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 nofitication 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