manufacturers Association, British Chemical Distributors and Trades Association and Chemicals Industry Association.

23. Responses suggested that the impact on the industry would be minimal. This view corresponds with the risk assessment and risk reduction strategy reports for both chemicals which states that the proposed Directive will pose only minor problems to industry, including small business, as the use of the chemicals is declining and companies have already developed, and continue to develop, water-based product alternatives to toluene.

24. The Small Business Service also considers that small firms are unlikely to suffer any significant impact. However, if as a result of formal consultation we identify any as yet unidentified or unintended impacts for small firms, we will further consult with the Small Business Service.

TCB

25. As part of our initial soundings we contacted the CIA, British Cable Makers Confederation, AWE, BAE Systems, Other Government Departments and the Environment Agency to identify potential costs and further meetings with key stakeholders are being held.

26. Responses from industry have so far been minimal and for those sectors that had a view indicated that the proposals will have, in line with the findings of the risk reduction strategy, minimal impact.

27. Further information on the uses of TCB from the SBS sector is encouraged and welcomed to further develop the regulatory impact assessment.

### **Competition Assessment**

28. We intend to undertake Stage One of the Competition Assessment but Risk Assessments suggest that as the proposed Directive would place restrictions on the marketing and use of particular chemicals, it is unlikely to have the effect of distorting or removing competition in the market. The Directive, if adopted, will not serve as a barrier to entry for potential entrants nor impose substantially more cost on some firms than others. Indeed, the Directive would set harmonised requirements to ensure that all involved in the manufacture and supply of products containing the substances in question can compete on an equal footing.

### **Enforcement and Sanctions**

29. If the proposed Directive is adopted, those provisions relating to toluene will be transposed into UK law by means of Regulations made using powers under the Consumer Protection Act 1987 (CPA), Section 11. The Regulations will extend to Great Britain and Northern Ireland and the sanctions applicable to breaches of safety regulations under Section 11 of CPA will apply. In Great Britain, the Regulations will be

enforced by Local Trading Standards Departments, and in Northern Ireland by Environmental Health Departments.

30. Those provisions relating to TCB will be transposed into English law using powers under Section 2(2) of the European Communities Act 1972, and the enforcement arrangements will be set out at this stage. The Government and the Devolved Administrations will agree jointly whether to extend this to other parts of the UK or whether the Devolved Administrations will make separate arrangements.

### **Monitoring and Review**

31. The Regulations will be monitored and reviewed in accordance with normal procedures - a review is likely once the implementing Regulations have been in force for 2-3 years.

### **Consultation**

#### ***Within Government***

32. Other Government Departments are being consulted about these proposals during this consultation.

#### ***Public Consultation***

33. The Consultation Document lists those organisations and individuals to whom the document has been sent. The consultees include, amongst others, manufacturers, the chemical industry, the DIY sector, consumer organisations, trade associations, charities, enforcement authorities, Government Departments and non-Governmental organisations. The consultation will run for 12 weeks.

### **Summary and Recommendation**

34. The proposal for a Directive, in the framework of the Marketing and Use Directive 76/769/EEC, to place certain restrictions on the marketing and use of toluene and TCB, is considered the most effective means of reducing the risks to human health and the environment from exposure to these potentially hazardous chemicals. The Directive, if adopted, will remove these chemicals from the consumer market and thereby reduce the potential for human ill-health and damage to the environment caused by exposure through use of them.

<b>Option</b>	<b>Total cost per annum Economic, environmental, social</b>	<b>Total benefit per annum Economic, environmental, social</b>
(i) To fully implement the provisions of the proposed Directive	To be determined	To be determined

(ii) To request industry to adopt voluntary measures	To be determined	To be determined
(iii) To do nothing	To be determined	To be determined

**Declaration**

***I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.***

***Signed by the Minister responsible***

.....

***Date***

***Contact point:***

## **4. What happens next?**

---

- 4.1 The results of this consultation exercise, including a summary of views expressed, will be published on the DTI and Defra websites<sup>9</sup>. We aim to publish these results no later than one month after the close of the consultation. Paper copies of the results will be made available from DTI and Defra, on request, from the sources detailed at paragraphs 1.5(a) and 1.5(b) of this document.
- 4.2 DTI and Defra will shortly be meeting with industry representatives to discuss their views on these proposals.
- 4.3 No precise details are currently known on Presidency plans for negotiating this proposal in Council. It is likely that it will receive a First Reading in the European Parliament towards the end of this year.
- 4.4 A further consultation document will be issued in due course in the event that this proposal is adopted or if there are any significant changes made to it.

---

<sup>9</sup> DTI : <http://www.dti.gov.uk/ccp/consultations.htm>

Defra: <http://www.defra.gov.uk/corporate/consult/current.htm>



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.4.2004  
COM(2004) 320 final

2004/0111 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**relating to restrictions on the marketing and use of toluene and trichlorobenzene  
(twenty-eighth amendment of Council Directive 76/769/EEC)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION AND CONTEXT

Toluene is used as a raw material in the production of benzene and a host of other chemicals (e.g. benzoic acid, nitrotoluenes, tolyl diisocyanates, as well as dyes, pharmaceuticals, food additives, plastics, etc.). Due to its solvent power toluene can be present in consumer products, including household aerosols, paints, varnishes, adhesives, and glues.

Trichlorobenzene (TCB) is predominantly used as an intermediate in the manufacture of herbicides and as a process solvent in closed systems. Besides, TCB has other minor uses as a solvent, a dye carrier and as a corrosion inhibitor.

The risks to the health and environment by toluene and TCB have been assessed under Council Regulation (EEC) 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances<sup>10</sup>. The risk assessments identified a need for reducing the risks to health from toluene and TCB. The Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) confirmed the conclusions of the assessment of these substances and the need to reduce risks to health.

The Commission adopted on xx xx 2004 Recommendations in the framework of Regulation (EEC) 793/93 on risk reduction strategies for toluene and TCB providing for restrictions on the marketing and use to control the risks identified.

On the basis of the risk assessments and recommended risk reduction strategies in the framework of Regulation (EEC) 793/93 the Commission proposes to restrict the marketing and use of toluene, TCB, and of preparations containing them.

The proposed Directive would introduce harmonised provisions on the marketing and use of toluene and TCB.

### 2. JUSTIFICATION FOR PROPOSAL

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

Due to the fact that certain uses of chemicals cannot be controlled under certain conditions, safety for human health can only be ensured by prohibiting such uses of the substances and preparations concerned.

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 to the benefit of the protection of people's health and safety.

*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 use of toluene and TCB.

---

<sup>10</sup> OJ L 84, 5.4.1993, p. 1.

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

The proposed Directive would establish uniform rules for the circulation of toluene and TCB. It also guarantees a high level of protection of people's health and safety. The proposed amendment to Directive 76/769/EEC is the only way to meet these goals. Targets would be insufficient.

### **3. RATIONALE OF THE PROPOSAL**

The proposed Directive would extend Annex I to Directive 76/769 by adding the substances toluene and TCB. Marketing and use of these substances would thus be restricted.

### **4. COSTS AND BENEFITS**

#### **4.1. Costs**

The proposed Directive should pose only minor problems to the industry or trade, as the uses of toluene and TCB are declining in the concerned cases, and companies have already developed alternatives.

#### **4.2. Benefits**

The benefits of the proposal are to establish an Internal Market as well as to protect human health and the environment. The proposed ban will ensure that for certain uses which pose a risk to human health or the environment toluene and TCB are no longer on the market.

### **5. PROPORTIONALITY**

The proposed Directive would yield benefits in terms of protecting human health and the environment. This will be achieved at little cost.

### **6. CONSULTATIONS PERFORMED IN PREPARING THE DRAFT AMENDMENT**

Advice on the preparation of the proposal was sought through meetings involving experts from Member States, the European Chemical Industry Council (CEFIC) and Eurométaux. 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 of human health and the environment. It is therefore in conformity with Article 95(3) of the Treaty.

### **8. EUROPEAN PARLIAMENT AND EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

In compliance with Article 95 of the Treaty, the Codecision Procedure with the European Parliament is applicable. The European 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 toluene and trichlorobenzene  
(twenty-eighth 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 <sup>11</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>12</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>13</sup>,

Whereas:

- (1) The risks posed to health and environment by toluene and trichlorobenzene (TCB) have been assessed under Council Regulation (EEC) 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances<sup>14</sup>. The risk assessment identified a need to reduce those risks, and the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) confirmed that conclusion.
- (2) Commission Recommendation 2004/xx/EC<sup>15</sup> of [date], adopted within the framework of Regulation (EEC) 793/93, proposed a risk reduction strategy for toluene and TCB, recommending restrictions to limit the risks from certain uses of these chemicals.
- (3) In order to protect health and the environment, it therefore appears necessary that the placing on the market and the use of toluene and TCB should be restricted.
- (4) 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<sup>16</sup> should be amended accordingly.
- (5) The objective of this Directive is to introduce harmonised provisions with regard to toluene and TCB, thus preserving the internal market whilst ensuring a high level of protection of human health and the environment, as required by Article 95 of the Treaty.
- (6) 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

---

<sup>11</sup> OJ C xx.

<sup>12</sup> OJ C xx.

<sup>13</sup> OJ C xx.

<sup>14</sup> OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 57, 25.2.2003).

<sup>15</sup> OJ L x, x 2004, p. x.

<sup>16</sup> OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/21/EC (OJ L 57, 25.2.2004, p. 4).

12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>17</sup>, 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)<sup>18</sup> 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)<sup>19</sup>,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Annex I to Directive 76/769/EEC is amended as set out in the Annex to this Directive.

#### *Article 2*

1. Member States shall adopt and publish, by [...] [*one year after the date of its entry into force*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from xx xx 200x [eighteen months after the entry into force of this Directive].

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.

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

#### *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*

---

<sup>17</sup> OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>18</sup> OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p.66).

<sup>19</sup> OJ L 131, 5.5.1998, p. 11.

## ANNEX

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

“[XX]. Toluene CAS No. 108-88-3	May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass in adhesives and spray paints intended for sale to the general public.
[XX]. Trichlorobenzene CAS No. 120-82-1	May not be placed on the market or used as a substance or constituent of preparations in a concentration equal or higher than 0.1 % by mass for all uses except as an intermediate.”

## Annex B

### Consultees

---

*This consultation document has been sent to the following interested parties:*

AMTAC Laboratories	Greenpeace UK
Association for Protection of Rural Scotland	Health & Safety Commission
Association of Public Analysts	Health & Safety Executive
Association of Bronze and Brass Founders	Homebase
Association of Light Alloy Refiners Ltd	Home Office
Association of Metal Sprayers	House of Commons (Deposited Papers)
Association of UK Oil Independents	House of Lords (Deposited Papers)
B&Q plc.	Institute of Metal Finishing
Bombardier Aerospace	Institute of Waste Management
Boots - Product Quality and Development Centre	Institute of Waste Management, Northern Ireland
Bostik Findley Ltd. (Mr Davison; Mr Meyrick)	Intertek Testing Services (Leicester) Ltd.
British Adhesives and Sealants Association	JAMA Europe
British Aerosol Manufacturers Association	Jewellery Distributors Association
British Association for Chemical Specialities (BACS)	Keep Scotland Beautiful
British Chambers of Commerce	LACORS
British Chemical Distributors & Trades Association	Law Commission (Professor Hugh Beale)
British Coatings Federation	LGC Ltd. (Mr Ian Axford)
British Colour Makers Association	Local Government Association
British Footwear Association	LSE (Professor Hugh Collins)
British Glove Association	Mail Order Traders Association
British Hat Guild	Manchester University (Mr Richard Bragg)
British Importers Association	Marie Curie Cancer Care
British Interior Textiles Association	Mechanical & Metal Trades Confederation
British Iron & Steel Producers Association	Medical Research Council
British Jewellers Association	Mobil Oil
British Leather Confederation	Montupet
British Medical Association	National Assembly for Wales Agriculture Department (NAWAD)
British Non-Ferrous Metals Federation	National Association of Goldsmiths
British Chemical Distributors & Traders	National Association of Local Councils
British Clothing Industry Association	National Consumer Council
British Lubricates Federation	National Consumer Federation
BP Chemicals Ltd	National Council of Women of Great Britain
BP Oil (UK) Ltd (J Lobban; D Adair/C Grice)	National Consumer Federation
British Plastics Federation	National Federation of Self-Employed and Small Business
British Retail Consortium	National Federation of Womens Institutes
British Rubber Manufacturers Association	National Society for Clean Air & Environmental Protection
British Stainless Steel Association	Nexfor Ltd
British Shops & Stores Association	Northern Ireland Chamber of Commerce & Industry
British Textile Technology Group (BTTG)	Northern Ireland Chamber of Trade
British Toy and Hobby Association (BTHA)	Northern Ireland Local Government Association
British Wood Preserving & Damp Proofing Association	Northern Ireland Office
Brunel University (Professor Geoffrey Woodroffe)	Northern Ireland Textile & Apparels Association
BSI Group Headquarters	Nottingham Trent University (Mr Christian Twig-Flesner)
BSI Product Services	Official Publications Library
Caledonian Environment Centre, Glasgow	Oil and Colour Chemists Association
Caledonian University	OXFAM
Cancer Research UK	P&E Ltd
Castrol UK Ltd	

Centre for Ecology & Hydrology (CEH)  
 Chamber of Commerce, Glasgow  
 Chemical and Oil Recovery Association  
 Chemicals Industries Association (CIA)  
 Chief Environmental Health Officers Group, N I  
 Confederation of British Industry  
 Confederation of British Industry, Northern Ireland  
 Conoco Philips Ltd  
 Consumers in the European Community Group  
 Consumers Association  
 Convention of Scottish Local Authorities (COSLA)  
 Cookson Precious Metals Ltd  
 Co-operative Group (CWS) Ltd  
 Da Stuart Oil Co. Ltd  
 Department of Health  
 Direct Marketing Association  
 Direct Selling Association  
 Dept. for the Environment in Northern Ireland  
 (DOENI)  
 Ear Piercing Manufacturers of Europe Ltd  
 Egger (Barony) Ltd  
 Environment Agency (Chemicals Assessment Section)  
 Environment Industries Commission  
 Environmental Services Association  
 Envirospire  
 Esso Petroleum Co. Ltd  
 European Automobile Manufacturers Association  
 ETAD  
 EXCO Nobel Decorative Coatings  
 Federation of Small Businesses (5 copies)  
 FIRA International  
 Fire Brigades Union  
 FOCUS (DIY) Ltd  
 Friends of the Earth  
 Friends of the Earth (Scotland)  
 General Consumer Council for Northern Ireland  
 Going for Green (Scotland)  
 Pesticides Safety Directorate  
 Petroplus Refining Teeside Ltd  
 Royal Environmental Health Institute of Scotland (REHIS)  
 SATRA Quality Assurance Ltd., Kettering  
 Scotland Office  
 Scottish Agricultural Science Agency  
 Scottish Centre for Infection & Environmental Health  
 Scottish Consumer Council  
 Scottish Environment Protection Agency  
 Scottish Executive Environment and Rural Affairs Department  
 Scottish Natural Heritage  
 Shell UK Oil Ltd  
 Society of Chemical Industry  
 Society of Dyers & Colourists  
 Society of Local Authority Chief Executives and Senior  
 Managers  
 Society of Motor Manufacturers and Traders Limited (SMMT)  
 Solvent Industries Association  
 Somerville College, Oxford (Professor Stephen Weatherill)  
 SPICE  
 St John's College, Oxford (Mr Simon Whittaker)  
 3M, Bangor  
 Tennants Textile Colours Ltd  
 Texaco Ltd  
 Textile Finishers Association  
 Total Ltd (J Wormald; B Brown)  
 Trades Union Congress  
 Trading Standards Institute  
 Trading Standards Service (Northern Ireland)  
 UCATT  
 UK Petroleum Industries Association  
 University of Dundee (Mr Cowan Ervine)  
 University of Hull (Ms Deborah Parry)  
 University of Nottingham (Mr Peter Cartwright)  
 Wales Office  
 Welsh Consumer Council  
 Welsh Local Government Association  
 Womens' Environmental Network  
 World Wildlife Fund (WWF)

***The Consultation Code of Practice***

---

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office website at:  
<http://www.cabinet-office.gov.uk/regulation/consultation/code.asp>

***Comments or complaints***

If you wish to comment on, or make a complaint about, the way this consultation has been conducted, please contact :

Nick Van Benschoten  
DTI Consultation Co-ordinator  
Room 723  
1 Victoria Street  
London SW1H OET

 020 7215 6913  
Email: [nickbenschoten@dti.gsi.gov.uk](mailto:nickbenschoten@dti.gsi.gov.uk)