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 :

(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 ;

(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 carcases 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.

Article 4

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

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).

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.