II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 November 2002

on Italian rules waiving permitting requirements for undertakings and establishments recovering hazardous waste under Article 3 of Directive 91/689/EEC on hazardous waste

(notified under document number C(2002) 4392)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/909/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 75/442/EEC of 15 July 1995 on waste [1], as amended by Directive 91/156/EEC [2],

Having regard to Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [3], and in particular Article 3 thereof,

Whereas:

(1) Article 3(2) and (3) of Directive 91/689/EEC provide the conditions that must be fulfilled if in accordance with Article 11(1)(b) of Directive 75/442/EEC a Member State wishes to waive the permitting requirement in Article 10 of Directive 75/442/EEC for establishments or undertakings which recover hazardous waste.

(2) Member States wishing to waive permitting requirements under Article 3(2) of Directive 91/689/EEC must also comply with the procedural requirements set out in Article 3(4) of that Directive.

(3) On 1 December 1999 and 17 November 2000 Italy sent to the Commission a draft Decree based on Article 33 of Decree No 22 of 5 February 1997 setting out conditions for applying a derogation to the permitting requirement in respect of the recovery of hazardous waste.

(4) The Commission has consulted Member States on the rules set out in the draft Decree, and during the consultation phase no Member State has objected to the draft rules being accepted.

(5) In the light of this consultation, and in view of its own analysis that the draft rules comply with the requirements of Article 3 of Directive 91/689/EEC, the Commission proposed that the draft rules be finally agreed upon in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

(6) The Committee established by Article 18 of Directive 75/442/EEC gave its opinion on 6 September 2002 in favour of agreeing upon the rules.

(7) The rules are thus in accordance with the opinion expressed by the Committee established in Article 18 of Directive 75/442/EEC.

(8) The rules set out in the Italian draft Decree should accordingly be agreed upon.

(9) This agreement relates exclusively to the requirements pertaining to Article 3(2) to (4) of Directive 91/689/EEC in conjunction with Article 11(1)(b) of Directive 75/442/EEC and is without prejudice to the application of other provisions contained in those Directives or other Community legislation to the Italian draft Decree,

[1] OJ L 194, 25.7.1975, p. 39.
[2] OJ L 78, 26.3.1991, p. 32.
[3] OJ L 377, 31.12.1991, p. 20.

I. PROCEDURE

I.A. Directives 75/442/EEC and 91/689/EEC

Article 9(1) of Directive 75/442/EEC requires that any establishment or undertaking carrying out disposal operations (listed in Annex IIA), obtains a permit from the competent authorities. Such a permit shall cover the types and quantities of waste, the technical requirements, the security precautions to be taken, the disposal site and the treatment method.

Article 10 of Directive 75/442/EEC requires also that establishments or undertakings carrying out recovery operations (listed in Annex IIB), obtain a permit from the competent authorities.

Article 11(1) of Directive 75/442/EEC allows Member States to exempt establishments or undertakings from the permit requirement imposed in Article 9 or in Article 10, for disposal operations carried out at the place of production as well as for recovery operations, only under the following conditions:

— competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements (Article 11(1), first indent), and

— the types or quantities of waste and methods of disposal or recovery are such that the conditions imposed in Article 4 of the Directive are complied with (Article 11(1), second indent).

The establishments or undertakings exempted according to Article 11(1) shall be registered with the competent authorities (Article 11(2)).

Article 3(1) of Directive 91/689/EEC establishes that the derogation from the permit requirement for establishments or undertakings which carry out their own waste disposal, referred to in Article 11(1a) of Directive 75/442/EEC, shall not apply to hazardous waste covered by this Directive.

Article 3(2) establishes that a Member State may waive Article 10 of Directive 75/442/EEC for establishments or undertakings, which recover waste:

— if the Member State adopts general rules listing the type and quantity of waste and laying down specific conditions (limit values for the content of hazardous substances in the waste, emission limit values, type of activity) and other necessary requirements for carrying out different forms of recovery, and

— if the types or quantities of waste and methods of recovery are such that the conditions laid down in Article 4 of Directive 75/442/EEC are complied with.

The establishments or undertakings referred to in paragraph 2 shall be registered with the competent authorities (Article 3 (3)).

If a Member State intends to make use of the provisions of Article 3(2), the rules referred to in that paragraph shall be sent to the Commission not later than three months prior to their coming into force. The Commission shall consult the Member States. In light of these consultations the Commission shall propose that the rules be finally agreed upon in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

I.B. The measures notified

On 28 August 1997 Italian authorities notified, pursuant to Directive 83/189/EEC laying down a notification procedure in the field of standards and technical regulations [1], a draft Decree setting out the conditions for applying Article 11 of Directive 75/442/EEC and Article 3(2) of Directive 91/689/EEC. On 17 October 1997, during a meeting of the Committee established by Article 18 of Directive 75/442/EEC (the Article 18 Committee), the Italian authorities confirmed that the notification was to be intended also as a notification under Article 3(4) of Directive 91/689/EEC. On the same date, the Commission transmitted a copy of the Italian draft measures to the other Member States and invited written comments by 15 November 1997, announcing that a Community Decision had to be taken according to Article 3(4) of Directive 91/689/EEC. Having assessed that the draft measures did not comply with the requirements of Article 3(4) of the Directive, the Commission prepared a draft decision rejecting the measures. This draft Decision was to be the subject of a vote of the Article 18 Committee on 8 May 1998, however Italy withdrew its draft measures on the same day. No vote took place.

On 1 December 1999, Italy notified redrafted measures to the Commission under the auspices of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations [2] and Article 3(2) of Directive 91/689/EEC. In the light of discussion in the Article 18 Committee on 29 March 2000 regarding the redrafted measures, Italy expressed its intention to amend them further.

On 17 November 2000, Italy notified an amended version of the redrafted measures. According to the Commission, the standstill period for this notification elapsed on 17 February 2001 for the purposes of Article 3(4) of Directive 91/689/EEC. Subsequent to the request of Member States in the Article 18 Committee of 28 March 2001 to the Commission to provide a general paper on the conditions applicable to Article 3(2) of Directive 91/689/EEC, discussion on the specific amended redrafted measures of Italy was postponed until after dissemination of the paper. A general paper was prepared and circulated by the Commission at the meeting of the Article 18 Committee on 6 July 2001 [3].

[1] OJ L 109, 26.4.1983, p. 8.
[2] OJ L 204, 22.6.1998, p. 37.
[3] Item 3 of Agenda: 'Information Document (DG ENV Unit A2): Conditions for the Derogation in Article 3(2) of Directive 91/689/EEC'.

II. CONTENTS OF THE MEASURES NOTIFIED

II.A. The Italian legislation on which the notified draft is based

The notified draft implements Article 33 of Decree No 22 of 5 February 1997. This Article establishes that recovery activities may be started not earlier than ninety days from the start of activity communication to the competent Province and on the condition that technical rules had been adopted on the maximum quantities of waste which can be used, on the origin, type and characteristics of the waste, on other specific conditions, in particular in order to ensure that the wastes are recovered, in relation to their types and quantities, without danger for human health and without using processes and methods which could harm the environment. For hazardous waste the rules must also contain specific conditions relating to the limit values for the content of hazardous substances in the waste, emission limit values for each type of waste, activity and plant used (taking also into account other emissions produced on site) and other necessary requirements for carrying out different forms of recovery.

Following the start of activity communication, the competent Province shall register the establishment in a specific register and within 90 days is required to verify the existence of the prescribed requirements. To this end, the start of activity communication shall include a report, which shall prove the following:

— the respect of the general technical rules and of the above mentioned specific conditions,

— that the establishment fulfils prescribed subjective requirements (financial standing, civil and penal status) for the management of the wastes,

— the recovery activities which are intended to be carried out,

— the establishment, recovery capacity and production or treatment cycle in which wastes are to be recovered,

— the prescribed specifications of the products deriving from recovery activities.

Whenever the Province establishes that the technical rules or other requirements are not complied with, it shall prohibit (by reasoned act) the start or the continuation of the activity, unless the establishment complies with the relevant provisions within a deadline set by the administration.

The communication shall be renewed every five years and in any case where any substantial modification of the recovery operations takes place.

II.B. Summary description of the measures notified (limited to the elements which are of interest in the context of this Decision)

The notified amended redraft of the Italian Decree consists of a main legislative text (nine articles) and three Annexes. It provides for specific regulation on the activities relating to the recovery of certain types of hazardous (Article 1(1)). It refers to some 39 different types of recovery activities, in particular spanning the sectors of non-ferrous metals, precious metals, smelting slag, sludge, inorganic and organic liquid wastes.

The amended redraft stipulates a number of specific rules in respect of recovery activities falling within its scope. It establishes the types of hazardous waste involved as well as technical standards and emission and limit values applicable to specific activities concerning their recovery (Article 1(4), Annex 1). Annex 1 is divided into two sub-annexes: sub-annex 1 contains general technical regulations for the recovery of certain materials from hazardous waste as well as limit values for hazardous substances; sub-annex 2 prescribes the limit values and prescriptions for emissions released into the atmosphere from hazardous waste recovery activities. The amended redraft also contains rules prescribing the maximum useable amounts in respect of the waste types that may be used by plants per year (Article 5 and Annex 2). In addition, it prescribes specific rules on methods and standards relating to storage of the hazardous wastes concerned (Articles 4 and Annex 3), as well establishing rules on notification of the commencement of activities, waste sampling and personnel requirements (Articles 6, 7 and 8). At all times, the recovery operations involved remain subject to a requirement that neither the environment or human health be endangered (Article 1(2)). Furthermore, goods and products obtained from the recovery activities which do not meet the requirements of the Annexes or are not destined for use in consumption or production cycles fall outside the scope of the simplified procedure and thus remain subject to general legislative rules on hazardous waste.

III. ASSESSMENT

III.A. Assessment by the Commission

The assessment of draft general rules notified by a Member State in accordance with Article 3(4) of the Directive is to be done primarily as regards the compliance with all the requirements provided for by Article 3(2) of Directive 91/689/EEC. As a general observation, it is the opinion of the Commission that, since the possibility of applying Article 3(2) of Directive 91/689/EEC is an exception to a general rule, this derogation should be applied in a restricted manner. The Italian measures should be considered in light of this general observation in order to determine if the derogation is too wide.

Legal analysis of the notified redrafted Decree leads the Commission to conclude that it does not perceive of a reason to object to the redrafted measures being agreed upon under the auspices of Article 3(4) of Directive 91/689/EEC.

The Commission considers that the redrafted measures comply with the requirements contained in Article 3(2) of Directive 91/689/EEC. The notified amended redraft constitute general rules which list the types and maximum quantities of hazardous waste which fall within the scope of the draft Decree. In addition, it prescribes specific conditions relating to the recovery operations involved (including establishing limit values on the contents of hazardous substances, emission limit values and type of activity). The typology of the waste involved is appropriately identified according to European Waste Catalogue ([1]) reference, the EWC enshrining a common list of non-hazardous and hazardous waste for the Community, to be periodically updated, as foreseen in Articles 1(a) of Directive 75/442/EEC and Article 1(4) of Directive 91/689/EEC. In addition, it enshrines other necessary requirements relating to the carrying out of the different forms of recovery including rules on storage, notification of commencement of activities, sampling and personnel. Finally, it stipulates that the types or quantities of waste and methods of recovery are such that the conditions laid down in Article 4 of Directive 75/442/EEC are complied with.

The Commission also considers that the registration requirement contained in Article 3(3) of Directive 91/689/EEC is satisfied. Article 33 of the enabling Decree No 22 of 5 February 1997 requires that activities for the recovery of waste falling within its scope be registered with the relevant Province. In addition, the notified amended redraft specifies that the design and construction of the installations or establishments where the recovery operations are to be carried must be approved and authorised (Article 1(3)), and that detailed notification of commencement of activities has to be carried out (Article 6).

III.B. **Consultation of the Member States: summary of the written and oral comments received**

Member States have been consulted for their views, written and oral on the draft rules. Specifically, on 30 April 2002 Member States were invited to provide the Commission with written comments. The Member States were also invited to make oral representations at the Meeting of the Article 18 Committee held on 22 May 2002.

On 16 and 28 May 2002 respectively, Sweden and the United Kingdom sent in written comments to the Commission.

Sweden did not have any substantive comments to make on the draft rules, and instead enquired about certain procedural aspects pertaining to Article 3(2) of Directive 91/689/EEC: namely the implications of any exemption for other Member States and its relationship with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([2]).

The United Kingdom in its written comments welcomed the proposal from Italy. From a general perspective, it considered that exemptions may encourage the recycling and re-use of some hazardous waste streams, for example through take-back schemes operated by the retail sector. It was also of the view that a requirement to obtain a full permit could discourage participation and result in more waste being disposed of through traditional waste management facilities, such as landfill or incineration. In addition, it saw the need for a widely understood mechanism for providing exemptions being all the greater following the introduction of a new hazardous waste list, which contains many everyday items such as fluorescent lamps and personal computer monitors. On the substance, whilst the United Kingdom did not wish to stand in the way of agreement to the draft rules, which it viewed as being consistent with the Commissions recent guidance, it did have certain concerns about the complexity of some of the proposed exemptions. In particular, it was concerned that the costs of demonstrating compliance could be high. For instance, it was not clear to the United Kingdom as to what steps would be required to demonstrate that waste complied with the limits for hazardous substances. Whilst this would be relatively simple in the case of homogeneous, consistent waste streams, more variable wastes would, in its view, present difficulties. The United Kingdom considered that there is a possibility that use of such exemptions could be at least as costly as obtaining a full permit and therefore of little practical benefit to recycling organisations. The United Kingdom was also concerned about the relationship between the Community's waste framework legislation and other Community environmental legislation in this matter, such as Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste ([3]).

At the Article 18 Committee meeting held on 22 May 2002, no Member State voiced any objection to the draft rules being agreed upon.

In the light of this consultation, and in view of its own analysis that the draft rules comply with the requirements of Article 3 of Directive 91/689/EEC, the Commission proposed that the draft rules be finally agreed upon in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC. The Committee established by Article 18 of Directive 75/442/EEC gave its opinion on 6 September 2002 in favour of agreeing upon the rules.

([1]) Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/404/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3) as amended by Commission Decision 2001/118/EC of 16 January 2001 (OJ L 47, 16.2.2001, p. 1), Commission Decision 2001/119/EC of 22 January 2001 (OJ L 47, 16.2.2001, p. 32) and Council Decision 2001/573/EC of 23 July 2001 (OJ L 203, 28.7.2001, p. 18).

([2]) OJ L 257, 10.10.1996, p. 26.
([3]) OJ L 332, 28.12.2000, p. 91.

IV. **CONCLUSION**

The Commission, in the light of the contents of the Italian draft and of the outcome of the consultation with the Member States described in the above considerations, concludes that the redrafted measures notified by Italy pursuant to Article 3(4) of Directive 91/689/EEC as at 17 November 2000 should be accepted and agreed upon as it has been verified that the requirements set out in Article 3(2) and (3) of that Directive are fulfilled, namely that:

— the draft rules are general rules listing the type and quantity of waste and laying down specific conditions (limit values for the content of hazardous substances in the waste, emission limit values, type of activity) and other necessary requirements for carrying out different forms of recovery,

— the types or quantities of waste and methods of recovery are such that the conditions laid down in Article 4 of Directive 75/442/EEC are complied with, and

— the establishments and undertakings concerned are to be registered with the competent authority,

HAS ADOPTED THIS DECISION:

Article 1

The rules set out in the Italian draft Decree sent to the Commission on 1 December 1999 and as amended on 17 November 2000, based on Article 33 of Italian Decree No 22 of 5 February 1997, pursuant to Article 3(4) of Directive 91/689/EEC on hazardous waste, are hereby agreed upon.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 November 2002.

For the Commission

Margot WALLSTRÖM

Member of the Commission