

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 20 March 1978

on toxic and dangerous waste

(78/319/EEC)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

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

Whereas any disparity between the provisions on disposal of toxic and dangerous waste already applicable or in preparation in the various Member States may create unequal conditions of competition and thus directly affect the functioning of the common market; whereas it is therefore necessary to approximate laws in this field, as provided for in Article 100 of the Treaty;

Whereas it seems necessary that this approximation of laws be accompanied by Community action so that one of the aims of the Community in the sphere of protection of the environment and improvement of the quality of life can be achieved by more extensive rules; whereas certain specific provisions to this effect should therefore be laid down; whereas Article 235 of the Treaty should be invoked as the powers required

for this purpose have not been provided for by the Treaty;

Whereas the 1973⁽³⁾ and 1977⁽⁴⁾ programmes of action of the European Communities on the environment stress the need for Community action in order to control the disposal of toxic and dangerous waste;

Whereas the essential objective of all provisions relating to the disposal of toxic or dangerous waste must be the protection of human health and the safeguarding of the environment against harmful effects caused by the collection of toxic and dangerous waste as well as its carriage, treatment, storage and tipping;

Whereas the prevention, recycling and recovery of toxic and dangerous waste and the use of recovered materials should be encouraged in order to conserve natural resources;

Whereas in order to ensure an effective protection of the environment, provision should be made for a uniform system of permits for undertakings which store, treat and/or tip toxic and dangerous waste; whereas unauthorized holders of toxic and dangerous waste should have it stored and/or treated only by authorized undertakings;

Whereas that proportion of the cost of the disposal of toxic and dangerous waste not covered by the proceeds of treating the waste must be defrayed in accordance with the 'polluter pays' principle;

(1) OJ No C 30, 17. 2. 1977, p. 27.

(2) OJ No C 77, 30. 3. 1977, p. 5.

(3) OJ No C 112, 20. 12. 1973, p. 3.

(4) OJ No C 139, 13. 6. 1977, p. 3.

Whereas provision should be made for a system of monitoring and supervision of all installations, establishments, or undertakings which produce, hold or dispose of toxic and dangerous waste, for the keeping of proper records regarding disposal, to ensure that any carriage of toxic and dangerous waste in the course of its disposal is accompanied by an identification form, and for the drawing up of programmes which take into account the various waste disposal operations;

Whereas, in order to coordinate action in this field, Member States should draw up a situation report on the disposal of toxic and dangerous waste;

Whereas technical progress necessitates rapid adaptation of the list of the toxic and dangerous waste to which this Directive applies: whereas, in order to facilitate the introduction of the measures required for this purpose, a procedure should be provided for whereby close cooperation would be established between the Member States and the Commission within a Committee on Adaptation to Technical Progress established under this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

- 7
- (a) 'waste' means any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force;
- 7
- (b) 'toxic and dangerous waste' means any waste containing or contaminated by the substances or materials listed in the Annex to this Directive of such a nature, in such quantities or in such concentrations as to constitute a risk to health or the environment;
- (c) 'disposal' means
- the collection, sorting, carriage and treatment of toxic and dangerous waste, as well as its storage and tipping above or under ground;
 - the transformation operations necessary for its recovery, re-use or recycling.

Article 2

When Member States which are parties to one or more international conventions concerning the carriage of dangerous goods are applying those conventions, this shall be adequate for the purposes of this Directive so far as carriage is concerned, provided that the measures being applied in implementation of the

conventions are at least as stringent as those required for the implementation of the Directive.

Article 3

The following shall be excluded from the scope of this Directive:

- (a) radioactive waste;
 - (b) animal carcasses and agricultural waste of faecal origin;
 - (c) explosives;
 - (d) hospital waste;
 - (e) effluents discharged into sewers and water-courses;
 - (f) emissions to the atmosphere;
 - (g) household waste;
 - (h) mining waste;
 - (i) other toxic and dangerous waste covered by specific Community rules.
- exemptions*

Article 4

Member States shall take appropriate steps to encourage, as a matter of priority, ⁽¹⁾ the prevention of toxic and dangerous waste, ⁽²⁾ its processing and recycling, ⁽³⁾ the extraction of raw materials, and possibly of energy therefrom, and any other process for the re-use of such waste. ⁽⁴⁾ ⁽⁵⁾

Article 5

1. Member States shall take the necessary measures to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment, and in particular:

- without risk to water, air, soil, plants or animals;
- without causing a nuisance through noise or odours;
- without adversely affecting the countryside or places of special interest.

2. Member States shall in particular take the necessary steps to prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9 (1).

Control illegal dumping

Article 6

Member States shall designate or establish the competent authority or authorities to be responsible, in a given area, for the planning, organization, authorization and supervision of operations for the disposal of toxic and dangerous waste.

Article 7

Member States shall take the necessary steps to ensure that:

- toxic and dangerous waste is, where necessary, kept separate from other matter and residues when being collected, transported stored or deposited;
- the packaging of toxic and dangerous waste is appropriately labelled, indicating in particular the nature, composition and quantity of the waste;
- such toxic and dangerous waste is recorded and identified in respect of each site where it is or has been deposited.

Article 8

Member States may at any time take more stringent measures with regard to toxic and dangerous waste than those provided for in this Directive.

Article 9

1. Installations, establishments or undertakings which carry out the storage, treatment and/or deposit of toxic and dangerous waste must obtain a permit from the competent authorities. Such waste may be stored, treated, and/or deposited only by installations, establishments or undertakings holding such permits. Undertakings engaged in the carriage of toxic and dangerous waste shall be controlled by the competent authorities of the Member States.

2. The permit referred to in paragraph 1 shall cover in particular:

- the type and quantity of waste;
- the technical requirements;
- the precautions to be taken;
- the disposal site(s);
- the methods of disposal.

This permit may also lay down the specific information to be made available at the request of the competent authorities.

3. Permits may include conditions and obligations. They may be granted for a specified period and may be renewed.

Article 10

Any person producing or holding toxic and dangerous waste without the permit referred to in Article 9 (1) shall as soon as possible have such waste stored, treated and/or deposited by an installation, establishment or undertaking authorized to do so under the said Article.

Article 11

1. In accordance with the 'polluter pays' principle, the cost of disposing of toxic and dangerous waste, less any proceeds from treating the waste, shall be borne by:

- the holder who has waste handled by a waste collector or by an installation, establishment or undertaking referred to in Article 9 (1);
- and/or
- the previous holders or the producer of the product from which the waste came.

2. If Member States charge levies on the monies used to cover the costs referred to in paragraph 1, the yield thereof may also be used for the following purposes:

- financing control measures relating to toxic and dangerous waste;
- financing research pertaining to the elimination of toxic and dangerous waste.

Article 12

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

- the type and quantity of waste to be disposed of;
- the methods of disposal;
- specialized treatment centres where necessary;
- suitable disposal sites.

The competent authorities of the Member States may include other specific aspects, in particular the estimated cost of the disposal operations.

2. The competent authorities shall make public the plans referred to in paragraph 1. The Member States shall forward these plans to the Commission.

3. The Commission, together with the Member States, shall arrange for regular comparisons of the plans in order to ensure that implementation of this Directive is sufficiently coordinated.

Article 13

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 toxic and dangerous 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.

labelling
packaging
record
keeping

licensing
of
facilities

Article 14

1. Any installation, establishment, or undertaking which produces, holds and/or disposes of toxic and dangerous waste shall:

— 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 such waste, including the dates of receipt and disposal;

and/or

— make this information available to the competent authorities on request.

2. When toxic and dangerous waste is transported in the course of disposal it shall be accompanied by an identification form containing at least the following details:

- nature;
- composition;
- volume or mass of the waste;
- name and address of the producer or of the previous holder(s);
- name and address of the next holder or of the final disposer;
- location of the site of final disposal where known.

3. Documentary evidence that the disposal operations have been carried out shall be kept for as long as the Member States deem necessary.

This evidence shall, where necessary, be addressed to the relevant authorities of the Member States concerned.

Article 15

1. Any installation, establishment or undertaking producing holding or disposing of toxic and dangerous waste shall be subject to inspection and supervision by the competent authorities to ensure that the provisions adopted in application of this Directive and the terms of any authorization are fulfilled.

2. To this end, Member States shall take the necessary measures to ensure that the installations, establishments or undertakings concerned afford the representatives of the competent authorities all necessary assistance to enable them to carry out any examinations, inspections or investigations concerning the waste, to take samples and to gather any information necessary for the fulfilment of their duties.

Article 16

1. Every three years, and for the first time three years following the notification of this Directive,

Member States shall draw up a situation report on the disposal of toxic and dangerous waste in their respective countries and shall forward it to the Commission. The Commission shall circulate this report to the other Member States.

2. The Commission shall report every three years to the Council and to the European Parliament on the application of this Directive.

Article 17

1. The amendments necessary for adapting this Directive to scientific and technical progress shall be:

- to state the name and composition of the toxic and dangerous substances and materials listed in the Annex;
- to add to the Annex toxic and dangerous substances and materials unknown at the time of notification of this Directive.

They shall be adopted in accordance with the procedure referred to in Article 19.

2. In adapting the Annex to technical and scientific progress, account shall be taken of the immediate or long term hazard to man and the environment presented by waste by reason of its toxicity, persistence, bioaccumulative characteristics, physical and chemical structure and/or quantity.

Article 18

1. A Committee for adapting this Directive to technical progress (hereinafter called 'the Committee') is hereby set up. It shall consist of representatives of the Member States and be chaired by a representative of the Commission.

2. The Committee shall draw up its rules of procedure.

Article 19

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time limit which may be determined by the chairman according to the urgency of the matter. It shall decide by a majority of 41 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

record
keeping

list

3. (a) The Commission shall adopt the measures envisaged where these are in accordance with the opinion of the Committee.
- (b) Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion has been given, the Commission shall forthwith propose to the Council the measures to be adopted. The Council shall act by a qualified majority.
- (c) If, within three months of the proposal being submitted to it, the Council has not acted, the measures proposed shall be adopted by the Commission.

Article 20

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

Article 21

1. Member States shall bring into force the measures necessary to comply with this Directive

within 24 months of its notification. They shall forthwith inform the Commission thereof.

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

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 20 March 1978.

For the Council

The President

K. HEINESEN

ANNEX

List of toxic or dangerous substances and materials

The following list consists of certain toxic or dangerous substances and materials selected as requiring priority consideration

1	Arsenic ; arsenic compounds
2	Mercury ; mercury compounds
3	Cadmium ; cadmium compounds
4	Thallium ; thallium compounds
5	Beryllium ; beryllium compounds
6	Chrome 6 compounds
7	Lead ; lead compounds
8	Antimony ; antimony compounds
9	Phenols ; phenol compounds
10	Cyanides, organic and inorganic
11	Isocyanates
12	Organic-halogen compounds, excluding inert polymeric materials and other substances referred to in this list or covered by other Directives concerning the disposal of toxic or dangerous waste
13	Chlorinated solvents
14	Organic solvents
15	Biocides and phyto-pharmaceutical substances
16	Tarry materials from refining and tar residues from distilling
17	Pharmaceutical compounds
18	Peroxides, chlorates, perchlorates and azides
19	Ethers
20	Chemical laboratory materials, not identifiable and/or new, whose effects on the environment are not known
21	Asbestos (dust and fibres)
22	Selenium ; selenium compounds
23	Tellurium ; tellurium compounds
24	Aromatic polycyclic compounds (with carcinogenic effects)
25	Metal carbonyls
26	Soluble copper compounds
27	Acids and/or basic substances used in the surface treatment and finishing of metals