

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 560 final - SYN 145

Brussels, 20 November 1989

**AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING
DIRECTIVE 75/442/EEC ON WASTE**

**AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE
ON HAZARDOUS WASTE**

(presented by the Commission pursuant to Article 149, paragraph 3
of the EEC Treaty)

Cons. 601

EXPLANATORY MEMORANDUM

On 25 May 1989, the European Parliament examined the proposals by the Commission to amend the Directive 75/442/EEC on waste and to replace the Directive 78/319 on toxic and dangerous waste by a Directive on hazardous waste. The Parliament adopted the report established by the Commission on Environment, Public Health and Consumer Protection, including amendments to the text of the Commission.

1. Proposal for a Council Directive amending the Directive 75/442/EEC on waste

The amendments concern various clarifications, the addition of recitals, the definition of waste, the field of application, the establishment of national waste reduction plans, certain waste elimination processes and the control and supervision by the competent authorities.

The Commission has followed the invitation by the Parliament to amend its proposal and has according to Art. 149, paragraph 3 of the Treaty, integrated ten amendments into a modified proposal.

The amendments put a stronger accent on the necessity of measures for waste prevention, clean technologies and recycling and extend the control and supervision of the competent authorities to a number of waste management activities not included previously.

2. Proposal for a Directive on hazardous waste

The amendments concern the modification of the Directive into a Regulation, the definition of hazardous waste, the relation between the proposed Directive and international conventions on the shipments of dangerous goods and the export of hazardous waste. Many of the amendments concern the reintroduction of the text of the existing Directive on toxic and dangerous waste (78/319/EEC). Some amendments finally aim at rejecting the Commission's proposal to apply the Committee procedure introduced into the Directive on waste to this Directive.

The Commission has only been able to accept two of the amendments and has integrated them according to Art. 149, Paragraph 3 of the Treaty into an amended proposal. Indeed most of the amendments of the Parliament concerned the replacement of the text proposed by the Commission with the text of the 78/319 Directive. This does not take into account that the proposal for an amended Directive on waste applies to all wastes and therefore many provisions need not be repeated in the directive on hazardous waste.

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING
DIRECTIVE 75/442/EEC ON WASTE
(COM(88)391 FINAL - SYN 145

(submitted by the Commission to the Council in accordance with Article 149(3) of the EEC Treaty)

Text of the original proposal

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the
European Economic Community, and in
particular Article 100a thereof,

Having regard to the proposal from the
Commission,

In cooperation with the European Parliament,

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

First recital

Whereas any disparity between the laws on
waste disposal in the Member States can
distort the conditions of competition and
thereby directly affect the establishment and
functioning of the internal market; whereas it
is therefore necessary to approximate laws in
this field.

Third recital

Whereas Council Directive 75/442/EEC (1)
established a set of Community rules on waste
disposal; whereas these must be amended to
take account of experience gained in the
implementation of this Directive by the
Member States; whereas the amendments
take as a base a high level of environmental
protection with as much regard to the
definition as to the disposal of waste;

(1) OJ No. L 194, 25.7.1975, p. 47

Amended proposal

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the
European Economic Community, and in
particular Article 100a thereof,

Having regard to the proposal from the
Commission,

In cooperation with the European Parliament,

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

First recital

Whereas any disparity between the laws on
waste disposal, waste processing and recycling
in the Member States can distort the
conditions of competition and thereby directly
affect the establishment and functioning of
the internal market; whereas it is therefore
necessary to approximate laws in this field.

Second recital

Whereas, in order to achieve a high level of
environmental protection, the Member States
must, in addition to action to ensure the
responsible removal, processing and, where
possible, recycling of waste, take measures to
restrict the production of waste;

Third recital

Whereas Council Directive 75/442/EEC (1)
established a set of Community rules on waste
disposal; whereas these must be amended to
take account of experience gained in the
implementation of this Directive by the
Member States; whereas the amendments
take as a base a high level of environmental
protection with as much regard to the
definition as to the disposal of waste;

(1) OJ No. L 194, 25.7.1975, p. 47

Fourth recital

Whereas the definition of waste should be revised in the light of experience in order to improve the efficiency of waste management in the Community;

Fifth recital

Whereas, as the environmental action programmes stress, the volume of waste can effectively be reduced by intervening at the production stage to promote clean technologies and products which can be recycled and re-used;

Seventh recital

Whereas it must be possible to adapt rapidly to technical progress and it is therefore advisable to facilitate such adaptation by providing for a procedure establishing cooperation between Member States within a committee on adaptation of this Directive to technical progress,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Directive 75/442/EEC is hereby amended as follows :

1. Articles 1,2,3,8,9, 10 and 12 are replaced by the following :

'Article 1

For the purpose of this Directive :

- (a) waste means any substance or object which the holder disposes of, or is required to dispose of, for the reasons listed in Annex I;
- (b) disposal means the collection, transport and treatment of waste, in particular any of the operations specified in Annex II;
- (c) collection means the gathering, sorting and/or mixing of waste from several holders for the purpose of treatment;
- (d) transport means the whole range of waste loading, unloading and carriage operations.

Fourth recital

Whereas the definition of waste should be revised in the light of experience in order to improve the efficiency of waste management in the Community;

Fifth recital

Whereas, as the environmental action programmes stress, the volume of waste can effectively be reduced by intervening at the production stage to promote clean technologies and products which can be recycled and re-used;

Sixth recital

Whereas it is necessary to take specific steps to encourage the development of clean technologies and recycling;

Seventh recital

Whereas it must be possible to adapt rapidly to technical progress and it is therefore advisable to facilitate such adaptation by providing for a procedure establishing cooperation between Member States within a committee on adaptation of this Directive to technical progress,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Directive 75/442/EEC is hereby amended as follows :

1. Articles 1,2,3,4,8,9, 10 and 12 are replaced by the following :

'Article 1

For the purpose of this Directive :

- (a) waste means any substance or object which the holder disposes of, or is required to dispose of, for the reasons listed in Annex I;
- (b) disposal means the collection, transport and treatment of waste, in particular any of the operations specified in Annex II;
- (c) collection means the gathering, sorting and/or mixing of waste from several holders for the purpose of treatment;
- (d) transport means the whole range of waste loading, unloading and carriage operations.

Article 2

1. The following shall be excluded from the scope of this Directive :
 - (a) radioactive waste;
 - (b) mining waste;
 - (c) animal carcasses and agricultural waste of faecal origin;
 - (d) waste waters discharged into sewers and the aquatic environment;
 - (e) emissions into the atmosphere.
2. Specific rules for particular instances or supplementing those of this Directive on the disposal of particular categories of waste shall be laid down by means of special Directives.

Article 3

1. Member States shall take appropriate steps to encourage the prevention, recycling and processing of waste, the extraction of raw materials and possibility of energy therefrom and any other process for the re-use of waste.
2. Member States shall inform the Commission in good time of any draft legislation relating to measures as referred to in paragraph 1 concerning, in particular :
 - (a) the use of products considered to be a source of technical difficulties as regards disposal or likely to generate excessive disposal costs;
 - (b) the encouragement of :
 - the reduction in the quantities of certain waste,
 - the treatment of waste for recycling and re-use,
 - the recovery of raw materials and/or the production of energy from certain types of waste;
 - (c) the use of certain natural resources, including energy resources, in applications where the raw materials can be replaced by recovered materials.

Article 2

1. The following shall be excluded from the scope of this Directive :
 - (a) radioactive waste;
 - (b) mining waste;
 - (c) animal carcasses and agricultural waste of faecal origin;
 - (d) waste waters discharged into sewers and the aquatic environment;
 - (e) emissions into the atmosphere.
2. Specific rules for particular instances or supplementing those of this Directive on the disposal of particular categories of waste shall be laid down by means of special Directives.

Article 3

1. Member States shall take steps firstly to encourage the prevention and secondly the recycling and processing of waste, the extraction of raw materials and possibly of energy therefrom and any other processes for the re-use of waste.
2. Member States shall inform the Commission in good time of any draft legislation relating to measures as referred to in paragraph 1 concerning, in particular :
 - (a) the use of products considered to be a source of technical difficulties as regards disposal or likely to generate excessive disposal costs;
 - (b) the encouragement of :
 - the reduction in the quantities of certain waste,
 - the treatment of waste for recycling and re-use,
 - the recovery of raw materials and/or the production of energy from certain types of waste;
 - (c) the use of certain natural resources, including energy resources, in applications where the raw materials can be replaced by recovered materials.

3. The measures must give priority to recovery, re-use and recycling, taking account of the available technology, economic implications and existing or potential market opportunities for the products obtained, while respecting the provisions of the Treaty concerning the establishment and proper functioning of the internal market.

4. Member States shall take measures designed, inter alia, to:

- (a) promote the development of new clean technologies generating less or no waste and more sparing in their use of natural resources;
- (b) promote the technical development and marketing of products designed to facilitate, or reduce the cost of, disposal, in particular by being suitable for recycling or re-use.

Article 4 (of Directive 75/442/EEC)

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 8

In order to comply with the measures taken pursuant to Article 4, any establishment or undertaking which carries out waste treatment for third parties, in particular any of the operations specified in Annex II a, must obtain a permit from the competent authority referred to in Article 5.

3. The measures must give priority to the prevention of the production of waste, then to recovery, re-use and recycling, taking account of the available technology, economic implications and existing or potential market opportunities for the products obtained, while respecting the provisions of the Treaty concerning the establishment and proper functioning of the internal market.

4. Member States must take measures to prevent the creation of waste:

- (a) by promoting clean technologies generating little or no waste and sparing in their use of natural resources;
- (b) by promoting clean products, designed to facilitate, or reduce the cost of, disposal, in particular by being suitable for recycling or re-use.

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.

Member States shall prohibit uncontrolled open-air incineration,

Article 8

In order to comply with the measures taken pursuant to Article 4, any establishment or undertaking which carries out waste treatment for third parties, in particular any of the operations specified in Annex II a, must obtain a permit from the competent authority referred to in Article 5.

Such permits shall cover :

- the types and quantities of waste,
- the technical requirements,
- the precautions to be taken,
- the disposal site,
- the treatment method.

Permits may be granted for a specified period; they may be renewable; and they may be subject to conditions and obligations.

Article 9

1. Establishments or undertakings which carry out waste disposal, with the exception of those which carry out the operations specified in Annex II B, shall be subject to periodic inspections by the competent authorities referred to in Article 5.
2. Member States shall take the necessary measures to ensure that the 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 performance of their duties.

Article 10

All establishments or undertakings referred to in Article 8 shall :

- keep a record of the quality, nature and origin of the waste and the treatment method,
- make this information available at regular intervals to the competent authorities referred to in Article 5.

Article 12

1. Every three years, and for the first time on 1 September 1990, Member States shall send the Commission a report on the measures taken to implement this directive. The report shall be based on a questionnaire which the Commission shall send to the Member States six months before the above date.
2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a consolidated report every three years, and for the first time in 1991.

Such permits shall cover :

- the types and quantities of waste,
- the technical requirements,
- the precautions to be taken,
- the disposal site,
- the treatment method.

Permits may be granted for a specified period; they may be renewable; and they may be subject to conditions and obligations.

Article 9

1. 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.
2. 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.
3. Member States shall take the necessary measures to ensure that the 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 performance of their duties.

Article 10

All establishments or undertakings referred to in Article 8 shall :

- keep a record of the quality, nature and origin of the waste and the treatment method,
- make this information available at regular intervals to the competent authorities referred to in Article 5.

Article 12

1. Every three years, and for the first time on 1 September 1990, Member States shall send the Commission a report on the measures taken to implement this directive. This report shall be based in particular on a questionnaire which the Commission shall send to the Member States six months before the above date.
2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a consolidated report every three years, and for the first time in 1991.

2. The following Articles are inserted :

'Article 12a

The amendments necessary for adapting the Annexes to this Directive to scientific and technical progress shall be adopted in accordance with the procedure set out in Article 12c.

Article 12b

The Commission shall be assisted by an advisory committee for adaptation to scientific and technical progress composed of the representatives of the Member States and chaired by the representative of the Commission.

Article 12c

Where the procedure set out in this Article is applied, the representative of the Commission shall submit to the Committee referred to in Article 12b a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

When adopting the measures, the Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.'

3. Annexes I and II to this Directive are added as Annexes I and II.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from 1 January 1990. 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 covered by this Directive.

Article 3

This Directive is addressed to the Member States.

2. The following Articles are inserted :

'Article 12a

The amendments necessary for adapting the Annexes to this Directive to scientific and technical progress shall be adopted in accordance with the procedure set out in Article 12c.

Article 12b

The Commission shall be assisted by an advisory committee for adaptation to scientific and technical progress composed of the representatives of the Member States and chaired by the representative of the Commission.

Article 12c

Where the procedure set out in this Article is applied, the representative of the Commission shall submit to the Committee referred to in Article 12b a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

When adopting the measures, the Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.'

3. Annexes I and II to this Directive are added as Annexes I and II.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from 1 January 1990. 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 covered by this Directive.

Article 3

This Directive is addressed to the Member States.

Annexes remain unchanged.

**ANNEX to the amended proposal for a Council Directive amending Council
Directive 75/442/EEC on waste**

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

I. What is the main reason for introducing the measure ?

The modification of Directive 75/442/EEC aims at making of it a framework directive for waste and at introducing new definitions developed together with OECD. The amended proposal extends the control of competent authorities to more types of activities.

II. Features of the businesses in question. In particular :

(a) Are there many SMEs ?

Yes.

(b) Are they concentrated in regions which are :

i. eligible for regional aid in the Member States ?

No.

ii. eligible under the ERDF ?

No.

III. What direct obligations does this measure impose on businesses ?

Waste disposal enterprises need a permit from the competent authorities and are subject to controls. The enterprises have to keep a register of waste treated.

IV. What indirect obligations are local authorities likely to impose on businesses ?

As far as waste disposal enterprises render services to local authorities, they can be subject to conditions concerning the execution of the work. The waste elimination plans specified in Article 6 can impose certain conditions on waste producers.

V. Are there any special measures in respect of SMEs ? Please specify.

No.

VI. What is the likely effect on :

(a) the competitiveness of businesses ?

The directive aims at a better harmonisation of national legislation.

(b) employment ?

The directive requires measures to promote clean technologies and clean products as well as recycling, which can all have a positive impact on employment.

**VII. Have both sides of industry been consulted ?
Please indicate their opinions.**

Consultations have taken place with UNICE, CEFIC, EUROMETAUX, CEAD, FEAD.

The opinions vary according to the interested represented. The ESC would have preferred more detailed provisions.

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON HAZARDOUS WASTE
(COM(88) 391 FINAL - SYN145)

(submitted by the Commission to the Council in accordance with Article 149(3) of the EEC Treaty)

Text proposed by the Commission

Amended proposal

Articles 1 to 12 remain unchanged

Article 12(3a) and (3b) (new)

3a. 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.

3b. The Commission shall report every three years to the Council and to the European Parliament on the application of this Regulation.

Articles 13 and 14 remain unchanged

Article 15 is deleted

Articles 16 to 19 remain unchanged

Annexes remain unchanged

**ANNEX to the amended proposal for a Council Directive
concerning hazardous waste**

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

I. What is the main reason for introducing the measure ?

The new directive introduces a more detailed and wider definition of hazardous waste, which has been elaborated together with OECD. The amended proposal adds an obligation for Member States to draw a report on the elimination of hazardous waste.

II. Features of the businesses in question. In particular :

(a) Are there many SMEs ?

Yes.

(b) Are they concentrated in regions which are :

i. eligible for regional aid in the Member States ?

No.

ii. eligible under the ERDF ?

No.

III. What direct obligations does this measure impose on businesses ?

Enterprises which dispose of or recycle waste are subject to a permit and supervision by the competent authorities. Enterprises, which produce hazardous waste, have to obtain the above mentioned permit for disposing of them or giving them to an authorised disposer.

IV. What indirect obligations are local authorities likely to impose on businesses ?

The waste disposal plans foreseen in Article 6 of Directive 75/442/EEC can impose certain conditions as far as the disposal of hazardous waste is concerned.

V. Are there any special measures in respect of SMEs ? Please specify.

No.

VI. What is the likely effect on :

(a) the competitiveness of businesses ?

A better harmonisation of the definition of hazardous waste in national legislation will avoid distortions which are due to the currently very divergent provisions.

(b) employment ?

The extension of the definition of hazardous waste will have a positive impact on waste disposal enterprises.

**VII. Have both sides of industry been consulted ?
Please indicate their opinions.**

Consultation of UNICE, CEFIC, EUROMETAUX, CEAD, FEAD.
The opinions vary according to the interests which are represented. The ESC would have preferred a stricter approach with minimal standards.

DOCUMENTS

EN

15

Catalogue number : CB-CO-89-547-EN-C

ISBN 92-77-55188-7

Office for Official Publications of the European Communities
L-2985 Luxembourg