II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 6 December 1984

on the supervision and control within the European Community of the transfrontier shipment of hazardous waste

(84/631/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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the 1973 (4), 1977 (5) and 1983 (6) programmes of action of the European Communities on the environment provide for Community action in order to control the disposal of hazardous waste;

Whereas, pursuant to Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (7), Member States are required to take the necessary measures to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment;

Whereas shipment of waste between Member States, or between Member States and other States, may be necessary in order to dispose of it under the best possible conditions;

Whereas any difference between the provisions on disposal of hazardous waste already applicable or in preparation in the various Member States may distort the conditions of competition and thus directly affect the functioning of the common market; whereas there are, in particular, differences between the procedures applying to the supervision and control of the transfrontier shipment of hazardous waste within the Community; whereas it is therefore necessary to approximate laws in this field, as provided for in Article 100 of the Treaty;

Whereas Council Directive 75/442/EEC of 15 July 1975 on waste (8), Council Directive 76/403/EEC of 16 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (9) and Council Directive 78/319/EEC have already laid down certain provisions concerning the disposal of dangerous waste, but have not yet regulated the supervision and control of the transfrontier shipment of hazardous waste;

Whereas an efficient and coherent system of supervision and control of the transfrontier shipment of hazardous waste should neither create barriers to intra-Community trade nor affect competition;

(1) OJ No C 53, 25. 2. 1983, p. 3 and OJ No C 186, 12. 7. 1983, p. 3.
(2) OJ No C 184, 11. 7. 1983, p. 50.
(3) OJ No C 176, 4. 7. 1983, p. 4.
(4) OJ No C 112, 20. 12. 1973, p. 3.
(5) OJ No C 139, 13. 6. 1977, p. 3.
(6) OJ No C 46, 17. 2. 1983, p. 1.
(7) OJ No L 84, 31. 3. 1978, p. 43.
(8) OJ No L 194, 25. 7. 1975, p. 39.
(9) OJ No L 108, 26. 4. 1976, p. 41.

Whereas the growing volume of long-distance transfrontier shipments of hazardous waste in the Community results in increased risk necessitating supervision and control of hazardous waste from the moment of its formation until its treatment or ultimate safe disposal ;

Whereas this requires compulsory notification of transfrontier shipments of hazardous waste and a uniform consignment note ;

Whereas the competent authorities of the Member States of destination of waste should be able to raise objections to shipments of waste ; whereas any objection should fulfil certain criteria and be duly substantiated ;

Whereas it is also desirable for the Member State of dispatch and the Member State of transit to be able, subject to certain criteria, to lay down conditions in respect of the shipment of waste on their territory ;

Whereas, moreover, in certain situations and subject to certain conditions, the Member State of dispatch should be able to object to a shipment ;

Whereas in the case of waste shipped outside the Community, the third State of destination and, where appropriate, the third State of transit should also be notified ;

Whereas in this case, in order effectively to control transfrontier shipments of hazardous waste, the customs authorities of the last Member State through which the shipment is due to pass should send a copy of the consignment note to the competent authority of that Member State ; whereas the holder should certify to the competent authorities of the Member State of dispatch that the waste has left the Community ;

Whereas in certain circumstances a general notification procedure may be used ;

Whereas information relating to the waste concerned, the producers, the existence of a contractual agreement with the consignee, the provisions made for routes and insurance and the conditions for the exercise of the transport operations should be sent to the competent authorities of the Member States concerned as part of the notification procedure ;

Whereas in order to ensure that hazardous waste does not constitute an unnecessary risk it should be properly packaged and labelled ; whereas the instructions to be followed in the event of danger or accident should accompany the waste in order to protect man and the environment from any danger that might arise during the operation ;

Whereas the Member States may fix border crossing-points after consulting the Commission ;

Whereas in accordance with the 'polluter pays' principle, the costs of implementing the notification procedure, including the costs of control and analysis, should be borne by the holder and/or the producer of the waste ;

Whereas it is important that the liability of the producer and that of any other person who may be accountable for damage should be defined and the conditions of application determined in order to guarantee effective and fair compensation for damage which may be caused during the shipment of dangerous waste ; whereas the Council should act at the latest within three years of the application of this Directive ; whereas the Council should also take a decision within the same time limit on a system of insurance ;

Whereas, subject to certain conditions, non-ferrous metal waste intended for re-use, regeneration or recycling should be exempted from the provisions of this Directive ;

Whereas Member States should communicate to the Commission any information relevant to the implementation of this Directive and must in particular prepare reports every two years on the basis of which the Commission will draw up a summary report ;

Whereas the Technical Committee set up under Directive 78/319/EEC should also be empowered to draw up and adapt as necessary the uniform consignment note on the uniform declaration provided for in this Directive and also to adapt the list of Conventions annexed to this Directive,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Member States shall, in accordance with the provisions of this Directive, take the necessary measures for the supervision and control, with a view to the protection of human health and the environment, of the transfrontier shipment of hazardous waste both within the Community and on its entering and/or leaving the Community.

Article 2

1. For the purposes of this Directive :

(a) 'hazardous waste', hereinafter referred to as 'waste', means :

— toxic and dangerous waste as defined in Article 1 (b) of Directive 78/319/EEC, except for the chlorinated and organic solvents referred to in points 13 and 14 of the Annex to that Directive,

— PCB as defined in Article 1 (a) of Directive 76/403/EEC ;

(b) 'competent authorities' of the Member States concerned means the competent authority or authorities, designated in accordance with Article 16, of the Member State of destination of the waste, of the Member State of dispatch of the waste and, where applicable, of the Member State or States of transit of the waste ;

(c) 'the producer of the waste' means anyone whose activities produce waste ('original producer') and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste ;

(d) 'the holder of the waste' means the producer of the waste or any other person or undertaking who or which proposes to carry out or to have carried out a transfrontier shipment of waste ;

(e) 'the consignee of the waste' means the person or undertaking to whom or to which the waste is shipped for disposal ;

(f) 'disposal' means disposal within the meaning of Article 1 (c) of Directive 78/319/EEC.

2. The off-loading to shore of waste produced by the normal operation of ships, including waste water and residues, shall not be considered a transfrontier shipment of waste within the meaning of this Directive.

Article 3

1. Where the holder of the waste intends to ship it or to have it shipped from one Member State to another, to have it routed through one or more Member States or to ship it to a Member State from a third State, he shall notify the competent authorities of the Member States concerned.

2. Notification shall be made by means of a uniform consignment note, hereinafter referred to as the 'consignment note', to be drawn up in accordance with Article 15 and the contents of which are set out in Annex I.

3. When so notifying the competent authorities of the Member States concerned the holder of the waste must provide them with satisfactory information, in particular on :

— the source and composition of the waste, including the producer's identity, and in the case of waste from various sources, a detailed inventory of the waste and, where such information exists, the identity of the original producers,

— the provisions made for routes and insurance against damage to third parties,

— the measures to be taken to ensure safe transport and, in particular, compliance by the carrier with the conditions laid down by the Member States concerned for the exercise of such transport operations,

— the existence of a contractual agreement with the consignee of the waste, who should possess adequate technical capacity for the disposal of the waste in question under conditions presenting no danger to human health or the environment. Where the waste is stored, treated or deposited within a Member State, the consignee must also possess a permit in accordance with Article 9 of Directive 78/319/EEC or Article 6 of Directive 76/403/EEC.

4. Where the waste is shipped outside the Community for disposal, the holder of the waste shall notify the third State of destination and where applicable, the third State or States of transit and the competent authorities of the Member States concerned.

Article 4

1. A transfrontier shipment may not be executed before the competent authority of the Member State referred to in paragraph 2 (a) or (b) has acknowledged receipt of the notification. The acknowledgement shall be entered on the consignment note.

2. The acknowledgement of receipt or any objection raised in accordance with paragraph 3 shall, not later than one month after receipt of the notification, be forwarded to the holder of the waste :

(a) either by the competent authority of the Member State of destination ;

(b) or, in the case of shipments of waste for disposal outside the Community or of waste from a third country in transit through the Community for disposal outside the Community, by the competent authority of the last Member State through which the shipment is due to pass,

with a copy to the consignee of the waste and to the competent authorities of the other Member States concerned.

3. Objections must be substantiated on the basis of laws and regulations relating to environmental protection, safety and public policy or health protection which are in accordance with the provisions of this Directive, with other Community instruments or with international conventions on this subject concluded by the Member State concerned prior to notification of this Directive.

4. Once the competent authority of the Member State referred to in paragraph 2 (a) or (b) is satisfied that the problems giving rise to its objections have been resolved, it shall immediately send an acknowledgement to the holder of the waste with a copy to the consignee of the waste and to the competent authorities of the other Member States concerned.

5. The acknowledgement forwarded by the competent authorities of the Member State referred to in paragraphs 2 (a) or (b) to the holder of the waste pursuant to the provisions of this Article shall not release the producer of such waste or any other person from his obligations under existing national and Community provisions.

6. Without prejudice to the provisions of paragraphs 1 and 2, the competent authorities of the Member State of dispatch and those of the Member State or States of transit, if any, shall have 15 days following the notification in which to lay down, if appropriate, conditions in respect of the shipment of waste on their national territory. These conditions, which shall be forwarded to the holder of the waste, with a copy to the competent authorities of the Member States concerned, may not be more stringent than those laid down in respect of similar shipments occurring wholly within the Member State in question and shall take due account of existing agreements. The holder of the waste must comply with these conditions in order to make the shipment.

Not later than 20 days after receipt of the notification, the competent authorities of the Member State of dispatch may raise objections on the grounds that the shipment of waste adversely affects the implementation of plans drawn up pursuant to Article 12 of Directive 78/319/EEC or Article 6 of Directive 76/403/EEC or that it conflicts with obligations resulting from international agreements on this subject concluded by it prior to notification of this Directive. Such objections shall be forwarded to the holder of the waste with copies to the competent authorities of the Member States concerned.

Article 5

1. The holder of the waste may use a general notification procedure where waste having the same physical and chemical characteristics is shipped regularly to the same consignee via the same customs office of exit of the Member State of dispatch, via the same customs office of entry of the Member State of destination and, in the case of transit, via the same customs offices of entry and exit of the Member State or States of transit.

2. The competent authorities of the Member State referred to in Article 4 (2) (a) or (b) and, where applicable, those of the Member State or States of transit, may make their agreement to the use of this general notification procedure subject to the supply of certain information, such as the exact quantities or periodical lists of the waste to be shipped.

3. Under a general notification procedure, a single acknowledgement within the meaning of Article 4 (1) may cover several shipments of waste over a maximum period of one year.

4. The general notification shall be made by means of the consignment note.

Article 6

1. Upon receipt of the acknowledgement referred to in Articles 4 and 5, the holder of the waste shall complete the consignment note and send copies to the competent authorities of the Member States concerned and to the third States concerned before shipment is carried out.

2. A copy of the consignment note, including the acknowledgement, shall accompany each shipment.

3. All undertakings subsequently involved in the operation shall complete the consignment note where indicated, sign it and retain a copy of it.

4. Within 15 days following receipt of the waste, the consignee of the waste shall forward to the holder of the waste, to the competent authorities of the Member States concerned and to the third States concerned copies of the duly completed consignment note. These copies shall be kept for at least two years.

Article 7

By way of derogation from Article 6 (4), when waste leaves the Community for disposal outside the Community, the customs service in the last Member State through which the shipment passes shall forward a copy of the consignment note to the competent authorities in that Member State, which shall keep it for at least two years.

The holder of the waste shall declare or certify to the competent authorities of the Member State of dispatch, not later than six weeks after the waste has left the Community, that the waste has reached its proper destination and shall indicate the last customs post in the Community through which the shipment passed.

Article 8

1. Transfrontier shipments must comply with the following conditions :

(a) The waste must be properly packed.

(b) The containers must have appropriate labels indicating, in addition to the nature, composition and quantity of the waste, the telephone number(s) of the person(s) from whom instructions or advice may be obtained at all times during shipment.

(c) The instructions to be followed in the event of danger or accident must accompany the waste.

(d) The labels and instructions referred to in (b) and (c) must be in the languages of the Member States concerned.

2. The conditions referred to in paragraph 1 shall be deemed to be met where a Member State applies the provisions applicable in the matter under the international transport conventions listed in Annex II to which it is a party in so far as those conventions cover the waste to which this Directive refers.

Article 9

Member States may designate border crossing-points for the shipment of waste where necessary and after consulting the Commission.

Article 10

In accordance with the 'polluter pays' principle, the cost of implementing the notification and supervision procedure, including the necessary analyses and controls, shall be chargeable to the holder and/or the producer of the waste by the Member State concerned, provided that this cost is comparable to that entailed by the same operations concerning the same types of waste and relating to shipments taking place entirely within that Member State.

Article 11

1. Without prejudice to national provisions concerning civil liability, irrespective of the place in which the waste is disposed of, the producer of the waste shall take all necessary steps to dispose of or arrange for the disposal of the waste so as to protect the quality of the environment in accordance with Directives 75/442/EEC and 78/319/EEC and with this Directive.

2. Member States shall take all necessary steps to ensure that the obligations laid down in paragraph 1 are carried out.

3. The Council shall, acting in accordance with the procedure referred to in Article 100 of the Treaty, determine not later than 30 September 1988 the conditions for implementing the civil liability of the producer in the case of damage or that of any other person who may be accountable for the said damage and shall also determine a system of insurance.

Article 12

1. Member States shall forward to the Commission not later than 31 December 1985 the name(s), address(es) and telephone and telex numbers of the competent authorities and of the installations, establishments or undertakings with a permit within the meaning of the last indent of Article 3 (3) to dispose of waste.

Member States shall forward regularly to the Commission any modifications to the data.

2. The Commission shall forward information referred to under paragraph 1 without delay to the other Member States.

Article 13

1. Every two years, and for the first time on 1 October 1987, Member States shall forward to the Commission reports on the implementation of this Directive and on the situation with regard to transfrontier shipments concerning their respective territories.

2. These reports shall in particular comprise the following information :

— transfrontier shipments of waste arising from major accidents, in particular within the meaning of Article 1 of Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (1),

— any significant irregularities in transfrontier shipment of waste covered by this Directive which has involved or may yet involve serious hazards for man or the environment,

— the quantity and type of waste which has entered their territory for disposal and the quality and type of waste produced in their territory and subsequently definitively exported.

Article 14

On the basis of the reports referred to in Article 13, the Commission shall prepare a summary report every two years, which it shall submit to the European Parliament, the Council and the Economic and Social Committee.

(1) OJ No L 230, 5. 8. 1982, p. 1.