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1. INTRODUCTION

Directive 2004/42/EC of the European Parliament and the Council ("the Paints Directive") limits emissions of volatile organic compounds ("VOC") due to the use of organic solvents in certain paints, varnishes and vehicle refinishing products.

The Paints Directive aims to prevent or reduce air pollution resulting from the contribution of VOC to the formation of ground-level ozone¹ and secondary particulate matter. It complements measures to be taken at national level in order to ensure compliance with the VOC emission ceilings as set out in Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants ("the NEC Directive"). The products it covers are paints and varnishes applied to buildings, their trim and fittings and associated structures for decorative, functional and protective reasons, as well as products for vehicle refinishing².

The Paints Directive requires that the products falling under its scope and placed on the market after 1 January 2007 have a VOC content not exceeding the limit values set out in its Annex II. Stricter (Phase II) VOC limit values have applied since 1 January 2010 for paints and varnishes. The Paints Directive also requires the labelling of products to indicate their VOC content and thus help inform consumer choice. Member States must set up a monitoring programme to verify compliance with the VOC limits and labelling requirements, with regular reporting to the Commission on the results thereof.

This is the Commission's second report to the European Parliament and to the Council providing an overview of the implementation of the Paints Directive by Member States. The first report³ was adopted in 2011. The on-going review of the Thematic Strategy on Air Pollution (TSAP)⁴ includes a holistic assessment of VOC emission sources and possible cost-effective reduction measures. Therefore, no separate review of the Paints Directive has been undertaken.

¹ Ozone is formed through the reaction of VOC, nitrogen oxides and carbon monoxide in the presence of sunlight

² 'vehicle refinishing products' are defined as the products listed in the subcategories in Annex II(B) of the Paints Directive. They are used for the coating of road vehicles as defined in Directive 70/156/EEC, or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations.

³ COM(2011)297 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0297:FIN:EN:PDF>

⁴ Communication from the Commission to the Council and the European Parliament: Thematic Strategy on air pollution (COM(2005) 446 final), 21.09.2005

As a supplementary action at a European level, it should be noted there are now 'Ecolabels' for indoor and outdoor paints and varnishes⁵. These Ecolabels require, *inter alia*, stricter voluntary limitations of the VOC content of products, thus leading to further reductions in VOC emissions by more informed consumer product selection.

2. IMPLEMENTATION

2.1. Introduction

Article 7 of the Paints Directive requires Member States to report to the Commission the results of their monitoring programme to demonstrate compliance with the requirements of the Directive. It also requires Member States to report on the category and quantity of products licensed according to Article 3(3) of the Paints Directive.

Member States had to submit their second reports, covering the year 2010, by 1 July 2012 in view of the more stringent Phase II VOC limits (Annex II to the Paints Directive) that applied for paints and varnishes from 1 January 2010. To promote consistent reporting by Member States, a common format was developed and adopted by the Commission⁶.

Implementation reports have been received from all 27 Member States. These reports, and their subsequent assessment, are available via the Commission's website⁷.

This report, summarising the main findings of the assessment of information received from Member States, focuses on two facets of implementation of the Paints Directive; namely:

- what monitoring programmes have been established to check the requirements of the Paints Directive i.e. actions principally undertaken by Member State competent authorities;
- how well Member States comply with the technical requirements of the Paints Directive i.e. the implementing actions taken by the manufacturers, importers, wholesalers and retailers of paints and varnishes.

2.2. Monitoring programmes

The information for 2010, as provided by Member States, demonstrates that the monitoring of compliance with VOC content limits (Annex II) and labelling requirements (Article 4) has progressed, or remained at least at the same level, as in 2007.

⁵ Commission Decision 2009/543/EC establishing the ecological criteria for the award of the Community eco-label to outdoor paints and varnishes, and Commission Decision 2009/544/EC establishing the ecological criteria for the award of the Community eco-label to indoor paints and varnishes.

⁶ Commission Decision 2010/693/EU of 22 July 2010 (OJ L 301, 18.11.2010, p. 4)

⁷ <https://circabc.europa.eu/w/browse/d8915eeb-0b2f-4d22-824e-1d4b5d969e14>

Member States have a variety of approaches to monitoring compliance. These may involve physical checks (e.g. sampling and analysis of paint products; visual inspection of labels) and/or a more remote auditing approach with checks on the documentation submitted by producers. In some cases, the more onerous process of inspecting / sampling is only undertaken if triggered by auditing observations. To promote more effective monitoring, some Member States indicated consideration of alternative approaches to compliance verification e.g. requiring manufacturers to complete a questionnaire which is returned with product samples; self-certification schemes.

Although individual Member States showed big variations, the total **number of inspections** of premises carried out in 2010 across the EU-27 was significant, with some 4,700 inspections for checking the VOC content of products and/or their labelling. Inspections covered all actors involved in placing products on the market, i.e. the manufacture, import, wholesale and retail of paints and varnishes. At an individual Member State level, the number of reported inspections ranged from zero (three Member States) to 830.

Again with big variations at a Member State level, a large number of paint and varnish samples were **analysed for VOC content** with over 19,000 analyses in the EU-27 in 2010. Four Member States analysed over 1,000 samples (the largest number was 11,800) but five Member States undertook no analyses. The paint and varnish products sold by retailers were most often analysed (accounting for 41% of samples).

The number of **checks on product labels**, either by visual inspection or by other methods, was in the order of 121,000 across the EU-27 in 2010, although again with big Member State differences. At an individual Member State level, the number of checks ranged from zero (five Member States) to 78,000. The paint and varnish products sold by wholesalers were most often checked for label conformity (41% of all checks).

Those Member States which reported zero, or very low levels, of monitoring in 2010 cited a **number of reasons**. Many Member States were hampered by a lack of resources, particularly financial. This has been countered in some Member State competent authorities by the use of prioritisation tools (e.g. monitoring is targeted at specific products) and / or information campaigns (to increase awareness of the Paints Directive and improve compliance). There were also issues with a shortage of certified laboratory capacity for the analysis of product samples.

2.3. Compliance with VOC limits and labelling requirements

VOC limits

Annex IIA to the Paints Directive defines two sets of limit values for the maximum content of VOCs in paint products and varnishes (in gram per litre of product that is 'ready for use'). The 'Phase I limit values' applied from 1 January 2007. Stricter, 'Phase II VOC limit values, came into force on 1 January 2010. Therefore products that in 2010 were found to be non-compliant with the 'Phase I' limits were also simultaneously non-compliant with the 'Phase II' limits. For vehicle refinishing products, the VOC limit values in Annex IIB to the Paints Directive applied from 1 January 2007 and have not been modified since.

For the Phase I VOC limits the overall compliance rate was relatively high at 98.7% (259 non-compliant samples out of a total of 19,525). The highest proportion of non-compliant samples was found among wholesalers (2.5% of samples were non-compliant) and importers (2.4% of samples were non-compliant).

For the stricter Phase II VOC limits the overall compliance rate was, again, relatively high at 97.46% (500 non-compliant samples). The highest proportion of non-compliant samples was found among importers (6% of samples were non-compliant).

These high levels of compliance indicate that, where they are checked, the VOC limits are generally followed across the EU-27 although there remain opportunities for moving the compliance closer to 100%. Overall compliance levels are similar to those reported for the year 2007.

Labelling requirements

Out of some 121,000 samples checked for labels in 2010, 94.2% were found to be compliant. The highest rate of non-compliance was amongst importers. Differences in the numbers of samples / labels analysed mean that it is not possible to properly compare non-compliance levels between Member States.

The reasons for non-compliance are not evident from the data provided in the Member States' reports. Although compliance levels appear to have improved considerably since the year 2007, when breaches of the labelling requirements were around 20%, there is scope for improved compliance checking, especially in those Member States where monitoring is not currently undertaken.

Non-compliant products

In most cases, Member States which detected non-compliance with the VOC content limits or labelling requirements also provided information on the sub-categories of the non-compliant products according to Annex I of the Paints Directive.

Most non-compliance with both the VOC content limits and, at the same time the labelling requirements, related to category 1.1d products ('Interior/exterior trim and cladding paints for wood, metal or plastic'). Three more categories of products were reported as non-compliant with both the requirements of VOC content limits and labelling; namely categories 1.1a 'matt coatings for interior walls and ceilings', 1.1e 'interior/exterior trim varnishes and woodstains' and 1.1i. 'one-pack performance coatings'.

A larger number of sub-categories reported non-compliance with the labelling requirements, compared to the VOC limits: in all but two sub-categories among paints and varnishes and in all sub-categories of vehicle refinishing product.

Actions to ensure compliance

The most common sanction taken by Member States in the case of non-compliance with the VOC content limits was withdrawal of products from the market, as required by the Paints Directive.

In response to a breach of the labelling requirements, Member States most commonly requested operators to correct the mistake within a certain period of time in order to avoid prosecution or financial penalties.

Prosecutions were only mentioned by one Member State and this same Member State requests operators to drive changes through their supply chain.

Some Member States reported that, instead of penalising operators for non-compliance, they constructively advised operators on the requirements of the Paints Directive and the changes required to ensure compliance.

3. CONCLUSION AND OUTLOOK

The information received from Member States under Article 7 of the Paints Directive shows that, as of 2010, most Member States had established monitoring to check the compliance of paint and varnish products that are placed on the market. However, there remain a small number of deficient Member States that had still not established adequate monitoring programmes.

In those Member States that undertake monitoring, there is a big range of monitoring frequency. These Member States show a generally good compliance with the VOC limit values prescribed by the Paints Directive, with the highest share of non-compliance generally found in imported paints. However, there appears to be a need for better enforcement of the labelling requirements.

The Member States that are lagging behind are urged to rapidly take the necessary measures to fully implement the obligations regarding monitoring programmes.

The Commission will closely monitor progress on these issues and will continue to assist Member States in further improving their level of performance, both through various supporting activities and appropriate enforcement action.

Member States are therefore recommended to continue their efforts in targeting monitoring and enforcement where it is most effective and efficient in reducing the placing on the market of non-compliant paint and varnish products.