

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 425 final

Brussels, 21 September 1993

Proposal for a
COUNCIL DIRECTIVE
amending Directive 91/689/EEC on hazardous waste

(presented by the Commission)

EXPLANATORY MEMORANDUM

This proposed Directive seeks to revise the definition of the term "hazardous waste" and to amend the date of implementation of Directive 91/689/EEC on hazardous waste and the date of repeal of Directive 78/319/EEC on toxic and dangerous waste in order to avoid a legal void.

The reasons for the revision are the following:

Article 1 of Directive 91/689/EEC defines hazardous waste in terms of a list, to be drawn up by the Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC on waste, and not later than six months before the date of implementation of this Directive (12 December 1993).

In addition this list is to be based on Annexes I and II to Directive 91/689/EEC and any waste featuring in the list must have one or more of the hazard properties listed in Annex III to Directive 91/689/EEC.

Therefore, the Commission should have defined hazardous waste in terms of an inclusive and binding list consisting of waste which have one or more of the 14 hazard properties listed in Annex III.

However, the production of an inclusive and binding list as a means of precisely defining the term "hazardous waste" has proved unfeasible, since it implies that a waste featuring on the list is definitely hazardous in all circumstances, which does not necessarily correspond to reality. Depending on the approach to follow the result may be a very short list where only the evident is hazardous, or a very long one where everything is hazardous, neither of them of practical value.

The classification of a waste as hazardous depends, among others, on the concentrations of hazardous constituents, or on specific conditions. For example, waste in category 22 of Annex I: ashes and/or cinders are only hazardous when the type and concentration of their constituents lead, after disposal, to the production of leachates which possess any of the properties of Annex III. In addition, the acidic or alkaline characteristic of the same waste may render it hazardous or not depending on the circumstances.

Consequently, at this stage, the Commission, in order to ensure the rapid implementation of the Directive, proposes:

- (a) not to define hazardous waste by means of a binding and inclusive list of waste that will always display one or more of the hazard properties of Annex III;
- (b) to modify the definition of hazardous waste by direct reference to the hazard properties;
- (c) to establish a Community list of hazardous waste, with a minimum of delay, on the basis of the modified definition;
- (d) until the establishment of a Community list of hazardous waste, Member States shall identify hazardous waste on the basis of the Annexes to Directive 91/689/EEC.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the implementation of Council Directive 91/689/EEC⁽¹⁾ depends on the establishment by the Commission of an inclusive and binding list of hazardous waste;

Whereas it has become apparent, through the work of the committee provided for in Article 18 of Council Directive 75/442/EEC⁽²⁾, as last amended by Directive 91/692/EEC⁽³⁾, that it has not been possible, within the time limits fixed by Directive 91/689/EEC, to define hazardous waste in terms of an inclusive binding list as required by paragraph 4 of Article 1;

Whereas it is necessary to ensure the implementation of Directive 91/689/EEC with a minimum of delay;

(1) OJ No L 377, 31.12.1991, p. 20.

(2) OJ No L 194, 25.7.1975, p. 39.

(3) OJ No L 377, 31.12.1991, p. 48.

Whereas as a consequence, it is necessary to amend the definition of hazardous waste in order that the implementation of Directive 91/689/EEC no longer requires the previous establishment of an inclusive and binding list of hazardous waste;

Whereas it is necessary to establish a Community list of hazardous waste in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, taking into account the Annexes to Directive 91/689/EEC;

Whereas it is therefore necessary to postpone the repeal of Council Directive 78/319/EEC⁽⁴⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/689/EEC is amended as follows:

1. Article 1(4) is replaced by the following:

"4. (a) For the purpose of this Directive "hazardous waste" means any substance or object belonging to the categories or generic types of waste set out in Annex I, taking into account the constituents referred to in Annex II, and which display one or more of the properties listed in Annex III.

(b) The Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, shall draw up a Community list of hazardous waste. The Community list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration. This list shall be periodically reviewed and, if necessary, revised by the same procedure.

⁽⁴⁾ OJ No L 84, 31.3.1978, p. 43.

Once a Community list of hazardous waste is established, any decision by a Member State to consider categories of waste as hazardous waste shall be notified to the Commission and reviewed in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC with a view to adaptation of the Community list."

2. Article 10 is replaced by the following:

"Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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."

3. Article 11 is replaced by the following:

"Article 11

Directive 78/319/EEC is hereby repealed with effect from 31 December 1994."

Article 2

This Directive is addressed to the Member States.

Done at Brussels,

**For the Council
The President**

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DOCUMENTS

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14

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