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COMMUNITY POLICY
CONCERNING THE MANAGEMENT
OF DANGEROUS WASTE

Luxembourg

Foreword

This study has been prepared by Mrs RAUM-DEGREVE, who was assigned to the Environmental, Public Health and Consumer Protection Division of the Directorate General for Studies, under a Robert Schuman Scholarship.

Although the complexity of the subject matter and the time allowed for the preparation of this study prevent it from being exhaustive, the present document nevertheless provides an insight into the Community policy which has been developed progressively since the first directive on waste in 1975. Since the subject is topical in this "Year of the Environment", it was thought appropriate to distribute this study in the form of a research and documentation file.

COMMUNITY POLICY CONCERNING THE MANAGEMENT OF DANGEROUS WASTE

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INTRODUCTION

In recent times, which are characterized by various forms of increased risk, there have already been several examples of catastrophes or near catastrophes (Torrey Canyon, Amoco Cadiz, Seveso and the 41 drums of drifting Dioxin, Bhopal, Feyzin, Chernobyl, Basle and many others). These experiences, which were nearly all associated with some aspect of the production and elimination of waste, have led to an awareness of the need for precautionary regulations, penalties and rules on compensation.

The increasing number of consumer goods and the permanent quest for new marketable products have given rise to pollution of many different kinds, both short term (domestic waste) and long term (dangerous and toxic industrial waste).

In view of the often uncontrollable accumulation of waste of all kinds and diffuse national legal provisions relating thereto, which detract from the proper functioning and the achievement of a common market, it was incumbent upon the European Community to make provision for Community action involving prevention, disposal and recycling of such waste, with regard to the effects of waste on human health and the environment and in a bid to save energy and use resources in a rational manner. The development of Community policy was inspired by this approach.

Aware of the ineffectiveness of an excessively sectoral multi-disciplinary approach, which pays too little attention to the interaction between the various kinds of pollution, and in view of the increasing impact of industrial waste in all the Member States, the Community is endeavouring to establish a comprehensive policy incorporating the principle of prevention in all cases (the "Seveso" directive, the directive on "impact studies, consultation policy and aid programmes for research and development").

So far, the EEC has succeeded in establishing a legally binding system of control and supervision in respect of waste. However, we have not progressed beyond the stage of making declarations of intent as regards the development of a real waste management strategy comprising all the action necessary to ensure the protection of human beings and the environment.

The present study concentrates on the question of dangerous waste, where the risks are the most serious, household waste having always been better provided for and regulated. The very diversity of dangerous waste, derived from industrial activities, and the quantity, composition and form thereof make it extremely difficult to establish a framework of legal provisions.

The problems are identified and at the same time an account is given of European Community action regarding the establishment of a legal framework within which the Member States are able to operate, having regard to the specific Community regulations, objectives and principles. The chapter devoted to the economic aspects of dangerous waste is intended to highlight the need for action.

As a result, less attention is devoted to the technical aspects, the ecological impact of waste, the importance of public participation and many other equally important considerations.

I. General EEC waste management policy

1. Basic features of Community action regarding waste

In July 1971, the Commission noted in its "first communication on Community environmental policy" the need "to orientate the various industrial sectors towards easier reutilization of so-called consumer products, better facilities for the elimination of certain persistent non-degradable products ... (and) recycling of harmful industrial by-products". Those proposals were supported by the European Parliament, which also emphasized that European policy should "encourage the manufacture of long-lasting products not giving rise to waste and readily capable of recycling"¹.

The Conference of the Heads of State and Heads of Government held in Paris in October 1972 confirmed the need to implement a common environmental policy by inviting the Community institutions to prepare a programme of action enabling Community action to be formulated, coordinated and put into effect.

2. The first environmental action programme (1973-1976)

The first action programme, approved on 22 November 1973² adopted the principle that action should be taken regarding waste, on the following grounds:

- the elimination of wastes which, because of their toxicity, their non-degradability, their bulk or for other reasons require a solution extending beyond the regional framework and possibly even beyond national frontiers;
- Community action may well become necessary if the elimination or re-use of the wastes is dependent on economic resources which, involving differences in the production and distribution conditions of certain goods, may have repercussions on the functioning of the Common Market.

These general guidelines for a Community policy on waste were developed further in the second programme of action.

3. The second environmental action programme (1977 - 1981)

Under the second action programme³, the management of waste was seen within the framework of "global action to combat wastage and protect and

¹European Parliament (EP) Resolution, 18.4.1972 - OJ C 46/10, 9.5.1972

²First action programme on the environment - OJ C 112 of 20.12.73

³Second action programme on the environment - OJ C 139 of 13.6.1977

manage natural resources"; and must be the subject of a policy of prevention, recovery and disposal.

4. The third environmental action programme (1982-1986)

The third action programme⁴ indicates that the Community is pursuing the action undertaken in the other two programmes, whilst taking account, in all its areas of activity, of the three main objectives of Community policy regarding waste management:

- prevention and reduction of the quantity of non-recoverable waste;
- recovery, recycling and re-utilization of waste as raw materials and energy sources;
- harmless disposal and management of non-recoverable waste.

However, greater stress will be placed on recovery, recycling and re-use of waste, and on prevention of waste production and the design of more easily recyclable products.

In general, the development of secondary raw materials from waste with a view to achieving savings of resources should be one of the Community's principal tasks in this area.

As regards the disposal of toxic and dangerous waste, the programme draws attention to the need to supplement and reinforce Community action with a view to making better use of such waste, an approach which should progressively supersede outright disposal; it is therefore necessary to encourage the development of new technologies facilitating easier recycling.

5. The fourth environmental action programme (1987-1992)

The "Environment" Council approved in principle a resolution⁵ of a general nature on the fourth "programme of action" which reinforces Community action on waste management in general, and of dangerous waste in particular. As in the third programme of action, the strategy is based on:

- a general policy of prevention and recovery
- the need for the effective implementation of action undertaken or proposed

⁴Third action programme on the environment - OJ C 176 of 4.7.1983

⁵"Europe", No.4441 of 1 and 2 December 1986, p.14, and draft for a resolution of the Council of the European Communities, COM(86) 485 final

- further action based on "own technologies" and "own products" programmes and action to promote recovery and recycling, such as programmes relating inter alia to the exchange of information, demonstration projects and the market for recycled products.

Recalling that that is the central theme of the European Year of the Environment, 1987, the Council also drew attention to the aspects of education and training and the need to increase public awareness and to encourage society as a whole to become involved in all these Community measures.

6. Conclusion

In the light of the principles and objectives succinctly formulated in the various programmes of action, the management of dangerous waste is now recognized as an integral part of the policy on waste, within the Community environmental policy.

The EEC intends to establish a legal system which will give rise neither to distortion of competition nor damage to the environment. In order to achieve these objectives regarding waste management, the action programmes provide for priority action which will be possible only if the institution responsible for undertaking it, namely the Commission, has the appropriate administrative and financial means to do so - and to date they have been regarded as inadequate.

The obligations imposed upon the Commission concern in particular:

- regular publication of statements regarding raw materials and secondary materials available;
- the implementation of a programme to encourage the recovery of secondary materials;
- the implementation of a programme to encourage the long-term use of products.

The "Committee on waste management"⁶ and the "Committee for adaptation to technical progress"⁷ are to assist the Commission in its work.

⁶Set up by Commission decision

Decision 76/431/EEC, OJ L 115 of 1.5.76

Decision 76/912/EEC, OJ L 35 of 24.12.76

The task of this committee is to give opinions on all problems relating to

- development of Community waste management policy;
- various measures for ensuring prevention, re-use and disposal of waste;
- application of directives concerning waste management and drawing up of new proposals for directives relating to that field.

⁷Infra II.2.2

II. Legal instruments - Directives directly relating to waste management and more particularly the management of dangerous waste

1. Legal basis and general survey

Environmental protection is one of the areas not strictly provided for in the Treaties and accordingly the programmes of action on the environment have called for a true Community policy on the environment, but the ambiguity as to the legal basis for such a policy has not been removed.

Like all measures for environmental protection, those relating to waste management are based on Article 235 of the EEC Treaty, whenever Article 100 cannot be used.

The Single European Act⁸, which revises the EEC Treaty, entered into force on 1st June 1987 after ratification by all the Member States, extending the powers of the Community to include the environment, thus giving a proper legal basis for such a policy.

In the specific case at issue here, namely the management of dangerous waste, the Commission has so far had recourse to directives and, in one case only, to a decision. At the present time, the management of dangerous waste is governed by the following Council directives:

- directive 75/439 of 16 June 1975 on the disposal of waste oils⁹;
- directive 75/442 of 15 July 1975 on waste¹⁰
- directive 76/403 of 6 April 1976 on the disposal of polychlorinated biphenyls (PCB) and polychlorinated terphenyls (PCT)¹¹
- directive 78/176 of 20 February 1978 on waste from the titanium dioxide industry¹²;
- directive 78/319 of 20 March 1978 on toxic and dangerous waste¹³;

⁸Single European Act, Bulletin of the European Communities, Supplement 2/86, Art.130 R to 130 T, p.16

⁹OJ L 194 of 25.7.75, p.31

¹⁰OJ L 194 of 25.7.75, p.47

¹¹OJ L 108 of 26.4.76, p.41

¹²OJ L 54 of 25.2.78, p.19

¹³OJ L 84 of 31.3.78, p.43

- directive 84/631 of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste¹⁴.
- directive 86/279 of 12 June 1986 amending directive 84/631¹⁵
- directive 86/278 of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture¹⁶.

These directives formulate very general principles and the detailed arrangements for their implementation will be worked out in due course.

They must be regarded as preliminaries to wider-ranging action and will have to be supplemented by other directives (for example, a directive on the dumping of waste at sea, a directive on the methods of supervision and control of the sectors affected by waste produced by the titanium dioxide industry, a directive prohibiting the burning of waste oil without pre-treatment, and a directive on the conditions for discharging toxic and dangerous waste) and they will have to be regularly amended to reflect technical advances and scientific knowledge.

2. Analysis of the principal directives

For the purposes of this study, the content and implications of the following three directives are analysed:

- framework directive 75/442/EEC on waste
- directive 78/319/EEC on toxic and dangerous waste
- directive 84/631 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (amended by directive 86/279).

2.1 Framework directive 75/442/EEC on waste¹⁷

On 15 July 1975 the Council adopted directive 75/442 which defines waste as: "any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force".

¹⁴OJ L 326 of 13.12.84, p.31

¹⁵OJ L 181 of 4.7.1986, p.13

¹⁶OJ L 181 of 4.7.1986, p.6

¹⁷Text in annex I

However, it does not concern: radioactive waste, mining waste, animal carcasses and agricultural waste, waste waters, gaseous effluents and waste covered by specific Community rules.

The directive imposes upon the Member States two general obligations:

- to take appropriate steps to encourage the prevention, recycling and processing of waste;
- to take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment.

Moreover, it imposes upon the Member States more specific obligations:

- to establish or designate the competent authorities to be responsible, in a given zone, for the planning, organization, authorization and supervision of waste disposal operations;
- to forward to the Commission (every three years) a report on the disposal of waste;
- to inform the Commission of the main provisions of national law planned and adopted in the field covered by the directive.

The directive goes on to establish certain basic legal rules:

- waste management plans are to be drawn up by the national authorities relating to the type and quantity of waste to be disposed of, general technical requirements, suitable disposal sites and any special arrangements for particular wastes;
- every holder of waste must be compelled to have the waste handled by a waste collector or disposal undertaking, or to dispose of it himself in accordance with the rules on the protection of public health and the environment;
- any undertaking treating, storing or tipping waste on behalf of third parties must first obtain a permit;
- the cost of disposing of waste, less any proceeds derived from treating the waste, is to be borne in accordance with the "polluter pays" principle by the holder who has the waste handled by a waste collector or by a disposal undertaking and/or by the previous holders or the producer of the product from which the waste came.

Conclusion

Directive 75/422 lays down the broad outlines of a general Community waste management policy. Since applicable legislation exists in most of the Member States already, it was prepared on the basis of comparative studies of the legislation on waste. The principles laid down in the directive

are very general and are designed above all to facilitate the adoption of an appropriate legal framework by those Member States which do not already have one. Subsequently, on the basis of the information which the Member States are obliged to furnish, the Commission will have to draw up harmonization measures and prepare a management plan in conformity with the objectives of Community policy.

2.2 Directive 78/319/EEC on toxic and dangerous waste¹⁸

Council directive 78/319 of March 1978 defines toxic and dangerous waste as "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 to the environment".

A list of 27 toxic and dangerous substances and materials selected on the basis of their relative importance is annexed to the directive (including mercury and cadmium, certain solvents and pharmaceutical products, ethers, tar and asbestos).

Directive 78/319 imposes the following obligations:

Member States must:

- prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste as well as its consignment to installations, establishments or undertakings which have not obtained a special permit;
- designate or establish competent 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;
- ensure that toxic and dangerous waste is, where necessary, kept separate from other matter and residues when being collected, transported, stored or deposited;
- ensure that the packaging of toxic and dangerous waste is appropriately labelled, indicating in particular the nature, composition and quantity of the waste;
- ensure that toxic and dangerous waste is recorded and identified in respect of each site where it is or has been deposited.

any undertaking which produces, holds and/or disposes of toxic and dangerous waste must:

¹⁸Text in annex II

- keep a record and/or furnish information to the competent authorities concerning the quantity, nature, physical and chemical characteristics and origin of the waste and of the methods and sites used for disposing of the waste, including the dates of receipt and disposal.

The other provisions of directives 78/319 (the obligations under directive 75/442 remain valid) are those which are to be found in all Community regulations on environmental matters:

- the "polluter pays" principle;
- the obligation to provide three-yearly reports;
- permissibility of stricter national rules than those in the directive;
- prohibition of any evasion of the directive;
- the obligation to implement the directive (within a period of 24 months) and to inform the Commission of the provisions adopted.

Conclusions

Directive 78/319/EEC on toxic and dangerous waste pursues two main objectives:

- the creation of a Community reference for the management of such waste with a view to ensuring protection of the environment, the quality of life and human health;
- the prevention of legal disparities which might lead to unequal conditions of competition and thereby directly affect the functioning of the Common Market.

Since applicable provisions already exist or are being prepared in the majority of the Member States, the directive is designed to eliminate differences by imposing a uniform system of control and supervision of dangerous and toxic waste.

On the basis of national reports concerning the disposal of toxic and dangerous waste, the Commission must present a synthesized report to the Council and the European Parliament every three years on the application of the directive.

In view of the speed of scientific and technical progress and of the potential danger of certain wastes for man and the environment (toxicity, persistence, bio-accumulation characteristics, physical and chemical structures, quantity), the directive provides for the creation of a "Committee for adapting this directive to technical progress" (Art.18) which will be able (in accordance with the procedure laid down in the directive) to adopt the necessary modifications (clarifications regarding the names and composition of substances, extension of the list annexed to the directive).

It should be noted that certain specific aspects of toxic and dangerous waste are already covered by regulations (see above II.1) or have been dealt with in other areas of Community policy.

2.3 Directive 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste 19

Definition:

Directive 84/631 relates to toxic and dangerous waste of the kind defined in directive 78/319/EEC, with the exception of chlorinated and organic solvents and PCBs as defined in directive 76/403/EEC. In addition, it provides for the application of simplified legal provisions for "waste, scrap, sludge, ash and dust from non-ferrous metals intended for re-use, regeneration or recycling on the basis of a contractual agreement regarding such operations".

The legal obligations relate mainly to the holder of waste:

- an obligation to give prior notice to the competent authorities in all the Member States concerned - including the countries passed through - attaches to any holder of waste who intends to send it or have it sent abroad;
- any person taking delivery of waste must have adequate technical capacity for disposal thereof, in conditions which do not entail any danger to human health or to the environment;
- transfrontier shipments of waste must be accompanied by an acknowledgement of receipt of the prior notification and by a consignment note (filled in by all the bodies concerned);
- an obligation to comply with all conditions concerning the transport of waste within national territory - which may, within certain limits, be established by the Member States);
- the waste must be "properly" packed and bear "appropriate" labels (indicating, in addition to the nature, composition and quantity of the waste, the telephone number of the persons from whom instructions or advice may be obtained at all times during shipment) and must be accompanied by the instructions to be followed in the event of danger or accident.

In addition to those obligations, the Council is obliged to determine (no 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 to determine a system of insurance.

¹⁹Text in annex III

The other provisions (directives 75/442 and 78/319 remain in full force) concern:

- the "polluter pays" principle
- the obligation to provide a two-yearly report
- the powers of the "Technical Committee"
- the obligation to implement the directive (within a period of 12 months) and to notify the Commission of the provisions adopted.

Conclusion:

Since the supervision of dangerous and toxic waste was interrupted at frontiers, directive 84/631 was adopted by the Council in order to remedy this lacuna in Community law.

The provisions of the directive reflect the main conclusions of a working group comprising national experts and industrial experts, all of whom called for Community provisions to ensure strict and certain control on the part of the country of shipment and, where appropriate, the transit country as well.

2.4 Directive 86/279/EEC amending directive 84/631/EEC²⁰ concerning the export of dangerous waste to non-member countries

The problem of supervision and control of transfrontier shipments extends far beyond the confines of the Community. Numerous international authorities, such as the UNEP²¹ and the OECD are concerned with it. The Commission proposal in fact takes up the "OECD recommendation on international co-operation concerning transfrontier movements of dangerous waste", which provides that "the OECD member countries shall not apply to transfrontier movements of dangerous waste affecting non-member countries control measures which are any less strict than those relating to movements affecting only member countries and they shall not allow movements of dangerous waste to countries which are not members of the OECD to take place unless the competent authorities in the importing country and, if appropriate, those in the countries of transit consent thereto and unless the dangerous waste is sent to suitable disposal plants in the importing country"²².

The Commission considered the possibility of implementing the OECD recommendation in the European Community. The most appropriate solution seemed to it to be the course of action offered by directive 84/631/EEC referred to above, with a number of adjustments, namely:

²⁰Text in annex IV

²¹U.N.E.P. "Transfrontier movements of hazardous waste with regard to developing countries" - W.N.E.P./WG 95/2, 15 November 1983

²²Conclusions and recommendations of the OECD Conference at Basle, 26-27 March 1985, Act of the Council of the OECD (185) 100

- the importing State, and the countries of transit, if any, must indicate their agreement to the import of dangerous waste
- the importing State must have the capacity and know-how to dispose of the waste properly.

The amendments proposed were also in conformity with the principle adopted in 1977 in the programme of action on the environment²³ which states that "a global environmental policy is only possible on the basis of new, more efficient forms of international cooperation which take into account both world ecological correlations and the inter-dependence of the economies of the world" and those amendments were approved by the European Parliament which, on numerous occasions, had already referred expressly to the problem raised by the export of dangerous waste to non-member countries and more particularly to the countries of the third world in several reports²⁴ and the Council formally adopted, on a proposal from the Commission, a directive amending that of 6 November 1984 on the supervision and control of transfrontier shipments of dangerous waste in the Community. That directive supplements the existing provisions regarding the export of waste for disposal in a non-member country, having regard in particular to an OECD resolution on that subject.

2.5 Conclusion

With the approval of that directive, the legal framework now exists for the management of dangerous waste - as a result of full transparency of information regarding movement thereof - "from cradle to grave".

This legal framework satisfies the main requirements of the overall policy on environment regarding protection of human health, protection of the environment, improvement of the quality of life and maximum economy of use of natural resources.

Provision is made for the means to give effect to this legal framework: the Member States must transpose the rules into their national legislation (multiple possibilities)²⁵ and notify the Commission of their legal provisions and their plans for the management of waste. On that basis, the Commission can and must exercise its role as guardian of the treaty, namely by checking whether all the rules have been incorporated in national law and are effectively applied thereafter. Moreover, it is the responsibility of the Commission to define legislative obligations, in accordance with the experience acquired and having regard to political and economic imperatives, and to remedy any lacunæ in the law by submitting

²³OJ C 139 of 13 June 1977, p.45

²⁴Document of 9 April 1984, 1-163/84/rev.

²⁵Since these legal rules are directives, they are binding on all Member States to which they are addressed as regards the result to be achieved, although the form and methods are left to the national authorities.

new proposals to the Council, by adopting those already in force or by ensuring the effective application of the existing legislative instruments. In view of the breadth of its obligations and its very limited means²⁶, and having regard to the laxity of the Member States as regards their obligation to furnish information, it is clear that the Commission has not so far been able to achieve a true European policy for waste management.

Those considerations prompt a survey of the problems involved in the transposition into national law and implementation under national law of the Community provisions on dangerous waste.

III. Identification of the problems of transposition and application of the Community provisions on dangerous waste in the Member States

In view of the very general nature of directive 75/442/EEC on waste, its transposition into national law does not pose any problem. General rules concerning waste already existed in practically all the Member States. However, directive 78/319/EEC on "toxic and dangerous waste", which constitutes a "specific" group of wastes in most of the Member States, had²⁷ a very considerable impact. In view of the economic importance of such waste, and having regard to a certain economic imbalance between North and South, it goes without saying that the difference in the extent to which rules on dangerous waste have been developed is not likely to simplify harmonization designed to eliminate distortions of competition and to promote waste management directed towards prevention, recovery and harmless disposal.

The directive concerning supervision and control of transfrontier shipments of dangerous waste, which focuses upon the last link in the waste chain, comes up against the rules deriving from international transport law (there are practically no national regulations regarding the transfrontier shipment of dangerous waste) and the problems of establishing a system of liability and insurance.

1. Directive 78/319/EEC - Transposition and application - Summary

1.1 Transposition

All new legislation should fit in with existing legislation, so as to avoid conflicts and overlapping. The regulations dealing with toxic and dangerous waste constitute for the most part a sub-category of the legislation on waste in general and it is with the latter legislation that the new rules should conform.

²⁶The total planned expenditure on action concerning the environment represents about 0.17% of the total 1985-1986 budget - OJ L 241 of 4.8.1986 and OJ L 358 of 31.12.1986.

²⁷Infra IV, Economic aspects of the management of dangerous waste

In so far as toxic and dangerous waste constitutes a specific problem within the wider field of waste management in general, the specific rules on toxic and dangerous waste supplement the other regulations and, without superseding them, add certain restrictions.

Most of the Member States have drawn up complete legislation on waste management which covers and deals with toxic and dangerous waste as well. In certain cases, the new rules have replaced previous legislation, as, for example, in the United Kingdom where the Deposit of Poisonous Waste Act has been replaced by the Control of Pollution Act and Special Waste Regulation. In other cases, uniformity has been ensured by recourse to the amendment of existing regulations, such as the list of classified treatment plants in France, which was modified in 1980 so as to include plants processing special types of waste.

As regards transport, the existing legislation on transport operations has not been changed in the Member States, but where necessary rules have been added concerning registers and consignment notes.

Thus, the Member States have more or less achieved the required transposition. But, although the rules in each country are uniform, the situation from one country to another is not so clear cut.

1.2 Application

Although there are significant differences in the legislation of the Member States in the approach to the question of dangerous waste, it is clear that there is a consensus on the following points: the matter of dangerous waste should not be left unregulated; it is necessary to dispose of dangerous waste in a safe manner, and generally at the expense of the producer. A written record must be kept in respect of certain waste, relating to the various phases of disposal.

However, the "Seveso affair" and the epic disappearance of the 41 drums of dioxin from the IGMESA/GIVAUDAN factory, indicated that the application of directive 78/319/EEC was far from complete. The consultations and investigations carried out by the "Committee of Enquiry into the Treatment of Toxic and Dangerous Substances by the European Community and its Member States"²⁸, and the studies prepared at the request of the Commission show that although at present the management of dangerous waste is subject to legislative control in a large number of countries, there are nevertheless "legal loopholes" in others:

²⁸In June 1983, the European Parliament took the initiative for the first time and set up this "Commission of Enquiry" on the basis of Article 95 of the Parliament's rules of procedure, at the request of Mrs Beate WEBER and 133 other Members. The results of the enquiry are set out in the Pruvot Report, PE 1-109/84 of 9.4.1984.

- the scope of the various regulations already adopted concerning dangerous waste is problematic. The very concept of waste has only rarely been given a precise legal definition, the distinction between "waste" and "goods" or "product" is difficult and more attention should be devoted to the precise legal status of "recyclable waste", otherwise there is a considerable risk of fraud. Moreover, as regards the characteristic identity of "dangerous" waste - which inevitably becomes a matter of nomenclature - it can only be hoped that the present legal systems will be brought closer together. In fact, in view of the present differences of approach regarding "listing", transfrontier shipments of dangerous waste attributable solely to a concern to avoid national regulations are inevitable;
- the legal obligations laid down by various national regulations upon the many operators involved in the management of dangerous waste display certain similarities, but there are also significant differences. In so far as those differences may lead to different economic costs and therefore distortions of competition as between States and the diversion of traffic (carrying waste) to the detriment of the public interest, it is important to consider the advisability of minimum international harmonization;
- as regards civil liability, there are certain differences between the present legal systems and there is a degree of legal uncertainty concerning compensation for damage caused by waste. An objective to be pursued is a common definition of special conditions for determining third party liability in respect of dangerous waste or, more broadly, in respect of dangerous activities.

1.3 Harmonization of the principal legal obligations

Conclusions and summary

The lack of uniformity between the legislations of the Member States precludes any coherent presentation of statistics concerning the present situation in the Community. Since a precondition for any management plan is the maximum availability of information, it would be appropriate to consider harmonizing the principal legal obligations existing in this area²⁹:

²⁹cf OECD, Legislation on dangerous waste in the OECD countries, Paris 1983.

- PLEINEVAUX C., La gestion des déchets dans la CE, in "Les déchets industriels et l'environnement en droit comparé et international", Limoges Conference 1984, pp 233-243

obligations of producers of dangerous waste:

- not to produce certain waste,
- to recover or recycle certain waste,
- to be authorized to dispose of waste themselves,
- to furnish certain information to the authorities,
- to keep a register,
- to fill in consignment notes,
- to appoint a person with responsibility for supervising waste,
- to ensure where appropriate that waste is transferred at a specified place,
- to take precautions regarding conditions for the transport and disposal of waste

obligations of carriers of dangerous waste:

- to comply with ADR and similar rules,
- to hold special permits,
- to hold consignment notes,
- to hold "instructions to be followed in the event of an accident",
- to keep a register,
- to make returns to the authorities,
- to furnish financial guarantees,
- to handle certain waste separately,
- to inform the authorities in case of accident

obligations of undertakings disposing of dangerous waste:

- to hold special permits,
- to furnish certain information to the authorities,
- to keep a register,
- to record each location where waste is kept,
- to appoint a person responsible for supervising waste,
- to take special measures when closing a plant,
- to carry out "post closure" monitoring of plant,
- to furnish financial guarantees,
- to process waste in accordance with specified processes,
- to process certain waste on request

obligations of authorities with responsibility for dangerous waste:

- to plan the disposal of waste,
- to exercise powers regarding the grant of permits,
- to exercise supervisory powers,
- to exercise certain powers of requisition and adoption of emergency measures

2. The position regarding problems relating to the transposition and application of directive 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste

2.1 Historical background to directive 84/631/EEC - International Cooperation

The incident of the Seveso dioxin drums revealed the multinational dimensions of the problems to be resolved in respect of dangerous waste: dangerous waste crossing frontiers within the Community represents more or less 10% of the dangerous waste produced (see below, Economic Aspects). For

technological and economic reasons, industrial producers of dangerous waste often find it advantageous to choose an establishment outside their country for the storage and neutralization of such waste (but in certain cases, dangerous waste "disappears"³⁰ in a country other than that of production, as a result of recourse to unlawful practices). Directive 78/319/EEC does not make satisfactory provision for controlling dangerous waste, in so far as supervision stops at national frontiers and trans-frontier movements are subject to regulations of many different kinds, most of them unilateral.

In the general interest, and as a result of public opinion and pressure from the European Parliament³¹, in July 1983 the Commission proposed a "draft regulation" conferring upon the Member States certain "powers of action" regarding the control of transfrontier shipments and approval of disposal undertakings in the importing country. After a long debate, on 6 December 1984 the Council finally adopted the directive on the supervision and control within the European Community of the transfrontier shipment of hazardous waste. Taking into account many of the results of the preparatory work for the EEC Directive, the Council of the OECD had already adopted, in February 1984, a "decision and recommendation" which had the same aims and was to apply to 23 members of that organization³². That decision constitutes the first binding international legal measure designed to achieve better control of transfrontier shipments of dangerous waste and it served as a source of inspiration for the basic features of the draft under discussion within the UNEP³³.

The "conclusions and recommendations" of the OECD Conference on international cooperation concerning transfrontier movements of dangerous waste, held in Basle on 27 and 28 March 1985, recommend that the member countries of the OECD should not apply to transfrontier shipments of dangerous waste involving non-member countries control measures any less rigorous than

³⁰The investigations carried out in Europe at a number of tips after the affair of the Seveso drums revealed that much dangerous waste was recently still being disposed of in violation of the legislation in force. In the case of Europe, the quantity of dangerous waste improperly disposed of could easily exceed 33% (according to the report of the European Parliament Committee of Enquiry - doc. 1-109/84 of 9 April 1984 - that figure is 50%).

³¹See EP resolution closing the procedure for consultation of the European Parliament on the proposal for a directive on the supervision and control of transfrontier shipments of hazardous wastes within the European Community - OJ C 184 of 11.7.1983 and OJ C 53 of 25.3.83.

³²Decision and recommendation of the Council of the OECD on transfrontier movements of dangerous waste COM(83) 180 final of 1 February 1984.

³³UNEP: draft directives concerning the ecologically rational management of dangerous waste, UNEP/WG 95/4 (December 83)

those applied to shipments involving only member countries.³⁴ On 20 June 1985 the Council of the OECD adopted the "resolution on international cooperation concerning transfrontier movements of dangerous waste", containing the decision "to set up an international system facilitating effective control of transfrontier shipments of dangerous waste, comprising appropriate OECD instruments such as new measures of the Council relating to notification, identification and control of such transfrontier shipments, and also a legally binding international agreement".

As regards the EEC, the main objective of directive 84/631 was to ensure supervision and control of dangerous waste within the Community. In response to international measures, the Commission examined the possibility of implementing them in the European Community and on 7 March 1986 the Council gave its agreement to the "proposal for a Council directive amending directive 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste"³⁵ which takes account of concern about the export of dangerous waste to third countries for disposal (on 12 June 1986 the Council formally adopted the directive amending directive 84/631/EEC).

That stage having been reached, harmonization of the EEC control and supervision system and the "international system" seems essential.

2.2 Identification of the problems relating to shipments of dangerous waste³⁶

The problems confronting the public authorities following directive 84/631/EEC are numerous and very complex. Since there is no provision in most of the Member States for governmental control of dangerous waste, transposition into national law of directive 84/631 ought not to raise problems. On the other hand, the existing national supervision systems designed to keep track of dangerous waste throughout transport operations (requirements regarding notification and transport documents, responsibilities of the competent authorities and so on) vary considerably from one country to another

³⁴ Conclusions and recommendations of the OECD Conference, Basle, 26-27 March 1985, OECD Council measure (185) 100

³⁵ COM(85)511 final

³⁶ For more details, see in particular:
-SHAW P., International legislation and the transport of hazardous wastes, in Industry and Environment (UNEP), Special Issue, No.4 1983 - pp63-66.
-FABRE J.M., Les transports de déchets, Conférence présentée aux journées d'information de l'institut du Droit de l'Environnement, Lyon III-14 December 1983.
-ROBERTS A.I., "Le transport des déchets dangereux".
-VAN VEEN, F., "Les systèmes nationaux de surveillance des déchets dangereux", in Mouvements transfrontières de déchets dangereux - Aspects juridiques et institutionnels - OECD, Paris 1985.

The directive imposes specific legal obligations throughout the EEC. To that end, it deals in detail with the basis for a uniform set of obligations applicable to transfrontier shipments of dangerous waste (supra, II.2.3).

The essential problems which appear to call for attention are as follows:

- interfacing of the control and supervision system with the existing transport codes
- the need for access to data
- provision within the system for questions of insurance and liability.

Identification and analysis of the problems

Analysis of the transport regulations on dangerous waste in the Community is rendered complex by the fact that:

- it involves a mixture of two legal fields: "transport law" and "environmental law"
- there is a complex tangle of rules of which the sources and scope are very different and which, moreover, form part of separate legal systems
- the subject matter is very technical and amendments and adjustments are constantly being made
- directive 84/631/EEC coexists with a complex system of international instruments, some of which were adopted long ago (for example the RID and the ADR) and others which are in preparation -(the UNIDROIT draft convention)
- the national legal systems approach the matter differently and, indeed, incompletely.

Consequently, the approach of the Courts and the trends in legislation may develop divergently, which goes against the objectives and principles of the EEC³⁷.

a) Classification of waste

The success, or otherwise, of "notification" and of the "consignment note"³⁸

³⁷To facilitate a Community system of control and supervision based on harmonized legislation, the EP and the Commission asked the European Foundation for the Improvement of Living and Working Conditions to undertake a study on "Transportation of dangerous goods, substances and waste in the EEC". See the final report by W. D. Gehrman, J. P. Hannequart and P. A. Maier, Brussels 1985

³⁸Notification without doubt constitutes the main factor facilitating flexibility and control of shipments of dangerous waste. This system makes the following possibilities available to the producers, the carriers, the disposal undertakings and the public authorities:

- recordal of types of waste processed and technologies used
- calculation of costs associated with supervision and control of dangerous waste
- availability of valid documents for insurance purposes

will depend upon the strictness of internal controls within the countries participating in the system.

The first lacuna concerns the very concept of dangerous waste. Accordingly, a basic list of "toxic and dangerous substances and materials" - chosen according to their degree of dangerousness - was annexed to directive 78/319/EEC. In fact, waste often presents the same type of risks as dangerous substances. But although there may be some advantage in "losing" waste (zero economic value of the substances, by contrast with the high disposal cost), there is little if any advantage in "losing" products ... that is why specific legislation is needed for dangerous "waste".

So far, there is no acceptable legal definition indicating the properties and characteristics of the substances which must be classified as dangerous waste for the purposes of environmental protection.

There are still no uniform criteria which could be used to classify dangerous waste (some systems are qualitative, others are quantitative, and others are based on lists). The result is that the borderline between normal waste and toxic waste varies from one country to another.

Another major lacuna relates to the particularly difficult concept of "recyclable waste". The proper way to deal with a substance intended for recycling or recovery is a matter of ambiguity where it is necessary to identify the borderline between a waste which is subject to all the control measures and a recyclable waste which may be subject to less wide-ranging controls, or indeed be exempted therefrom. It is necessary to strike a balance between the need for effective control and the need not to impose improper restrictions on lawful trade. Recycling may be advantageous to society as a whole since it enables potentially rare raw materials to be consumed at a slower rate. Moreover, if recovery, recycling and proper use of resources give rise to substitute products which are less costly than the raw materials, the total cost of the goods used by society tends to diminish. Furthermore, the recycling industry provides extensive employment. The authorities must take care to ensure that the measures adopted in this area do not adversely affect demand or the use of recyclable products, which may also be components of substances falling within the classification of potentially dangerous waste³⁹. The objective which the public authorities must pursue when it comes to choosing between recycling and the disposal of waste is to

- to provide valid documents for all legal or judicial purposes
- to improve control of dangerous waste from the legislative and regulatory points of view

³⁹The dangerous wastes excluded from directive 84/631/EEC (those intended for recycling) are regarded as market products. However, many of them should be subject to the rules laid down in directive 67/548/EEC concerning the packaging and labelling of dangerous substances.

reduce to a minimum the potential dangers for the environment whilst at the same time offering the possibility of increasing the recycling of substances which would otherwise be disposed of as waste.

National transport legislations are more consistent regarding the classification of dangerous substances since they are largely based on international conventions. As regards identification of the degree of danger in the context of transport legislation it is of no importance whether or not the goods, substances, solutions or mixtures are to be regarded as waste. For that reason, until the present time no special classification existed for identifying particular classes of risks associated with waste (in the RID and ADR conventions). The classification method for solutions and mixtures (including waste) was adopted by the RID and ADR conventions and will soon enter into force. Moreover, a new class is envisaged in those conventions for substances presenting dangers to the environment (PCB, asbestos, etc.).

b) Packaging of dangerous waste

The safety of packaging is of primary importance in the transport of dangerous waste. In view of the fact that no special obligations were laid down in the transport conventions or, as a result, in the national legislations, transport operators in the Community for a long time used packagings which did not always meet safety requirements. That situation prompted, in recent years, the adoption of special recommendations by the United Nations, which now form a basis for harmonizing the rules on transport and packaging in the international conventions (RID, ADR and IMDG Code)⁴⁰. A number of Member States have already incorporated those recommendations in their national legislation (France, Germany, Netherlands and Italy) and others are in the process of doing so. In that connection, it should be noted that Ireland and Greece have not yet ratified the ADR. Other problems relate to safety standards, labelling, the cleaning of packagings and proof of certification and inspection.

c) Training of transport operators

There are no Community rules on specific vocational training for carriers of dangerous waste, although that question was discussed at length during the preparatory work for directive 84/631. The European Parliament,⁴¹ the Communities and the industrial experts insisted that training was necessary, since the carriers of waste are those who are first confronted with the question of what measures should be taken in case of danger.

⁴⁰See "International Transport Conventions" - Directive 84/631/EEC, Annex II

⁴¹Resolution of 8.6.1983, OJ C 184 of 11.7.1983

In most countries, there are hardly any measures to ensure the vocational training of carriers of dangerous waste. With the exception of the traditional master's certificate and heavy goods vehicle driving licence, vocational training obligations are rare.

The ADR and RID rules provide for training of drivers as regards the basic knowledge of the properties and dangers of dangerous waste. The training of drivers seems incomplete regarding the carriage of mixtures and solutions of dangerous waste in which the dangerous substances are a minor component, so that there is little danger under normal transport conditions. However, in cases of accident, such mixtures and solutions may give rise to unexpected and serious dangers to the environment. Moreover, the present training in the Member States does not seem appropriate for operators who specialize in the collection and carriage of dangerous waste. Furthermore, it does not cover drivers' mates or support personnel.

Specific vocational training for carriers of toxic and dangerous waste is therefore a matter of great importance. There should not only be Community rules regarding this matter, but also incentives and the provision of information.

d) Special measures in cases of accident

The legal principle that carriers must be informed by the shipper of the dangers associated with the substances carried, including the special measures to be taken in cases of accident, is imposed by law in all the Member States.

There are special safety cards (tremcards), but the unsuitability of the nomenclature for the transport of waste inevitably means that these cards are also unsuitable. As regards the "emergency action codes", harmonization is also called for. The need to establish international emergency plans and emergency consultation centres is generally recognized, but so far this aim has not been achieved as a result, inter alia, of a lack of reliable scientific information.

e) Compilation of data

Several Member States have computerized systems for collecting information relating to the control of dangerous waste; however, no such system exists for the supervision of transfrontier shipments of dangerous waste. The only recent developments in that direction, of an international nature, concern transport by rail (HERMES draft) and by sea (a data communication system for a number of important European ports, covering the characteristics of vessels and certain movements thereof). Implementation of the Community project concerning a data bank for toxic and dangerous waste (TOXWASTE) will remedy this deficiency⁴².

⁴²The Committee on Dangerous Waste (p.6 note 6) decided to launch the pilot phase of TOXWASTE. This system will be made available to the authorities and to industry, and may be entrusted to a private undertaking for the purpose of marketing.

Conclusion

If the supervision and control system is to be effective, a proper set of uniform obligations must be developed, to apply to transfrontier shipments of dangerous waste, carried out in collaboration with other competent international bodies.

2.3 Article 11 of Directive 84/631/EEC - "Accountability and insurance"⁴³

Article 11 states: "The Council shall 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".

Attribution of liability:

The attribution of liability for damage caused to persons and/or to the environment as a result of transfrontier shipments of dangerous waste varies from one Member State to another. Such differences may give rise to confusion and possibly lead to litigation in cases of incidents or accidents occurring in connection with transfrontier shipments of waste. A solution must be found, in the form of a harmonized system of liability, within the framework of international cooperation and permanent consultation with all interested parties (producers, carriers, disposal undertakings, public authorities, insurers, and so on).

The legislation on civil liability essentially fulfils two functions: to rectify damage already caused and to prevent future damage. Numerous reports show that in many countries the positive law concerning the disposal of dangerous waste is subject to certain lacunae in those two respects. For a victim of damage, the most important concern is to obtain compensation and to be protected against future damage, regardless of whether or not any offence has been committed by the producer or the undertaking disposing of the waste which caused the damage. However, in most countries, liability is always based on fault. Moreover, the victim comes up against difficulties arising from the existence of "multiple" causes of damage and the apportionment of liability, so that even if the victim establishes a party's liability, he runs the risk of being able to obtain only a fraction of the damages to which he is entitled. The situation is therefore not very satisfactory in this area.

⁴³On this subject, see in particular:

- REMOND M., "Responsabilité et transport de déchets dangereux", p.224-245 in "Mouvements transfrontières de déchets dangereux", OECD op. cit.

At international level, measures to harmonize the legal provisions on claims for compensation for damage caused by dangerous waste⁴⁴ envisage the following solutions:

- the imposition of absolute liability, also referred to as "channelling" of civil liability", in accordance with the existing conventions⁴⁵, or draft conventions⁴⁶ (the producer may be liable for costs resulting from an accident even if no negligence can be proved against him).

As national laws stand at present⁴⁷, only the Belgian legislature (1974 legislation on toxic waste) effectively attaches the burden of liability to the producer of toxic waste. The fact is that producers are particularly well placed to determine the nature of the risks involved regarding the transport and disposal of waste (quite apart from the justification of providing an incentive to reduce waste at source). To date, it seems that there is still much opposition to the general adoption of that approach in all the Member States of the EEC, and in any event the following considerations should be borne in mind:

- . exclusive liability on the lines of the nuclear convention does not seem politically feasible;
 - . a right of recourse against offending third parties should be available;
 - . cases where liability is avoided must be defined, such as cases of force majeure and action by third parties;
 - . a limitation of liability will without doubt have to be considered, taking account of economic necessities and the rights of victims;
- imposition of joint and several liability; thus in the case of a load comprising waste from several sources which gives rise to damage or is affected thereby, each producer would be liable for all the damages⁴⁸.

⁴⁴Since from the victim's point of view different regulations for purely national transport are logical, it is generally accepted that a unified system of liability should not be limited to transfrontier shipments.

⁴⁵This principle was adopted inter alia by the Paris Convention of 29 July 1960 concerning nuclear accidents.

⁴⁶Proposals were formulated in the "draft directives concerning ecologically rational management of dangerous waste" (Art.45) prepared by the UNEP (Document UNEP/WG 95/4 of 15.12.1983)

⁴⁷See table 1

- application or extension to potentially dangerous waste of the regulations in force, applicable to the transport of dangerous products (waste as such is of no significance except with respect to unauthorized tipping and should be regarded as a problem of evasion of the law)
- as regards a definition for the term "dangerous", the UNIDROIT proposal (definition of dangerous substances, special list, restrictions on the transport of certain exceptionally dangerous substances) should be taken into account.

The problem of attribution of liability is very important, but many further studies, coordination discussions and "concessions" will be necessary before international harmonization is achieved. In the meantime, the problem is often dealt with in practice by means of an appropriate insurance.

TABLE 1: Application of the concept of strict liability

German law	The framework legislation on water (Art.22) provides for strict liability in certain cases which may exceptionally apply to the discharge of waste. However, there is no case of practical application in that respect.
Belgian law	The 1974 legislation on toxic waste provides that the producer "is to be liable for any damage of any nature caused by toxic waste, in particular at any time during transportation, destruction, neutralization or disposal thereof".
Danish law	In principle, civil liability in connection with the management of dangerous waste requires an offence to have been committed, but proceedings are at present pending to have "strict liability" established.
French law	The Law of 15 July 1975 lays down the principle whereby that law will not "preclude the liability incurred by any person for damage caused to others in particular in connection with the disposal of waste held or carried by that person or deriving from products manufactured by that person".

⁴⁸As in the case of Japan, where the Civil Code (Article 719) enables a victim to obtain full compensation for damage, by proceeding against any joint perpetrator, according to NOMURA T. - Les déchets industriels et l'environnement en droit japonais - Université de Limoges, May 1984.

This provision is relatively obscure in so far as it refers to a rather imprecise decision attributing liability to a producer whose fault was not truly proved (on the basis of ownership and continuing custody of the structure of a thing).

EEC Law proposed by the Commission in June 1983, but not accepted by the Council (to date, see Article 11, directive 84/631/EEC.

"The producer of waste within the meaning of the present article shall be liable for such waste from the time of its production until disposal thereof. He shall be liable for any damage caused to a third party by such waste until harmless disposal thereof. Liability shall be incurred regardless of any fault on his part".

American law

Law 94-580 does not affect the common law concerning liability in each State. Under that law, the liability of producers of waste has sometimes been enforced in very wide terms, similar to the concept of "strict liability".

Japanese law

In the case of pollution of water or of the atmosphere by industrial waste, giving rise to bodily injury, the victim may obtain compensation without proving any fault. (In addition, certain trends in case law tend towards a more flexible approach regarding the requirement of fault and causality).

Norwegian law

The concept of strict liability applies under Law No.15 of 16 June 1961 on neighbourhood relations and pollution problems, and by virtue of unwritten law concerning industries which endanger the neighbourhood. There are also plans for applying strict liability for the purposes of the Law of 13 March 1981 on pollution control.

However, to date there has been no case where the principle of strict liability has actually been applied in respect of damage to the environment.

First draft UNEP
directives on the
ecologically rational
management of dangerous
waste

States should apply the principle of strict
liability, indicating any cases of exemption.

Source: J. P. Hannequart, "Identification des responsabilités en
matière de gestion des déchets dangereux" - OECD Paris 1985, p.83-84.

Insurance⁴⁹

If machinery for the enforcement of civil liability for the benefit of victims of damage is to be effective, the "solvency" of the defendant is naturally of fundamental importance. Such solvency may be guaranteed by an obligation to effect insurance. The legal device of compulsory insurance is well known with respect to motor vehicle risks. It is also to be found in other areas, in particular nuclear risks. In the latter case, it appears that all operators of nuclear plants must, in order to cover any possible liability, contract and maintain in force an appropriate financial guarantee, which may take the form of a financial surety, liquid assets or insurance.

The purpose of insurance is to compensate for unavoidable damage and to compensate third parties, not the insured. The precise point where the insurer's liability ends must be clearly identifiable (it is necessary to establish the limits of legal liability and of compensation, the damage to be covered, damage to the environment, and reinstatement measures, and these should be incorporated in the rules on liability).

Certain national legislation on dangerous waste requires transport operators to effect special insurance policies or equivalent financial guarantees. There is no apparent uniformity as between the legal provisions in force. The aim pursued by the public authorities in this area could be to establish a uniform insurance system which ensures the availability of funds in cases of accident or incidents occurring during transfrontier shipments of dangerous waste. Another solution would be to establish an insurance system approved by everyone which would be valid throughout the journey, that is to say in each country crossed. If the insurance is to be integrated within a general harmonization process regarding international management and transfrontier shipments of dangerous waste, the insurance companies will necessarily have to play an important role in drawing up the policies. The insurance industry

⁴⁹See SMETS H., Le système de garantie pour mieux contrôler les mouvements transfrontières de déchets dangereux, in Mouvements transfrontières de déchets dangereux - aspects juridiques et institutionnels, OECD, pp195-218.

has set up a special study group responsible for examining the problems associated with risks deriving from dangerous waste.

One of the solutions envisaged is to compel the producer or shipper of dangerous waste to provide a surety or financial guarantee, which would reduce the risk of "loss" of such waste in transit.

Conclusion

Directives 84/631 (which entered into force on 1 October 1985) and 86/279 (which entered into force on 1 January 1987) represent a first step towards the adoption of a harmonized system of controls on trans-frontier shipments of dangerous waste. They raise problems which will require the adoption of new international agreements, and other problems which may be resolved by national laws conforming with the obligations and principles of the directives adopted. The entry into force of those directives is too recent and the information concerning their trans-position and application is not yet available. As mentioned earlier, effective application will depend on the firmness with which the Member States impose the notification and consignment note procedures. However, until such time as there is a nomenclature for and classification of waste, the Commission's supervisory role (infringement of obligations regarding information, actual compliance with directives, publication of legal texts and miscellaneous communications) imposed by the 50 directives will be carried out in extremely difficult conditions⁵⁰.

IV Economic aspects of the management of dangerous waste⁵¹

1. Present situation and general aspects

1.1 Introduction

Maintenance of satisfactory control of waste which may present dangers for man and the environment is a task which raises great difficulties in industrialized countries. In addition to goods and services, the industrial sector inevitably generates by-products. Such by-products may be residues (and are then fed back into the production cycle), substances (raw materials for other market products) or waste (having no economic value for the producer).

⁵⁰For more details, see in particular the annual reports of the Commission to the European Parliament on the monitoring of the application of Community law and the "Community directives on the environment: their application and possibilities of monitoring by the European Parliament" - Research and documentation dossiers, environment series No.7, EP November 1985.

⁵¹This chapter purports only to "illustrate" the economic importance of dangerous waste; the information is taken from an OECD Study, which is why the values are expressed in Dollars and not Ecus - See "Coûts et avantages du contrôle des déchets dangereux", OECD, January 1986.

There is no real homogeneity in existing legislation regarding the definition of dangerous waste and there are no international rules on the properties which waste must display in order to be classified as "dangerous"; the existing lists of prohibited substances vary considerably from one country to another. Dangerous waste, waste constituting "recyclable materials" and residues constituting dangerous substances are subject to separate laws and regulations and therefore it goes without saying that, according to the market situation, pressure will be exerted upon the public authorities (and the EEC competition policy is liable to be jeopardized).

The laws and regulations in force give rise to extra costs both for the producers of waste and for the public body responsible for supervising the implementation of those laws and regulations.

1.2 Present rate of production of dangerous waste

In the absence of any clear and uniform definition of dangerous waste, the estimates of quantities of dangerous waste produced are only approximate⁵². Nevertheless, a number of statistics have been notified by certain Member States and it is estimated, on the basis of a complicated system of extrapolations, that the European countries of the OECD produce between 15 and 20 million tonnes⁵³.

1.3 Recycling/recovery value

It is estimated that proper control and disposal (incineration, physiochemical processing, submarine dumping, surface and underground disposal and recycling) of dangerous waste in the OECD area cost more than 12,000 million Dollars each year. However, those costs should be adjusted on the basis of the quantities of materials recycled and recovered from the dangerous waste. The OECD estimates that its member countries recycled, recovered or re-used between 12 and 16 million tonnes of such waste in 1984, in other words around 4-5% of the total quantities produced. It is considered that the positive value of this activity is between 1 and 1.5 thousand million Dollars. It is considered therefore that recycling and recovery activities thus reduced by about 10% the cost of disposal of dangerous waste in 1984. It is thus clearly advantageous to establish a policy encouraging the recycling and recovery of raw materials.

⁵²According to the EP-PRUVOT report, supra, the evaluation of quantities of waste is up to 100% inaccurate.

⁵³OECD environmental data, OECD Paris 1985, p.153.

1.4 Reinstatement of abandoned, unauthorized or illegal sites⁵⁴

The control of waste may be expensive, but it is estimated that the reinstatement of sites, the purification of the soil, and the reconstitution of water tables damaged by the inappropriate disposal of waste are even more expensive. The number of identified sites which need to be reinstated is increasing day by day. In Germany between 1,000 and 1,400 sites require corrective action and the total cost may exceed 2,000 million Dollars. In the Netherlands about 5,000 cases in all have been identified, 1,000 of which call for further examination and 350 must be dealt with urgently since they are located in residential areas or hydrographic basins; the total cost of the remedial action will exceed 1 thousand million Dollars over a period of 20 years. Denmark intends taking measures in respect of 380 sites. To date, France has taken remedial action at 66 sites.

In all countries there are a number of sites constituting "black spots" which were being used before the entry into force of the legislation on control of dangerous waste or which were operated contrary to that legislation. This is an example of the problems of "catching up" which are encountered in environmental management; the problem consists in disposing of the mass of different pollutants which accumulated before the adoption of the legislation and regulations, which are not therefore covered by the new legislation. In most Member States, the public authorities undertake responsibility for cleaning these "abandoned sites" or "black spots". If specific persons can be identified as responsible for the damage caused to the environment or to health, the law on extra-contractual liability in force in the country in question may provide a basis for compensation through recourse to the Courts.

In the United States, special provisions govern the reinstatement of sites which fall within the scope of the Resource Conservation and Recovery Act (RCRA): the national or local authorities undertake an enquiry with a view to identifying the largest possible number of such sites; they determine the priorities and, within the limits of the available "super fund" resources, the sites which present the greatest or the most imminent danger are dealt with first. The problem is becoming ever greater in the Member States of the European Communities as well and certain Member States have proposed that there be created a "fund for the cleaning up of old tips" for which resources would be provided by industry; accordingly, and having regard to the potential danger of such sites, it is important for the Commission to be able to put forward a uniform plan of action based on an analysis of the methods adopted by the Member States regarding compensation and prevention.

⁵⁴See in particular "Hazardous waste problem sites", OECD, Report of the expert seminar, Paris 1983 and "Les poubelles de l'industrie débordent", Science et Vie No.821, February 1986, pp84-89.

1.5 Costs and benefits of compliance with laws and regulations governing dangerous waste

The total costs of control and disposal of waste and of reinstatement associated with the management of dangerous waste in the member countries of the OECD probably exceeded 0.2% of their aggregate gross domestic product in 1983. The laws and regulations affect manufacturing costs of the undertakings concerned and may also influence the technology adopted to manufacture products and to dispose of waste. Moreover, the measures adopted and the expenses incurred to deal appropriately with unauthorized tipping or abandoned waste represent a financial burden for the regional authorities and for private promoters.

It is possible to arrive at a preliminary evaluation of the costs by assessing the expenditure incurred in controlling dangerous waste and comparing it with the actual or estimated costs of reinstating abandoned or unauthorized tips. By making such a comparison, it is possible to evaluate the costs thereof in approximate terms in relation to the costs of the control measures in force, in so far as the comparison shows the potential cost of the subsequent reinstatement process which will be avoided. The results show that rigorous control of dangerous waste under the regulations would be an advantageous additional investment for society. The figures for North America show that if the improper disposal of about 3% of the waste actually produced is prevented, the additional cost of the control measures can be justified (see also below, IV 2.4).

2. Transfrontier shipments of dangerous waste

At the present time, there are numerous reasons for thinking that the quantities of waste crossing national frontiers are increasing and that this trend will continue. In Europe, waste transported to another Member State for disposal - that is to say to a country other than the country of origin - virtually doubled from 1982 to 1983.

It is difficult to determine the exact volume of dangerous waste which is disposed of outside the country of origin. However, estimates for 1983 were prepared on the basis of data compiled for the OECD Group on waste management policies.

Thus, within the OECD-Europe area, it is estimated that about 2.2 million tonnes of dangerous waste crossed national frontiers in 1983 for processing, storage and/or discharging, which represents between 10 and 11% of the total production of waste. Since dangerous waste is in most cases transported by road in batches of 22 to 24 tonnes, transfrontier shipments of dangerous waste in the OECD area of Europe no doubt account for more than 100,000 frontier crossings each year. Out of that total, between 20,000 and 30,000 probably involve highly dangerous waste (\pm 700,000 tonnes) intended for discharging in a country other than the country of origin (having regard to the fact that the international conventions on dumping at sea contain lists of substances of which the dumping is prohibited or subject to restrictive conditions).

In 1982, about 1.5 million tonnes of dangerous waste crossed national frontiers in the European OECD area. The increase in the volume of waste within the latter category - 700,000 tonnes in 1983 - is attributable to the fact that it has recently become possible to use, at relatively low cost, waste disposal plants in certain countries which are not OECD members.

Everything points to the conclusion that in Europe dangerous waste moves from one country to another in ever increasing quantities despite the reinforcement of controls and a tendency to reduce the volumes discharged into the sea.

Causes of transfrontier shipments

In certain cases, it is possible to dispose of waste lawfully for a lower cost per unit of weight if the controls are less strict in the importing country than in the exporting country. As long as such a situation persists, certain producers will show a strong inclination to choose the least onerous solution. They may also be tempted to "lose" waste in a country which does not have a strict internal control system to ensure that the waste reaches an approved disposal plant.

The laws and regulations at present applied by governments with a view to controlling dangerous waste entail higher costs for the producers of such waste. These extra costs are accounted for by the sums spent in respect of activities which would not have been undertaken if such laws and regulations did not exist. Thus, the rules may require that certain types of waste, which were previously dumped, must be disposed of by incineration. Producers of such waste who previously were able to bury the waste at the place of production must now record the waste, package it and transport it to the place of incineration and, finally, destroy it. As a result, a producer may find that the cost of disposing of a given weight of waste may be 2 to 5 times higher than the previous cost.

Undertakings which are concerned about profitability will naturally seek to minimize the extra cost deriving from compliance with governmental measures concerning dangerous waste. If costs, including all the administrative expenses and costs of transport, are lower where the operations of processing, storage and/or disposal of dangerous waste in accordance with law are carried out at a site (at sea for example) or in a country other than the place of origin, the producer regards the transfrontier shipment of such waste as justified.

The costs of treatment, storage and/or disposal, including the cost of transport, are sometimes lower in the importing country because:

- the importing country has better technical equipment;
- the plants in the importing country achieve economies of scale; the treatment, storage and/or disposal facilities in the country of destination are closer to

the point of production of the waste than the equivalent facilities in the country of origin.

Other valid reasons may account for transfrontier shipments of dangerous waste, for example:

- in the exporting country, there is no undertaking with the necessary technology to process the waste in accordance with the standards imposed in that country;
- a multi-national undertaking which has constructed the necessary facilities at one of its locations may decide to send there all waste produced by plants belonging to it in other countries which can possibly be dealt with by those facilities.

Cost of disposing of dangerous waste and advantages of transfrontier shipments

The present cost of disposing of dangerous waste may enable a given producer to save on average about 75 Dollars per tonne if he is able to resort to regulated surface or underground disposal rather than to more onerous methods such as incineration or physical and chemical treatment (even greater savings can be achieved for certain substances, such as waste containing PCB).

If one compares the figure of 75 Dollars per tonne, which represents the average additional cost of disposing of waste, with the cost of transporting a tonne of waste over a distance of one kilometre, it will be seen that producers may contemplate sending their waste 800 kilometres by road or rail to reduce the cost of disposing of waste which, otherwise, would have required incineration or physical and chemical treatment.

What is the overall saving achieved by European producers when they send abroad 700,000 tonnes of their highly dangerous waste each year? The saving amounts to at least 700,000 x 75 Dollars, that is to say 52 million Dollars. That is hardly 4% of the total cost of disposing of potentially dangerous waste in Europe, which in 1983 represented about 1.3 million Dollars. Since thousands of loads of dangerous waste cross the frontiers of European countries, the risks of "losing" considerable quantities of such substances are very great. The problem stems from the fact that the "saving" of some 52 million Dollars per year achieved by producers may well be transformed into much higher costs when it is necessary to take remedial measures. Experience has shown that the cost of reinstating polluted areas, per unit of weight of dangerous waste, may be 100 times greater than the cost of properly disposing of such waste. In other words, a "loss" of only 0.2% of the waste transported may cost more than 52 million Dollars in terms of reinstatement. Moreover, it is the public and not the polluter which bears the costs.

Finally, a simple analysis of the transport costs points to the conclusion that the shipment by sea of certain very dangerous waste (in particular waste of which dumping at sea is prohibited by international conventions from industrialized countries to certain less developed countries) may be more profitable for all the parties concerned. Consequently, the emergence of a flow of very dangerous waste from the North towards the South must be envisaged as an entirely plausible eventuality. The benefits to be achieved by rigorous controls are therefore clearly evident.

V. CONCLUSION - SUMMARY AND FUTURE DEVELOPMENTS

This study on "the policy of the EEC regarding the management of dangerous waste" was designed to give an overall view of that policy and of the principal difficulties involved in implementing it.

Since the policy on waste is an integral part of environmental policy, it goes without saying that the objectives and principles laid down in the programmes of action define the framework within which that policy will be able to develop: it is necessary to achieve rational management of waste, with a view to protection of human health, improvement of the quality of life and protection of the environment, by preserving natural resources, taking account of the EEC's commitment regarding the pursuit of maximum economic growth which, under the influence of public opinion, is moving gently towards qualitative or healthy economic growth.

This explains why EEC action was initially based not upon reduction of consumption - the source of waste and therefore the very cause of the malady - but on anti-pollution measures and measures to ensure recycling, re-utilization and innocuous disposal - the symptoms of the malady - and is now developing towards a real policy of prevention (reorientation of investment programmes and research directed towards recycling, re-utilization and clean technologies).

It may be concluded from the study that the EEC has succeeded in establishing a genuine system of control and supervision of dangerous waste, the results of which will depend upon the efforts deployed in consolidating what has so far been achieved, in particular by effectively implementing the directives adopted (not only with regard to formal transposition into national law, but also with respect to effective application and cooperation of the Member States in penalizing infringements).

In that connection, it must be noted that certain general measures (such as agreement on information, evaluation of the impact on the environment, the system of information on the state of the environment and, above all, evaluation of major accident risks) are of fundamental importance in the interpretation of the regulations and with respect to the approaches adopted for the implementation of the Community policy on waste management.

At the present time, the Commission, the body responsible for implementing the programme of action, is preparing a "Community waste management programme" which is so far proving difficult to achieve in the absence of precise information (how can methods for disposing of dangerous waste be determined if the exact production figure is unknown?). In order to provide the required boost for the waste management policy, it will be necessary to devote considerable effort to helping the Member States to overcome the practical difficulties of internal organization and it will also be necessary to consider what methods can be employed to extend the discussion further to include all interested parties and those affected by the Community measures (this is particularly important, in so far as such measures must necessarily provide a solution which reconciles interests of equivalent importance).

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Appendix I

DEFINITIONS GIVEN IN THE DIRECTIVES

Directive No. 78/319/EEC on toxic and dangerous waste - OJ L84 of 31.3.1978, p 78

"waste" : any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force;

"toxic and dangerous waste" : 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;

"disposal" : the carriage, sorting and treatment of dangerous waste, as well as its storage and tipping above or under ground;

the transformation operations necessary for its recovery, re-use or recycling.

Directive No. 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste OJ L 326 of 13.2.1984, pp 32-33

"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;

"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 despatch of the waste and, where applicable, of the Member State or States of transit of the waste;

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

"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 have carried out a transfrontier shipment of waste;

"the consignee of the waste" means the person or undertaking to whom or to which the waste is shipped for disposal;

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

Appendix II

List of Abbreviations

ADR/RID :	European Agreement concerning the International Carriage of Dangerous Goods by Road.
	Règlement international concernant le transport des marchandises dangereuses par chemin de fer (International Regulations concerning the carriage of dangerous goods by rail)
EEC :	European Economic Community
EC :	European Communities
MS :	Member State
IMDG :	International Maritime Dangerous Goods Code
OECD :	Organization for Economic Co-operation and Development
UNO :	United Nations Organization
PCB & PCT :	Polychlorinated biphenyls and polychlorinated terphenyls
EP :	European Parliament
UNEP :	United Nations Environmental Programme
RCRA :	Resource Conservation and Recovery Act
UNIDROIT :	Institut International pour l'Unification du Droit Privé

COUNCIL DIRECTIVE

of 15 July 1975

on waste

(75/442/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 waste disposal 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 for this approximation of laws to 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 essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste;

Whereas the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources;

Whereas the programme of action of the European Communities on the environment ⁽³⁾, stresses the need for Community action, including the harmonization of legislation;

Whereas effective and consistent regulations on waste disposal which neither obstruct intra-Community trade nor affect conditions of competition should be applied to movable property which the owner disposes of or is required to dispose of under the provisions of national law in force, with the exception of radioactive, mining and agricultural waste, animal carcasses, waste waters, gaseous effluents and waste covered by specific Community rules;

Whereas, in order to ensure the protection of the environment, provision should be made for a system of permits for undertakings which treat, store or tip waste on behalf of third parties, for a supervisory system for undertakings which dispose of their own waste and for those which collect the waste of others, and for a plan embracing the essential factors to be taken into consideration in respect of the various waste disposal operations;

Whereas that proportion of the costs not covered by the proceeds of treating the waste must be defrayed in accordance with the 'polluter pays' principle,

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;

⁽¹⁾ OJ No C 32, 11. 2. 1975, p. 36.

⁽²⁾ OJ No C 16, 23. 1. 1975, p. 12.

⁽³⁾ OJ No C 112, 20. 12. 1973, p. 3.

(b) 'disposal' means:

- the collection, sorting, transport and treatment of waste as well as its storage and tipping above or under ground,
- the transformation operations necessary for its re-use, recovery or recycling.

Article 2

1. Without prejudice to this Directive, Member States may adopt specific rules for particular categories of waste.

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

- (a) radioactive waste;
- (b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;
- (c) animal carcasses and the following agricultural waste: faecal matter and other substances used in farming;
- (d) waste waters, with the exception of waste in liquid form;
- (e) gaseous effluents emitted into the atmosphere;
- (f) waste covered by specific Community rules.

Article 3

1. Member States shall take appropriate steps to encourage the prevention, recycling and processing of waste, the extraction of raw materials and possibly of energy therefrom and any other process for the re-use of waste.

2. They shall inform the Commission in good time of any draft rules to such effect and, in particular, of any draft rule concerning:

- (a) the use of products which might be a source of technical difficulties as regards disposal or lead to excessive disposal costs;
- (b) the encouragement of:
 - the reduction in the quantities of certain waste,
 - the treatment of waste for its recycling and re-use,
 - the recovery of raw materials and/or the production of energy from certain waste;
- (c) the use of certain natural resources, including

energy resources, in applications where they may be replaced by recovered materials.

Article 4

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

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

Article 5

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

Article 6

The competent authority or authorities referred to in Article 5 shall be required to draw up as soon as possible one or several plans relating to, in particular:

- the type and quantity of waste to be disposed of,
- general technical requirements,
- suitable disposal sites,
- any special arrangements for particular wastes.

The plan or plans may, for example, cover:

- the natural or legal persons empowered to carry out the disposal of waste,
- the estimated costs of the disposal operations,
- appropriate measures to encourage rationalization, of the collection, sorting and treatment of waste.

Article 7

Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector or by a disposal undertaking,
- or disposes of it himself in accordance with the measures taken pursuant to Article 4.

Article 8

In order to comply with the measures taken pursuant to Article 4 any installation or undertaking treating, storing or tipping waste on behalf of third parties must obtain a permit from the competent authority referred to in Article 5, relating in particular to :

- the type and quantity of waste to be treated,
- general technical requirements,
- precautions to be taken,
- the information to be made available at the request of the competent authority concerning the origin, destination and treatment of waste and the type and quantity of such waste.

Article 9

The installations and undertakings referred to in Article 8 shall be periodically inspected by the competent authority referred to in Article 5 to ensure, in particular, that the conditions of the permit are being fulfilled.

Article 10

Undertakings transporting, collecting, storing, tipping or treating their own waste and those which collect or transport waste on behalf of third parties shall be subject to supervision by the competent authority referred to in Article 5.

Article 11

In accordance with the 'polluter pays' principle, the cost of disposing of waste, less any proceeds derived from treating the waste, shall be borne by:

- the holder who has waste handled by a waste collector or by an undertaking referred to in Article 8;
- and/or the previous holders or the producer of the product from which the waste came.

Article 12

Every three years, Member States shall draw up a situation report on waste disposal in their respective countries and shall forward it to the Commission. To this effect, the installations or undertakings referred to in Articles 8 and 10 must supply the competent authority referred to in Article 5 with the particulars on the disposal of waste. The Commission shall circulate this report to the other Member States.

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

Article 13

Member States shall bring into force the measures needed in order to comply with this Directive within 24 months of its notification and shall forthwith inform the Commission thereof.

Article 14

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 15

This Directive is addressed to the Member States.

Done at Brussels, 15 July 1975.

For the Council
The President
 M. RUMOR

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 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.

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.

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.

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

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 trans-frontier 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 trans-frontier 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 number 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.

Article 15

The Technical Committee set up under Article 18 of Directive 78/319/EEC, and acting under the procedure laid down in Article 19 of that Directive, shall be empowered to draw up, in accordance with the information given in Annexes I and III respectively, the consignment note including the general instructions and the uniform declaration document referred to in Article 17. The Committee shall also be empowered, under the same procedure, to adapt to technical progress the consignment note, the declaration document and the list of international transport conventions contained in Annex II.

Article 16

Member States shall designate the competent authorities for the purpose of Article 4.

Article 17

Waste (including in particular waste, scrap, sludge, ash and dust) from non-ferrous metals which is intended for re-use, regeneration, or recycling on the basis of a contractual agreement regarding such operations shall be exempt from the provisions of this Directive provided that the following conditions are fulfilled:

- (a) the holder must make a declaration on a uniform document, the contents of which is set out in Annex III, and which must accompany the shipment, to the effect that these materials are

intended for the operations in question, and must forward a copy of this document to the competent authorities of the Member State referred to in Article 4 (2) (a) or (b);

- (b) the consignee must declare in the same document, which he shall forward to the competent authorities of the Member State referred to in (a) not later than 15 days from receipt of the materials that these operations will actually be carried out.

Article 18

1. Member States shall take the measures necessary to comply with this Directive as from 1 October 1985. 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 governed by this Directive. The Commission shall inform the other Member States thereof.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 6 December 1984.

For the Council

The President

L. KAVANAGH

ANNEX I

CONTENT OF THE UNIFORM CONSIGNMENT NOTE

SECTION A

Information to be provided on notification

(See General Instructions — paragraph 1)

1. Holder of the waste (a)
 2. General notification or notification of a single shipment
 3. (a) Consignee of the waste (a)
(b) Permit No (where applicable)
(c) Information relating to the contractual agreement between the holder and the consignee
 4. Producer(s) of the waste (a)
 5. (a) Carrier(s) transporting the waste (a)
(b) Licence No (where applicable) (b)
 6. (a) Country of origin of the waste
(b) Competent authority (c)
 7. (a) Expected countries of transit
(b) Competent authority (c)
 8. (a) Country of destination of the shipment
(b) Competent authority (c)
 9. Planned date(s) of shipment(s) (d)
 10. Means of transport envisaged (road, air, sea, etc.)
 11. Information relating to insurance against damage to third parties (f)
 12. Name and physical description of the waste and its composition (e)
 13. Method of packing envisaged
 14. Quantit(y)(ies) (kg) (g)
 15. UN classification
 16. Process by which the waste was generated
 17. Nature of the risk: Explosive / Reactive / Corrosive / Toxic / Flammable / Other
 18. Outward appearance of the waste at ... °C: Powdery or Pulverulent / Solid / Viscous or Syrupy / Sludgy / Liquid / Gaseous / Other
Colour
 19. Place of generation of the waste
 20. Place of disposal of the waste
 21. Method of disposal of the waste
 22. Other information
 23. Declaration by the holder that the information is correct, place, date, signature of holder.
-
- (a) Full name and address, telephone and telex number and the name, address, telephone or telex number of the person to be contacted.
 - (b) Where there is no specific licence, the carrier should be able to demonstrate that he complies with the rules of the Member State concerned in respect of transport of such waste.
 - (c) Full name and address, telephone and telex number. This information is obligatory only where the countries concerned are Member States. In other cases it should be provided if known.
 - (d) In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
 - (e) The nature and the concentration of the most characteristic components, in terms of the toxicity and other dangers presented by the waste will be required together with, if possible, an analysis referring to the method of disposal envisaged, particularly in the case of an initial shipment.
 - (f) Examples of information to be included where such insurance is required: insurer, policy number, last day of validity.
 - (g) In the case of a general notification covering several shipments, both the total quantity and the quantities for each individual shipment will be required.

SECTION B**Acknowledgement**

(See General Instructions — paragraph 2)

1. Date of receipt of notification
2. Date on which acknowledgement is sent
3. Period of validity of acknowledgement
4. Whether acknowledgement applies to a single shipment or to several shipments
5. Date, signature and stamp of competent authority.

SECTION C**Transport arrangements**

(See General Instructions — paragraph 3)

1. Serial No of shipment
2. Identification of means of transport
3. No and type of containers, markings, numbers, etc.
4. Exact quantities (kg)
5. Customs posts of entry in the country(ies).(ies), whose territory is to be passed through
6. Special conditions (if any) set by Member States concerned regarding the transport across their territory
7. Declaration by the holder and the carrier that the information is correct ; place, date, signature of holder and carrier.

SECTION D**Receipt by the consignee**

(See General Instructions — paragraph 4)

Declaration by the consignee that he has received the waste for disposal and the quantity thereof ; place, date, signature of the consignee.

SECTION E**Customs endorsement**

(See General Instructions — paragraph 5)

1. Address of customs post
2. Declaration that the waste has been exported from the customs territory of the Community
3. Date of exit
4. Date, stamp and signature of customs authority.

GENERAL INSTRUCTIONS

NB: Any competent authority may require further information or documentation to supplement the information provided on the consignment note.

1. Section A of the consignment note must be completed by the holder and sent to the competent authority of the Member State of destination of the waste or, in the case of waste exported to a destination outside the Community or of waste in transit through the Community, to the competent authority of the last Member State through which the shipment is due to pass, with copies to the third State of destination and to the competent authorities of the other Member States concerned with the shipment.
2. Section B must be completed by the competent authority of the Member State to whom the notification is addressed and returned to the holder of the waste within one month of receipt of the notification.

A transfrontier shipment of hazardous waste may not be carried out until after receipt of the acknowledgement of notification supplied by the competent authority referred to above. The acknowledgement must accompany the shipment.

3. After receipt of the acknowledgement from the competent authority, the holder, in conjunction with the carrier, must complete section C of the consignment note. The consignment note, duly completed, must accompany the shipment and, before the shipment takes place, copies must be forwarded to the competent authorities of the Member States concerned.
4. Section D must be completed by the consignee on receipt of the waste where the consignee is situated in a Member State. The consignee must forward copies of the duly completed consignment note to the holder of the waste and to the competent authorities of the Member States concerned.
5. In the case of export of waste from the Community for disposal outside the Community, or of waste in transit through the Community, section E must be completed by the customs authority at the post where the shipment leaves the Community and returned to the competent authority in that Member State. In this case, the holder of the waste must certify to the competent authority of the Member State of dispatch not later than six weeks after the waste has left the Community, that the waste has reached its destination and shall indicate the last customs post in the Community through which the shipment passed.

ANNEX II

LIST OF INTERNATIONAL TRANSPORT CONVENTIONS REFERRED TO IN
ARTICLE 8 (2)⁽¹⁾

1. ADR :
European Agreement concerning the International Carriage of Dangerous Goods by Road (1957);
2. CIM :
International Convention concerning the Carriage of Goods by Rail (1924)⁽²⁾,
including in Annex I:
RID :
International Regulations concerning the Carriage of Dangerous Goods by Rail (1924);
3. SOLAS Convention :
International Convention for the Safety of Life at Sea (1974);
4. IMDG Code⁽³⁾ :
International Maritime Dangerous Goods Code;
5. Chicago Convention :
Convention on International Civil Aviation (1944) *Annex 18* to which deals with the carriage of dangerous goods by air (T.I. : Technical Instructions for the Safe Transport of Dangerous Goods by Air);
6. MARPOL Convention :
International Convention for the Prevention of Pollution from Ships (1973/1978);
7. ADNR :
Regulation of the Carriage of Dangerous Substances on the Rhine (1970).

⁽¹⁾ This list contains those Conventions in force at the time of adoption of this Directive and may be adapted by the Technical Committee referred to in Article 15.

⁽²⁾ From 1 May 1985 this Convention will be called :
COTIF : Convention concerning International Carriage by Rail.
The RID will become an Annex to the COTIF called :
'Regulations concerning the international carriage of dangerous goods by rail'.

⁽³⁾ From 1 January 1985, the IMDG code will be incorporated in the SOLAS Convention.

ANNEX III

DECLARATIONS REGARDING WASTE FOR RE-USE, REGENERATION, RECYCLING

A. HOLDER'S DECLARATION (1)

Name and address of the holder

The following materials (2)

are intended for re-use/regeneration/recycling on the basis of a contractual agreement with : (3)

These materials are exempt from the provisions of Directive 84/631/EEC in accordance with Article 17 thereof.

Date and signature of the holder

B. CONSIGNEE'S DECLARATION (4)

Name and address of the consignee

We certify that these materials will be effectively re-used/regenerated/recycled.

Date and signature of the consignee

(1) To be completed by the holder and sent with the shipment. The holder must in addition forward a copy of this document to the competent authorities of the Member State of destination of the waste or, in the case of waste exported from the Community to the competent authority of the last Member State through which the shipment is due to pass.

(2) Usual commercial description of the materials and quantity.

(3) Name and address of the consignee.

(4) To be completed by the consignee and sent to the competent authorities of the Member State referred to in footnote 1 not later than 15 days after receipt of the waste.

COUNCIL DIRECTIVE

of 12 June 1986

amending Directive 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste

(86/279/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 programme of action of the European Communities on the environment, approved by the Council on 22 November 1973 ⁽⁴⁾, the continuation and implementation of which are the subject of the resolutions of 17 May 1977 ⁽⁵⁾ and 7 February 1983 ⁽⁶⁾, provides for Community action aimed at controlling the disposal of hazardous wastes;

Whereas, pursuant to Directive 78/319/EEC ⁽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 for this purpose Directive 84/631/EEC ⁽⁸⁾ organizes the supervision and control within the Community of the transfrontier shipment of hazardous waste;

Whereas, in connection with protecting the environment against dangers arising out of such waste, account must be taken of the risk of pollution occurring outside the Community;

Whereas, therefore, in the case of waste being transferred outside the Community the holder must, when notifying the transfer, furnish satisfactory information in respect of the agreement of the non-member State of destination and

whereas the consignee of the waste must possess adequate technical capacity for the disposal of the waste;

Whereas, moreover, experience has shown that, in the case of waste being transferred outside the Community, it would be more fitting for the right to issue the acknowledgement of receipt of the notification or to raise objections to the transfer to be given to the dispatching Member State; whereas, however, in certain circumstances, the Member State of final transit of the waste should be able to exercise that right;

Whereas, in order to take account of these various requirements, Directive 84/631/EEC should be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Articles 3, 4, 5, 7 and 17 of Directive 84/631/EEC are replaced by the following:

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 or from a Member State to a third State, he shall notify the competent authority of the Member State responsible for issuing the acknowledgement of receipt, with a copy to the competent authorities of the other Member States concerned and, where applicable, to the third State of destination and/or the third State(s) of transit.

2. Notification shall be effected 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 authority of the Member State responsible for issuing the acknowledgement of receipt, the holder of the waste shall provide it with satisfactory information on the following in particular:

⁽¹⁾ OJ No C 284, 7. 11. 1985, p. 5.

⁽²⁾ OJ No C 36, 17. 2. 1986, p. 197.

⁽³⁾ OJ No C 354, 31. 12. 1985, 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 326, 13. 12. 1984, p. 31.

- 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 provision 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 dumped in 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. In the case of a shipment from a Member State to a third State, the holder of the waste shall obtain the agreement of the third State of destination before embarking upon the notification procedure provided for in paragraph 3. The notification must include satisfactory information on such agreement.

Article 4

1. Transfrontier shipment may not be effected before the competent authorities of the Member States referred to in paragraph 2 (a), (b) or (c) have acknowledged receipt of the notification. The acknowledgement shall be entered on the consignment note.

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

- (a) either by the competent authorities of the Member State of destination; or
- (b) in the case of shipments of waste from a third State in transit through the Community for disposal outside the Community, by the competent authorities of the last Member State through which the shipment is due to pass; or
- (c) in the case of shipments of waste from a Member State for disposal outside the Community in a third

State, by the competent authorities of the Member State of dispatch, except in the case provided for in the last subparagraph of this paragraph

with a copy to the consignee of the waste and to the competent authorities of the other Member States concerned, and where applicable, to the third State of destination and the third State(s) of transit.

Where the waste is disposed of in a third State bordering on the last Member State of transit, the latter shall be entitled to issue the acknowledgement of receipt or to raise any objection in place of the Member State referred to in (c). A Member State of transit intending to exercise the right conferred upon it in this subparagraph shall communicate it to the Commission and other Member States. It may not exercise this right earlier than three months following such communication.

3. Objections must be substantiated on the basis of laws and regulations relating to environmental protection, public policy and public security or health protection which are in conformity with 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 authorities of the Member State referred to in paragraph 2 are satisfied that the problems giving rise to their objections have been resolved, they 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, and, where applicable, to the third State of destination and the third State(s) of transit.

5. The acknowledgement forwarded by the competent authorities of the Member State referred to in paragraph 2 to the holder of the waste pursuant to 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 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 in 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 effected 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 to be able to carry out 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 a copy 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) 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 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 during a maximum period of one year.

4. General notification shall be by means of the consignment note.

Article 7

1. 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, in the case referred to in Article 4 (2) (c), shall also forward a copy to the competent authorities in the Member State of

dispatch. These copies shall be kept for at least two years.

2. The holder of the waste shall also declare or certify to the competent authorities of the Member State referred to in Article 4 (2) (b) or (c), 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 17

Waste (including in particular waste, scrap, sludge, ash and dust) from non-ferrous metals which is intended for re-use, regeneration or recycling on the basis of a contractual agreement relating to such operations shall be exempt from the provisions of this Directive provided that the following conditions are fulfilled:

- (a) the holder must make a declaration on a uniform document, the contents of which are set out in Annex III and which must accompany the shipment, to the effect that the materials concerned are intended for the operations in question and must forward a copy of this document to the competent authorities of the Member State referred to in Article 4 (2);
- (b) the consignee must declare in that same document, which he shall forward to the competent authorities of the Member State referred to in (a) not more than 15 days after receipt of the materials, that these operations will actually be carried out.

Article 2

1. Member States shall bring into force, not later than 1 January 1987, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

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

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 12 June 1986.

For the Council
The President
P. WINSEMIUS

