

Proposal for a Council Directive on hazardous waste*COM(88) 399 final — SYN 165**(Submitted by the Commission on 16 August 1988)**(88/C 295/04)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas any disparity between the laws of the Member States on the disposal of hazardous waste can distort the conditions of competition and thereby directly affect the establishment and functioning of the internal market; whereas it is therefore necessary to approximate laws in this field;

Whereas Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste⁽¹⁾ established Community rules on the disposal of hazardous waste; whereas, in order to take account of experience gained in the implementation of that Directive by the Member States, it is necessary to amend the rules and to replace Directive 78/319/EEC by this Directive;

Whereas the action programme of the European Communities on the environment, which was the subject of the Resolution of 19 October 1987 of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council, on the continuation and implementation of a European Community policy and action programme on the environment (1987 to 1992)⁽²⁾, provides for Community measures to improve the conditions under which hazardous wastes are disposed of;

Whereas the Commission's proposal takes as a base a high level of environmental protection with as much regard to the definition as to the disposal of hazardous waste;

Whereas it is necessary, in order to improve the efficiency of the management of hazardous waste in the Community, to use a precise and uniform definition of hazardous waste based on experience;

Whereas the general rules applying to waste disposal, which are laid down by Council Directive 75/442/EEC⁽³⁾, as amended by Directive . . ., also apply to the disposal of hazardous waste;

Whereas the correct disposal of hazardous waste necessitates additional, more stringent rules to take account of the special nature of such waste; whereas it is necessary to ensure that disposal, and in particular transport, of this waste is monitored in the fullest manner possible;

Whereas when Member States charge levies on the monies used to cover the cost of disposing of hazardous waste following the 'polluter pays' principle, the yield thereof may be used, among other things, for financing supervisory measures relating to hazardous waste as well as financing research pertaining to the elimination of hazardous waste;

Whereas the data currently available on the qualitative and quantitative aspects of waste management is wholly inadequate; whereas it is therefore necessary to establish at Community level a system of mutual information on quantities of hazardous waste and the methods of correct disposal of this waste;

Whereas it must be possible rapidly to adapt the provisions of this Directive to technical progress and whereas the Committee on the adaptation to technical progress set up by Directive 75/442/EEC must also be empowered to adapt the provisions of this Directive to technical progress;

Whereas Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste⁽⁴⁾, which lays down common rules for transfrontier movements of such waste, refers in several Articles to Directive 78/319/EEC and whereas it is

⁽¹⁾ OJ No L 84, 31. 3. 1978, p. 43.

⁽²⁾ OJ No C 328, 7. 12. 1987, p. 1.

⁽³⁾ OJ No L 194, 25. 7. 1975, p. 47.

⁽⁴⁾ OJ No L 326, 13. 12. 1985, p. 31.

therefore necessary to make amendments of form to the text of Directive 84/631/EEC in order to incorporate explicit references to the corresponding provisions of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The object of this Directive is to approximate the laws of the Member States on the controlled disposal of hazardous waste.

2. For the purposes of this Directive:

'hazardous waste' means:

- any waste falling within one of the categories or types of waste specified in Annex I A, unless it can be proved to have none of the properties listed in Annex III;
- any waste falling within one of the categories specified in Annex I B and containing one of the substances or materials listed in Annex II, unless it can be proved to have none of the properties listed in Annex III;
- any other waste displaying any of the properties listed in Annex III.

Article 2

Hazardous waste covered by specific Community rules shall be excluded from the scope of this Directive.

Article 3

Member States shall take the necessary measures to prohibit the uncontrolled abandonment, discharge, disposal and transport of hazardous waste.

Article 4

Member States shall take the necessary measures to:

- prohibit the mixing of hazardous wastes with other wastes, substances or materials in the course of the disposal operations except for the purposes of Article 4 of Directive 75/442/EEC or for the purpose of improving safety during disposal;
- require that hazardous waste be kept separate from other waste during disposal operations where this is necessary for technical reasons;
- require that on every site used for the depositing of hazardous waste the waste be identified and recorded.

Article 5

1. The provisions of Article 8 of Directive 75/442/EEC on permits shall apply to any establishment or undertaking which treats hazardous wastes, including those carrying out the operations specified in Annex II B to Directive 75/442/EEC.

2. Member States may require establishments or undertakings which collect and/or transport hazardous waste to obtain a permit. The permit issued for such transport operations by a Member State shall be recognized by other Member States without further requirements.

Article 6

Any person producing or holding hazardous waste without the permit referred to in Article 5 shall as soon as possible have such waste disposed of by an establishment or undertaking authorized or supervised by the competent authorities.

Article 7

1. Any establishment or undertaking which produces, holds or disposes of hazardous waste shall:

- be subject to regular inspections by the competent authorities;
- keep a record of the quantity, nature, physical and chemical characteristics and origin of such waste, and of the methods and sites used for disposing of the waste, including the date of receipt and surrender;
- supply this information to the competent authorities on request.

2. Documentary evidence that the disposal operations have been carried out shall be kept for a least two years. This evidence shall, where necessary, be sent to the competent authorities of the Member State concerned.

Article 8

1. Member States shall take the necessary measures to ensure that the following conditions are met in the course of collection, transport and temporary storage:

- (a) the waste is properly packaged;
- (b) the containers carry appropriate labels stating the nature, composition and quantity of the waste and the telephone number(s) of the person(s) to be contacted in case of necessity;
- (c) instructions are supplied with the waste regarding the procedure to be followed in the event of danger or accident.

2. The conditions set out in paragraph 1 shall be deemed to have been met in the case of transport operations where a Member State applies equivalent provisions under the international transport conventions listed in Annex II to Directive 84/631/EEC to which they are party, provided that those conventions cover hazardous waste.

3. The inspections provided for in Article 7 regarding collection and transport operations shall cover in particular:

- the technical requirements concerning the vehicles;
- training for the drivers or persons responsible for the transport operations.

The inspection procedures must be equivalent to the provisions applicable to the carriage of hazardous goods laid down in the international transport conventions listed in Annex II to Directive 84/631/EEC:

4. Where hazardous waste is transferred for the purpose of disposal, it shall be accompanied by an identification form containing the details specified in Section A of Annex I to Directive 84/631/EEC.

Article 9

In accordance with the 'polluter pays' principle, the cost of disposing of hazardous waste, less any proceeds from re-use or reclamation, shall be borne by:

- the holder who consigns the waste to an undertaking or establishment which carries out waste disposal;
- and/or the previous holders or the producer of the product which gave rise to the waste.

Article 10

1. The competent authorities of the Member States shall draw up and keep up to date plans for the disposal of hazardous waste. The plans shall cover in particular:

- the types and quantities of waste to be disposed of;
- the methods of disposal;
- the authorized disposal sites and centres;
- the technical standards and requirements laid down;
- disused tips and contaminated sites which need to be kept under surveillance or reclaimed.

The competent authorities may include other specific aspects, including the estimated cost of the disposal operations.

2. The competent authorities shall make public the plans referred to in paragraph 1. Member States shall transmit these plans to the Commission by 1 January 1990.

3. The Commission shall compare these disposal plans, and in particular the methods of disposal and the technical standards laid down. Where necessary, the Commission shall prepare proposals to harmonize the technical disposal standards.

Article 11

In cases of emergency or grave danger, Member States shall take all necessary steps, including, where appropriate, temporary derogations from this Directive, to ensure that hazardous waste is so dealt with as not to constitute a threat to the population or the environment. The Member States shall inform the Commission of such derogations.

Article 12

1. Every three years, and for the first time on 1 September 1990, Member States shall send the Commission a report on the measures taken to implement this Directive. This report shall be drawn up as part of the report provided for in Article 12(1) of Directive 75/442/EEC in accordance with the procedures laid down therein.

2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a consolidated report as part of the report provided for in Article 12 (2) of Directive 75/442/EEC in accordance with the procedures laid down therein.

3. In addition, by 1 January 1991 the Member States shall send the Commission the following information for every establishment or undertaking holding a permit:

- name and address;
- the method used to treat the waste;
- the types of waste which can be treated;
- the scale of charges for treatment;
- the nature of waste resulting from the treatment;
- operating data such as:
 - the actual quantity of waste treated during the year;
 - capacity utilization level in units of time.

Once a year, Member States shall inform the Commission of any changes in this information.

The Commission shall make this information available on request to competent authorities in the Member States.

Article 13

The amendments necessary for adapting the Annexes to this Directive to scientific and technical progress shall be adopted in accordance with the procedure laid down in Article 12c of Directive 75/442/EEC.

Article 14

The Committee for adaptation to scientific and technical progress set up under Article 12b of Directive 75/442/EEC shall also be responsible for examining the amendments considered pursuant to Article 13 of this Directive.

Article 15

Member States shall prohibit all acts which intentionally or in effect circumvent the provisions of this Directive.

Article 16

Directive 84/631/EEC is hereby amended as follows:

- (a) in Article 2 (1), point (f) is replaced by the following:
'(f) 'disposal' means disposal within the meaning of Article 1(b) of Directive 75/442/EEC';
- (b) in Article 15, the words 'Article 18 of Directive 78/319/EEC' shall be replaced by the words 'Article 12b of Directive 75/442/EEC'.

Article 17

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 1990. They shall forthwith inform the Commission thereof.

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

Article 18

1. Directive 78/319/EEC is hereby repealed with effect from 1 January 1990.

2. References to the Directive repealed by paragraph 1 shall be understood as references to this Directive. References to Articles of the repealed Directive are to be read in accordance with the correspondence table contained in Annex IV.

Article 19

This Directive is addressed to the Member States.

*ANNEX 1***CATEGORIES OR GENERIC TYPES OF HAZARDOUS WASTES (*)**

(wastes may be liquid, sludge or solid in form)

ANNEX A

Wastes which consist of:

- 1 Anatomical substances; hospital and other clinical wastes
- 2 Pharmaceuticals, drugs, medicines and veterinary compounds
- 3 Wood preservatives
- 4 Biocides and phyto-pharmaceutical substances
- 5 Residue from substances employed as solvents
- 6 Halogenated organic substances not employed as solvents excluding inert polymerized materials
- 7 Tempering salts containing cyanides
- 8 Mineral oils and oily substances (e.g. cutting sludges, etc.)
- 9 Oil/water, hydrocarbon/water mixtures, emulsions
- 10 Substances containing PCBs and/or PCTs (e.g. dielectrics, etc.)
- 11 Tarry materials arising from refining, distillation and any pyrolytic treatment (e.g. still bottoms, etc.)

(*) Certain redundancies with entries found in Annex II are intentional.

- 12 Inks, dyes, pigments, paints, laquers, varnishes
- 13 Resins, latex, plasticizers, glues/adhesives
- 14 Chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known (e.g. laboratory residues, etc.)
- 15 Pyrotechnics and other explosive materials
- 16 Photographic chemicals and processing materials
- 17 Any material contaminated with any congener of polychlorinated dibenzo-furan
- 18 Any material contaminated with any congener of polychlorinated dibenzo-p-dioxin

ANNEX B

Wastes which contain any of the constituents listed in Annex II and consisting of:

- 19 Animal or vegetable soaps, fats, waxes
- 20 Non-halogenated organic substances not employed as solvents
- 21 Inorganic substances without metals or metal compounds
- 22 Ashes and/or cinders
- 23 Soil, sand, clay including dredging spoils
- 24 Non-cyanidic tempering salts
- 25 Metallic dust, powder
- 26 Spent catalyst materials
- 27 Liquids or sludges containing metals or metal compounds
- 28 Residue from pollution control operations (e.g. baghouse dusts, etc.) except (29), (30) and (33)
- 29 Scrubber sludges
- 30 Sludges from water purification plants
- 31 Decarbonization residue
- 32 Ion-exchange column residue
- 33 Sewage sludges, untreated or unsuitable for use in agriculture
- 34 Waste waters not otherwise taken into account in Annex I A
- 35 Residue from cleaning of tanks and/or equipment
- 36 Contaminated equipment
- 37 Contaminated containers (e. g. packaging, gas cylinders, etc.) whose contents included one or more of the constituents listed in Annex II
- 38 Batteries and other electrical cells
- 39 Vegetable oils
- 40 Materials resulting from selective waste collections from households and which exhibit any of the characteristics listed in Annex III
- 41 Any other wastes which contain any of the constituents listed in Annex II

*ANNEX II***CONSTITUENTS OF WASTES WHICH RENDER THEM HAZARDOUS WASTES (*)**

Wastes having as constituents:

- C 1 Beryllium; beryllium compounds
- C 2 Vanadium compounds
- C 3 Chromium (VI) compounds
- C 4 Cobalt compounds
- C 5 Nickel compounds
- C 6 Copper compounds
- C 7 Zinc compounds
- C 8 Arsenic; arsenic compounds
- C 9 Selenium; selenium compounds
- C 10 Silver compounds
- C 11 Cadmium; cadmium compounds
- C 12 Tin compounds
- C 13 Antimony; antimony compounds
- C 14 Tellurium; tellurium compounds
- C 15 Barium compounds, excluding barium sulphate
- C 16 Mercury; mercury compounds
- C 17 Thallium; thallium compounds
- C 18 Lead; lead compounds
- C 19 Inorganic sulphides
- C 20 Inorganic fluorine compounds, excluding calcium fluoride
- C 21 Inorganic cyanides
- C 22 The following alkaline or alkaline earth metals: lithium, sodium, potassium, calcium, magnesium in uncombined form
- C 23 Acidic solutions or acids in solid form
- C 24 Basic solutions or bases in solid form
- C 25 Asbestos (dust and fibres)
- C 26 Phosphorus; phosphorus compounds, excluding mineral phosphates
- C 27 Metal carbonyls
- C 28 Peroxides
- C 29 Chlorates
- C 30 Perchlorates
- C 31 Azides

(*) Certain redundancies with generic types of hazardous wastes listed in Annex I are intentional.

- C 32 PCBs and/or PCTs
- C 33 Pharmaceutical or veterinary compounds
- C 34 Biocides and phyto-pharmaceutical substances (e.g. pesticides, etc.)
- C 35 Infectious substances
- C 36 Creosotes
- C 37 Isocyanates, thiocyanates
- C 38 Organic cyanides (e.g. nitriles, etc.)
- C 39 Phenols; phenol compounds
- C 40 Halogenated solvents
- C 41 Organic solvents, excluding halogenated solvents
- C 42 Organohalogen compounds, excluding inert polymerized materials and other substances referred to in this Annex
- C 43 Aromatic compounds; polycyclic and heterocyclic organic compounds
- C 44 Aliphatic amines
- C 45 Aromatic amines
- C 46 Ethers
- C 47 Substances of an explosive character, excluding those listed elsewhere in this Annex
- C 48 Sulphur organic compounds
- C 49 Any congener of polychlorinated dibenzo-furan
- C 50 Any congener of polychlorinated dibenzo-p-dioxin
- C 51 Hydrocarbons and their oxygen, nitrogen and/or sulphur compounds not otherwise taken into account in this Annex

ANNEX III

CHARACTERISTICS OF WASTES WHICH RENDER THEM HAZARDOUS WASTES

- H 1 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene;
- H 2 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances;
- H 3-A 'Highly flammable':
 - liquid substances and preparations having a flash point below 21 °C (including extremely flammable liquids), or
 - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
 - solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or
 - gaseous substances and preparations which are flammable in air at normal pressure, or
 - substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities;
- H 3-B 'Flammable': liquid substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C;
- H 4 'Irritant': non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation;

- H 5 'Harmful': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks;
- H 6 'Toxic': substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death;
- H 7 'Carcinogenic': substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence;
- H 8 'Corrosive': substances and preparations which may destroy living tissue on contact;
- H 9 'Infectious': substances containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms;
- H 10 'Teratogenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence;
- H 11 'Mutagenic': substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence;
- H 12 Substances or preparations which release toxic or very toxic gases in contact with water, air or an acid;
- H 13 Capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above;
- H 14 'Ecotoxic': substances and preparations which present or may present immediate or delayed risks for one or more sectors of the environment.

Notes

1. Attribution of the hazard characteristics 'toxic' (and 'very toxic'), 'harmful', 'corrosive' and 'irritant' is made on the basis of the criteria laid down by Annex VI, part I A and part II B of Council Directive 67/548/EEC (*) as amended by Council Directive 79/831/EEC of 18 September 1979 (?).
2. With regard to attribution of the characteristics 'carcinogenic', 'teratogenic' and 'mutagenic', and with account taken of the state of the art, additional criteria are contained in the guide to the classification and labelling of dangerous substances and preparations of Annex VI (part II D) to Directive 67/548/EEC as amended by Commission Directive 83/467/EEC of 29 July 1983 (?).

Test methods

The test methods serve to give specific meaning to the definitions given in Annex III.

The methods to be used are those described in Annex V to Directive 67/548/EEC as amended by Commission Directive 84/449/EEC of 25 April 1984 (*) or by subsequent Commission directives adapting Directive 67/548/EEC to technical progress. These methods are themselves based on the work and recommendations of the competent international bodies, in particular the OECD.

(*) OJ No L 196, 16. 8. 1967.

(?) OJ No L 259, 15. 10. 1979.

(*) OJ No L 257, 16. 9. 1983.

(*) OJ No L 251, 19. 9. 1984.

*ANNEX IV***CORRESPONDENCE TABLE BETWEEN THE ARTICLES OF DIRECTIVE 78/319/EEC, WHICH HAS BEEN REPEALED AND THE ARTICLES OF DIRECTIVE/EEC ON HAZARDOUS WASTE**

<i>Directive 78/319/EEC</i>	<i>Directive/EEC</i>
Articles repealed	New articles
Article 1	Article 1 (2)
Article 2	Article 8 (2)
Article 3	Article 2
Article 4	— deleted (Article 3 (1) of Directive 75/442/EEC)
Article 5 (1)	— deleted (Article 4 of Directive 75/442/EEC)
Article 5 (2)	Article 3
Article 6	— deleted (Article 5 of Directive 75/442/EEC)
Article 7	Article 4
Article 8	— deleted
Article 9	Article 5 (1)
Article 10	Article 6
Article 11	Article 9
Article 12	Article 10
Article 13	Article 11
Article 14 (1)	Article 7 (1)
Article 14 (2)	Article 8
Article 14 (3)	Article 7 (2)
Article 15	Article 7 (1)
Article 16	Article 12
Article 17	Article 13
Article 18	Article 14
Article 19	— deleted (Article 12c of Directive 75/442/EEC)
Article 20	Article 15
Article 21	Article 17
Article 22	Article 19
Annex	Annex II
