

COUNCIL REGULATION (EC) No 120/97

of 20 January 1997

amending Regulation (EC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189c ⁽³⁾,

Having regard to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community ⁽⁴⁾, and in particular Article 16 thereof,

Whereas the European Community has been a Party to the Basle Convention on the control of transboundary movements of hazardous waste and their disposal since 7 February 1994;

Whereas at the Second Conference of the Parties to the Basle Convention a Decision ('Decision II/12') was adopted by consensus to prohibit immediately all exports of hazardous wastes which are destined for final disposal from OECD to non-OECD States and to prohibit as of 1 January 1998, all exports of hazardous wastes which are destined for recycling or recovery operations from OECD to non-OECD States;

Whereas at the Third conference of the Parties to the Basle Convention a Decision ('Decision III/1') was adopted by consensus to amend the Convention to prohibit all exports of hazardous wastes which are destined for disposal from States listed in Annex VII to the Convention to States not so listed, and to prohibit as of 1 January 1998 all exports of hazardous wastes referred to in Article 1 (1) (a) of the Convention which are destined for recovery operations from States listed in Annex VII to the Convention to States not so listed;

Whereas Community definitions of hazardous waste do not entirely concur at the present time with those of the Basle Convention and as this could result in waste covered by the Basle Convention's export ban still being exported from the Community, the Community definitions and lists in this respect must be adjusted;

Whereas it is necessary to establish an Annex V to Regulation (EEC) No 259/93, comprising hazardous wastes to which the Basle Convention's export ban shall apply;

Whereas the Commission should, not later than 1 January 1998, review and amend the said Annex V, taking into full consideration those wastes featuring on the list of wastes adopted in accordance with Article 1 (4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽⁵⁾ and any lists of wastes characterized as hazardous for the purposes of the Basle Convention; whereas exports of wastes listed in the said Annex V for recovery, except exports to countries to which the OECD Decision applies, should be prohibited from 1 January 1998 onwards;

Whereas it may be necessary from time to time to review and amend the said Annex V to reflect agreement among the Parties to the Basle Convention as to what wastes should be characterized as hazardous for the purposes of the Convention;

Whereas the Parties are requested to cooperate and work actively to ensure the effective implementation of Decisions II/12 and III/1 of the conferences of the Parties to the Basle Convention;

Whereas with respect to waste destined for final disposal, Article 14 of Regulation (EEC) No 259/93 already prohibits all exports of such kind of waste to non-OECD States; whereas Article 18 of that Regulation prohibits all exports of waste to ACP States;

Whereas currently the said Regulation does not provide for a total prohibition of exports of hazardous waste destined for recycling or recovery operations to non-OECD States;

Whereas the said Regulation should therefore be amended,

⁽¹⁾ OJ No C 164, 30. 6. 1995, p. 8.

⁽²⁾ OJ No C 18, 22. 1. 1996, p. 18.

⁽³⁾ Opinion of the European Parliament of 16 January 1996 (OJ No C 32, 5. 2. 1996, p. 32), Council Common Position of 28 May 1996 (OJ No C 219, 27. 7. 1996, p. 19) and Decision of the European Parliament of 18 September 1996 (OJ No C 320, 28. 10. 1996, p. 75).

⁽⁴⁾ OJ No L 30, 6. 2. 1993, p. 1. Regulation as amended by Commission Decision 94/721/EC (OJ No L 288, 9. 11. 1994, p. 36).

⁽⁵⁾ OJ No L 377, 31. 12. 1991, p. 20. Directive as amended by Directive 94/31/EC (OJ No L 168, 2. 7. 1994, p. 28).

HAS ADOPTED THIS REGULATION:

Article 1

Article 16 (1) of Regulation (EEC) No 259/93 shall be replaced by the following:

'1. All exports for recovery of waste listed in Annex V for recovery shall be prohibited except those to:

- (a) countries to which the OECD Decision applies;
- (b) other countries:

- which are Parties to the Basle Convention and/or with which the Community, or the Community and its Member States, have concluded bilateral or multilateral or regional agreements or arrangements in accordance with Article 11 of the Basle Convention and paragraph 2 of this Article. Any such exports shall however be prohibited from 1 January 1998 onwards,
- with which individual Member States have concluded bilateral agreements and arrangements prior to the date of application of this Regulation, insofar as these are compatible with Community legislation and in accordance with Article 11 of the Basle Convention and paragraph 2 of this Article. These agreements and arrangements shall be notified to the Commission within three months of the date of application of this Regulation or of the date that such agreements are brought into effect, whichever is earlier, and shall expire when agreements or arrangements are concluded in accordance with the first indent. Any such exports shall however be prohibited as from 1 January 1998 onwards.

The Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, shall, as soon as possible, and at the latest before 1 January 1998, review and amend Annex V to this Regulation taking into full consideration those wastes featuring on the list of wastes adopted in accordance with Article 1 (4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (*) and any lists of wastes characterized as hazardous for the purposes of the Basle Convention.

Annex V shall be reviewed and further amended as appropriate under the same procedure. In particular, the Commission shall review the Annex in order to give effect to decisions of the Parties to the Basle Convention as to what waste should be characterized as hazardous for the purposes of the Convention and to amendments of the list of wastes adopted in accordance with Article 1 (4) of Directive 91/689/EEC.

(*) OJ No L 377, 31. 12. 1991, p. 20. Directive as amended by Directive 94/31/EC (OJ No L 168, 2. 7. 1994, p. 28).'

Article 2

The following shall be inserted as Annex V to Regulation (EEC) No 259/93:

'ANNEX V

Wastes listed in Annex III to this Regulation.

Wastes listed in Annex IV to this Regulation.'

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 January 1997.

For the Council

The President

J. VAN AARTSEN