COUNCIL DIRECTIVE

of 4 December 1990

on the transitional measures applicable in Germany with regard to certain Community provisions relating to the protection of the environment

(90/656/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130 s 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 European Economic Community has adopted a set of rules concerning the protection of the environment;

Whereas, from the date of German unification onwards, Community law will be fully applicable to the territory of the former German Democratic Republic;

Whereas, however, it is necessary to take account of the particular situation in that territory as regards the state of the environment;

Whereas, to this end, it is necessary to allow Germany to lay down a specific time limit within which certain rules in force in that territory must be brought into conformity with Community law;

Whereas the derogations provided for in that connection must be temporary and cause the least possible disturbance to the functioning of the common market, and in particular to conditions of competition; whereas these derogations do not apply to new installations;

Whereas the state of the environment in the territory of the former German Democratic Republic calls for considerable improvement in order to comply with the quality standards, limit values and other environmental protection requirements laid down in Community legislation;

Whereas the time needed for adjustment depends both on the situation in that territory and on the measures required in order to comply with Community requirements; whereas the time limits cannot therefore be determined in a uniform manner;

Whereas the measures to be taken in the various fields covered by this Directive often call not only for changes in production but also for the construction of new installations; whereas these measures presuppose the existence of an appropriate administrative structure and the establishment of networks for measuring and monitoring; whereas, as a result, a period of several years must be envisaged in order to arrive at a situation which complies with Community law in the environmental field;

Whereas information on the rules in force and on the state of the environment in the territory of the former German Democratic Republic is insufficient to permit the type of adjustment or the extent of the derogations to be definitively established; whereas, in order to allow for changes in the situation, a simplified procedure must be laid down, in accordance wiht the third indent of Article 145 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Quality of surface water

1. By way of derogation from Directive 75/440/EEC (4) and Directive 79/869/EEC (5), the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the quality standards for surface water and the methods of measurement and frequencies of sampling and analysis laid down in those Directives must be complied with by 31 December 1995 at the latest.

2. The Federal Republic of Germany shall submit to the Commission, no later than 31 December 1992, an improvement plan describing how the objectives in the Directives referred to in paragraph 1 are to be achieved within the prescribed time limits.

(1) OJ No L 263, 26. 6. 1990, p. 42 as amended on 25. Oktober 1990 and 28 November 1990.
(2) Opinion delivered on 21 November 1990 (not yet published in the Official Journal).
(3) Opinion delivered on 20 November 1990 (not yet published in the Official Journal).
(4) OJ No L 194, 25. 7. 1975, p. 34.
(5) OJ No L 271, 29. 10. 1979, p. 44.

Article 2

Quality of bathing water

By way of derogation from Directive 76/160/EEC [1], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the obligations arising out of that Directive must be complied with by 31 December 1993 at the latest.

Article 3

Discharges of dangerous substances

1. By way of derogation from Directive 76/464/EEC [2], Directive 82/176/EEC [3], Directive 83/513/EEC [4], Directive 84/156/EEC [5], Directive 84/491/EEC [6], Directive 86/280/EEC [7] and Directive 88/347/EEC [8], the Federal Republic of Germany shall be authorized to apply, in respect of the territory of the former German Democratic Republic, the provisions laid down in the said Directives to industrial installations which, on the date of German unification, are located in that territory, from 31 December 1992 at the latest.

2. An existing plant whose capacity for handling the substances is significantly increased is considered to be a new plant within the meaning of Article 2 (g) of Directive 86/280/EEC.

3. As regards Directive 86/280/EEC, paragraphs 1 and 2 above shall apply only in respect of the substances listed in Annex II thereto.

4. The special programmes provided for in Article 4 of Directive 84/156/EEC and Article 5 of Directive 86/280/EEC shall be drawn up and put into effect by 31 December 1992 at the latest.

Article 4

Quality of fish-farming waters

By way of derogation from Directive 78/659/EEC [9], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the obligations arising out of the said Directive must be complied with as from 31 December 1992 at the latest.

Article 5

Wild birds

By way of derogation from Directive 79/409/EEC [10], the Federal Republic of Germany shall be authorized to undertake, for the territory of the former German Democratic Republic, the protection measures resulting from the obligations of Articles 3 and 4 of the said Directive, by 31 December 1992 at the latest.

Within six months of the date of German unification, the Federal Republic of Germany shall identify those territories which it proposes to classify as Special Protection Areas.

In anticipation of the entry into force of the protection measures under Articles 3 and 4 of the said Directive, the Federal Republic of Germany shall ensure that the conservation value of these territories will not be affected by the intervention of public authorities.

Article 6

Protection of groundwater against pollution

1. By way of derogation from Directive 80/68/EEC [11], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the obligations arising out of the said Directive concerning the discharge of substances in Lists I and II as they stand on the date of unification must be complied with by 31 December 1995 at the latest.

2. The inventories of authorizations referred to in Article 15 of Directive 80/68/EEC must be completed as soon as possible and in any event by the end of the period provided for in paragraph 1 above.

3. The Federal Republic of Germany shall submit to the Commission, no later than 31 December 1992, a programme for improving the groundwater referred to in this Article containing the measures needed to prevent the introduction of substances in List I and limit the introduction of substances in List II as set out in Directive 80/68/EEC into such water.

Article 7

Quality of water intended for human consumption

2. By way of derogation from Directive 80/778/EEC [12], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the obligations arising out of the said Directive must be complied with by 31 December 1995 at the latest. However, the Federal Republic of Germany shall endeavour to attain this objective from 31 December

(1) OJ No L 31, 5. 2. 1976, p. 1.
(2) OJ No L 129, 18. 5. 1976, p. 23.
(3) OJ No L 81, 27. 3. 1982, p. 29.
(4) OJ No L 291, 24. 10. 1983, p. 1.
(5) OJ No L 74, 17. 3. 1984, p. 49.
(6) OJ No L 274, 17. 10. 1984, p. 11.
(7) OJ No L 181, 4. 7. 1986, p. 16.
(8) OJ No L 158, 25. 5. 1988, p. 35.
(9) OJ No L 222, 14. 8. 1978, p. 1.
(10) OJ No L 103, 25. 4. 1979, p. 1.
(11) OJ No L 20, 26. 1. 1980, p. 43.
(12) OJ No L 229, 30. 8. 1980, p. 11.

1991. If the quality standards provided for in Directive 80/778/EEC have not been met by that date, the Federal Republic of Germany shall immediately submit to the Commission all the relevant information together with an improvement plan describing how compliance with the standards in the Directive is to be ensured by 31 December 1995 at the latest.

Article 8

Air quality values for sulphur dioxide and suspended particulates

1. By way of derogation from Directive 80/779/EEC [1], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to that Directive, that:

— the obligations laid down in Article 3 (1) must be complied with by 31 December 1991 at the latest,

— the obligations laid down in Article 3 (2) to be met by 1 October 1982 and 1 April 1986 respectively must be complied with by 31 December 1991 and 31 December 1995 at the latest.

Article 9

Major-accident hazards

1. By way of derogation from directive 82/501/EEC [2], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, that the obligations arising out of the said Directive must be complied with, as regards the industrial activities which are performed there on the date of German unification, by 1 July 1992 at the latest.

2. As regards the industrial activities referred to in paragraph 1, the Federal Republic of Germany shall be authorized to provide that the supplementary declaration referred to in Article 9 (4) of Directive 82/501/EEC and in Article 2 (2) of Directive 87/216/EEC [3] must be submitted to the competent authority no later than 1 July 1994.

Article 10

Lead in the air

By way of derogation from Directive 82/884/EEC [4], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to the said Directive, that:

— the obligation laid down in Article 3 (1) must be complied with by 31 December 1991 at the latest,

— the obligation to inform the Commission laid down in Article 3 (2) must be complied with by 31 December 1991 at the latest,

— the obligation laid down in the first sentence of Article 3 (3) to forward to the Commission plans for the progressive improvement of air quality must be complied with by 31 December 1992 at the latest,

— the obligation laid down in the third sentence of Article 3 (3) to achieve the limit values fixed in the Directive must be complied with by 1 July 1994 at the latest.

Article 11

Air pollution from industrial plants

By way of derogation from Directive 84/360/EEC [6], the Federal Republic of Germany shall be authorized to lay down, in respect of the territory of the former German Democratic Republic, that the date taken into consideration in Article 2 (3) of that Directive for the definition of existing plants should be that of German unification.

Article 12

Air quality standards for nitrogen dioxide

By way of derogation from Directive 85/203/EEC [7], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to the said Directive, that:

— the obligation to achieve the limit value for concentrations of nitrogen dioxide in the air laid down in Article 3 (1) must be complied with by 31 December 1991 at the latest,

— the deadlines laid down in Article 3 (2) shall be extended to 31 December 1991 at the latest,

— the deadline for forwarding the improvement plans provided for in the first sentence of the second subparagraph of Article 3 (2) shall be fixed at 31 December 1992 at the latest,

— the maximum period set out at the end of Article 3 (2) shall be extended to 31 December 1995 at the latest.

Article 13

Disposal of waste oils

By way of derogation from Directive 87/101/EEC [7], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to that Directive, that the date taken into consideration in Article 3 should be that of German unification.

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(1) OJ No L 229, 30. 8. 1980, p. 30.
(2) OJ No L 230, 5. 8. 1982, p. 1.
(3) OJ No L 85, 28. 3. 1987, p. 36.
(4) OJ No L 378, 31. 12. 1982, p. 15.
(5) OJ No L 188, 26. 7. 1984, p. 20.
(6) OJ No L 87, 27. 3. 1985, p. 1.
(7) OJ No L 42, 11. 1. 1987, p. 43.

Article 14

Pollution by asbestos

By way of derogation from Directive 87/217/EEC [1], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to the said Directive, that:

— the obligations laid down in Article 14 (1) must be complied with by 31 December 1991 at the latest,

— the obligations laid down in Article 14 (2) must be complied with by 30 June 1993 at the latest.

Article 15

Limitation of pollution from large combustion plants

1. By way of derogation from Directive 88/609/EEC [2], the Federal Republic of Germany shall be authorized to provide, in respect of the territory of the former German Democratic Republic, with regard to that Directive, that:

— in Article 2 (9) and (10) the date of 1 July 1987 shall be replaced by 1 July 1990,

— in Article 3 (1) the date of 1 July 1990 for drawing up programmes for reducing emissions shall be replaced by 1 July 1992.

2. In Annex I to Directive 88/609/EEC, the reference to Germany shall be amended as follows:

	0	1	2	3	4	5	6	7	8	9
Member State		1993	1998	2003	1993	1998	2003	1993	1998	2003
Germany	5000	3000 [3]	2000	1500	−40 [3]	−60	−70	[3]	—	—

[3] Germany must comply with the value shown under this heading from 1 January 1996 onwards.'

3. In Annex II to Directive 88/609/EEC, the reference to Germany shall be amended as follows:

	0	1	2	3	4	5	6
Member State		1993	1998	1993	1998	1993	1998
Germany	1090	872 [4]	654	−20	−40	—	—

[4] Germany must comply with the value shown under this heading from 1 January 1996 onwards.'

Article 16

Waste

1. By way of derogation from Article 8 of Directive 75/442/EEC [3] and Article 9 of Directive 78/319/EEC [4], the Federal Republic of Germany shall be authorized, except in the case of new installations, to take the measures necessary to ensure compliance with these obligations in the territory of the former German Democratic Republic by 31 December 1995 at the latest.

2. The Federal Republic of Germany shall submit to the Commission no later than 31 December 1991 improvement plans which conform to the requirements laid down in Article 6 of Directive 75/442/EEC and Article 12 of Directive 78/319/EEC and which enable the deadline referred to in paragraph 1 to be met.

[1] OJ No L 85, 28. 3. 1987, p. 40.
[2] OJ No L 336, 7. 12. 1988, p. 1.
[3] OJ No L 194, 25. 7. 1975, p. 39.
[4] OJ No L 84, 31. 3. 1978, p. 43.

Article 17

Information

The Federal Republic of Germany shall forthwith inform the Commission of the measures taken pursuant to Articles 1 to 16, which the Commission shall communicate to the other Member States and to the European Parliament.

Article 18

1. Adjusting measures to fill obvious loopholes and to make technical adjustments to those provided for in this Directive may be adopted.

2. Adjusting measures must be designed to ensure coherent application of Community rules in the sector covered by this Directive in the territory of the former German Democratic Republic, with due regard for the specific circumstances in that territory and the special difficulties involved in the application of those rules.

They must be consistent with the principles of those rules and be closely related to one of the derogations provided for by this Directive.

3. The measures referred to in paragraph 1 may be adopted as follows:

— as regards Article 1, in accordance with the procedure provided for in Article 11 of Directive 79/869/EEC,

— as regards Article 2, in accordance with the procedure provided for in Article 11 of Directive 76/160/EEC,

— as regards Article 4, in accordance with the procedure provided for in Article 14 of Directive 78/659/EEC,

— as regards Article 5, in accordance with the procedure provided for in Article 17 of Directive 79/409/EEC,

— as regards Article 7, in accordance with the procedure provided for in Article 15 of Directive 80/778/EEC,

— as regards Article 8, in accordance with the procedure provided for in Article 14 of Directive 80/779/EEC,

— as regards Article 9, in accordance with the procedure provided for in Article 16 of Directive 82/501/EEC,

— as regards Article 10, in accordance with the procedure provided for in Article 11 of Directive 82/884/EEC,

— as regards Article 12, in accordance with the procedure provided for in Article 14 of Directive 85/203/EEC,

— as regards Article 14, in accordance with the procedure provided for in Article 12 of Directive 87/217/EEC,

— as regards Article 16, in accordance with the procedure provided for in Article 19 of Directive 78/319/EEC,

4. For cases not covered by the procedures provided for in paragraph 3, the measures referred to in paragraph 1 may be adopted in accordance with the following procedure after convening an *ad hoc* committee composed of representatives of the Member States and chaired by a representative of the Commission.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion of the draft within a time limit which the Chairman may lay down according to the urgency of the matter.

The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

5. The adjusting measures referred to in paragraph 1 and 2 may not be adopted after the deadlines laid down in this Directive for full application of the respective Directives. They shall not apply beyond those dates. The supplementary measures allowed under this Article may be adopted only until 31 December 1992; they shall not apply after the deadlines laid down in this Directive for full application of the respective Directives or, in the absence of such deadlines, after 31 December 1995 at the latest.

6. Where it proves essential to postpone a time limit laid down in this Directive for application of a derogation, the date in question may be postponed in accordance with the procedure laid down in paragraphs 3 or 4, but not beyond 31 December 1995.

7. Any Member State may refer any difficulties to the Commission. The Commission shall, as a matter of urgency, examine the question and submit its conclusions, possibly accompanied by appropriate measures.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 4 December 1990.

For the Council

The President

G. DE MICHELIS