



Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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Hazardous waste

Formal references	
91/689/EEC (OJ L377 31.12.1991)	Directive on hazardous waste
Proposed 5.8.88 – COM(88)391	
Legal base	Article 192 TFEU (originally Article 130s EEC Treaty)
Amended by	
94/31/EC (OJ L168 2.7.1994)	Directive amending Directive 91/689/EEC
Legal base	Article 192 TFEU (originally Article 130s EEC Treaty)
Regulation (EC) No 166/2006 (OJ L33/1 4.2.2006)	Regulation concerning the establishment of a European pollutant release and transfer register and amending Directives 91/689/EEC and 96/61/EC
94/904/EC (OJ L356 31.12.1994)	Council Decision establishing a list of hazardous waste
96/302/EC (OJ L116 11.5.1996)	Commission Decision establishing format for information
2000/532/EC (OJ L226 6.9.2000)	Council Decision replacing Decision 94/3/EC establishing a list of wastes
2001/118/EC (OJ L47 16.2.2001)	Commission Decision amending Decision 2000/532/EC
2001/119/EC (OJ L47 16.2.2001)	Commission Decision amending Decision 2000/532/EC
2001/573/EC (OJ L203 28.7.2001)	Commission Decision amending Decision 2000/532/EC
To be repealed and replaced by	From 12 December 2010
2008/98/EC (OJ L312 22.11.2008)	Directive on waste and repealing certain Directives
Binding dates	
91/689/EEC	
Notification date	19 December 1991
Formal compliance	Originally 12 December 1993 but postponed to 27 July 1995
Implementation reports	Every three years
List of hazardous waste to be drawn up	Originally 12 July 1993 but postponed to 27 December 1994
Specific rules on domestic waste to be established	31 December 1992
Member States to forward information on disposal/recovery operations for third parties	12 December 1994
To be repealed by Directive 2008/98/EC	12 December 2010
2008/12/EC	
To repeal Directive 91/689/EEC (and others)	12 December 2010
For specific binding dates and targets see Waste Framework Directive	

Purpose of the Directive

Directive 91/689/EEC lays down more stringent controls for hazardous waste within the broader framework for waste management, which was first established by the Waste Framework Directive [75/442/EEC](#) and later repealed and replaced by Directive [2006/12/EC](#) on waste. The broader waste framework deals with issues such as the establishment of competent authorities for producing plans and authorizing installations handling waste.

Summary of the Directive

Directive 91/689/EEC on hazardous waste takes as its starting point the provisions of the Waste Framework Directive [75/442/EEC](#) (now repealed and replaced by Directive 2006/12/EC) and introduces stricter requirements for operations involving hazardous waste. A separate [Regulation](#) deals with shipments of waste. Both Directives 91/689/EEC and 2006/12/EC will be repealed and replaced on 12 December 2010 by Directive 2008/98/EC on waste.

List of hazardous waste

In accordance with Directive 91/689/EEC, a list of hazardous waste was drawn up by the Commission and the Advisory Committee established under the Waste Framework Directive 75/442/EEC, with reference to three annexes which list categories or generic types of hazardous waste according to: their nature or the activity which generated them (Annex I); constituents (Annex II); and properties which render wastes hazardous (Annex III). The list takes into account the origin and composition of the waste and, where necessary, the limit values of concentration. Member States had the opportunity to notify the Commission of other waste they considered to display hazardous properties for possible inclusion in the list. Domestic waste is specifically excluded from the Directive's provisions.

There are 394 entries classified as hazardous waste according to the most recent version of the list, each of which are considered to display one or more of the properties included in Annex III of Directive 91/689/EEC. Wastes which are not included in the most recent version of the list – Decision 2000/532/EC, as amended – but which nevertheless satisfy any of the Annex III properties are also considered to be hazardous. Inclusion in the list does not mean that a material is waste in all circumstances, with the definition set out in the Waste Framework Directive 75/442/EEC being the determining factor.

Mixing of wastes

Member States must require that establishments and undertakings which dispose of, recover, collect or transport hazardous waste do not mix different categories of hazardous waste or mix it with non-hazardous waste. Where technically and economically feasible – and necessary to comply with the general duty of Directive 75/442/EEC and Directive 2006/12/EC to recover or dispose of waste safely – hazardous waste mixed with other waste, substances or materials must be separated. Mixing is permitted where the general duty is met and where it has the purpose of improving safety during disposal or recovery, and it must be subject to the permitting requirement of Directive 2006/12/EC.

Permits

The permitting exemption of Directive 75/442/EEC for establishments or undertakings which carry out their own waste disposal may not be applied in the case of hazardous waste. The permitting exemption for establishments or undertakings which recover hazardous waste may be applied if the Member State adopts general rules listing the type and quantity of waste and laying down specific conditions for recovery, and if the general safety duty of Directive 2006/12/EC is met. Recovery operators must be registered with the competent authorities.

Inspections and records

Producers of hazardous waste must be made subject to periodic inspections by the competent authorities, and inspections concerning collection and transport operations must cover particularly the origin and destination of hazardous waste. Producers and transporters of hazardous waste must keep detailed records, which are to be preserved for at least three years and one year respectively. Documentary evidence of management operations must be supplied to the competent authorities or a previous holder on request. Member States must require that waste is recorded and identified on every site where hazardous waste is tipped and that it is properly packaged and labelled in accordance with Community and international standards in the course of collection, transport and temporary storage. When hazardous waste is transferred it must be accompanied by an identification form containing details specified in the Waste Shipment Regulation (EC) No [1013/2006](#).

Plans

Competent authorities are required to draw up plans for the management of hazardous waste. The plans may form part of the general waste management plans required under Directive [2006/12/EC](#) on waste or may be separate, and must be made public. The Commission is to compare them, in particular the methods of disposal and recovery, making information available to the competent authorities on request.

Reports and implementation

Member States are to send to the Commission a report on implementation in the context of the reports required under the Framework Directive. The Commission is to report to the Parliament and the Council every three years. In addition, the Member States were required to send the Commission information on every establishment or undertaking which carries out disposal and/or recovery of hazardous waste principally on behalf of third parties and which is likely to form part of the integrated network of disposal installations to be established under the Framework Directive. The information provided was to include the types and quantities of waste which can be treated and the treatment methods used. This provision (Article 8(3)) was repealed by Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register, within which such reporting is now undertaken. Commission Decision 96/302/EC sets out the format for Member States' data submissions in fulfilment of this obligation.

In line with the standardized reporting Directive [91/692/EEC](#) (see section on the implementation and enforcement of legislation) Member States are to send information to the Commission on the implementation of the Directive, in the form of a sectoral report. These

reports are to be submitted at intervals of three years and are to cover other waste legislation. The report is to be drawn up on the basis of the questionnaire drafted by the Commission in Decision [97/622/EC](#), amended by Decision [2007/151/EC](#).

Emergencies and derogations

In cases of emergency or grave danger, the Directive requires Member States to take all necessary steps to ensure that hazardous waste does not constitute a threat to the population or the environment. Member States must inform the Commission of any derogation from the Directive in such circumstances.

Development of the Directive

Replacement for Directive 78/319/EEC on toxic and dangerous waste

Directive 91/689/EEC on hazardous waste replaced the Directive [78/319/EEC](#) on toxic and dangerous waste. Some ideas which fed into the proposal which became Directive 78/319/EEC can be attributed to laws in particular countries, including Belgium and France. A British official, giving evidence to the Lords' Scrutiny Committee, claimed that Britain was a major contributor: 'The Directive was quite deliberately based on the Control of Pollution Act. The Commission did use it as their main model ...'.

Directive 91/689/EEC was proposed in 1988 alongside proposals to amend Directive 75/442/EEC. A major concern was the need for an improved definition of hazardous waste, as different definitions in the Member States were leading to problems in implementing Directive 84/631/EEC on transfrontier shipments (which then became Regulation (EC) No [1013/2006](#) on shipments of waste) and could also distort the internal market. The proposal drew heavily on the OECD's work to define hazardous waste, which was adopted in Decision [C\(88\)90](#) on transfrontier movements of hazardous waste.

Proposed amendments

The European Parliament proposed numerous amendments, seeking to change the proposal into a Regulation, and to introduce more detailed specifications for permits and levies on products giving rise to hazardous waste. However, the Commission accepted only two of the Parliament's amendments, dealing with reporting arrangements.

The proposal was agreed in a common position by the Council in December 1990, six months after the amendment to the Framework Directive 75/442/EEC on waste. The European Parliament adopted a Resolution in July 1991 calling for Article 100a EEC Treaty (now Article 114 TFEU) to be used as the legal base, but Directive 91/689/EEC was formally adopted under Article 130s EEC Treaty (now Article 192 TFEU) in December 1991. The principal changes from the original proposal concerned the introduction of the Community list of hazardous wastes (rather than definition according to the annexes alone), simplified reporting requirements and the exclusion of domestic waste.

Difficulty establishing the list of hazardous waste

Following agreement of Directive 91/689/EEC, the Member States were unable to agree on the required list of hazardous waste as quickly as had been anticipated. An initial proposal drawn up by the Commission listed categories of waste based on Annex I that would be considered hazardous if they conformed to the Annex III hazard criteria. However, this was rejected by a Technical Advisory Committee comprising Member States' representatives, with some governments favouring a list of every waste considered to be hazardous. France and Germany in particular opposed the Commission's proposal outright, and when the same proposal was subsequently submitted by the Commission to the Council, a Franco-German alternative draft began to find favour. This reflected a single list of wastes considered to be hazardous, an approach which was ultimately implemented in Decision 94/904/EC.

The United Kingdom opposed the list adopted in Decision 94/904/EC, on the grounds that some of the categories included in the list were too broad and impose unnecessary costs. The United Kingdom argued that the Decision adopted could contravene the mechanism specified in Article 1(4) of Directive 91/689/EEC, in that the list *considers* that each entry displays one or more of the Annex III properties (which the United Kingdom disputed), while Article 1(4) *requires* wastes classified as hazardous to have one or more of the Annex III properties. There was significant discussion on this point, and Decision 94/904/EC does include an allowance in the preamble whereby a waste included on the list may be considered non-hazardous if it does not display any of the Annex III properties. However, this provision may only be applied 'in exceptional cases' and 'on the basis of documentary evidence provided in an appropriate way by the holder'. The extent of this allowance, and its expression in the preambular text rather than in a substantive Article, suggest limited scope for application. The United Kingdom's arguments opposing the list of hazardous waste were supported by Italy, and both countries voted against its adoption. A joint statement was subsequently submitted by Italy and the United Kingdom for inclusion with the minutes.

Legal lacuna

Failure to agree the list by the original deadline of 12 June 1993 meant that a legal lacuna was created when on 12 December 1993 Directive 78/319/EEC was repealed by 91/689/EEC, despite the fact that 91/689/EEC was inoperable in the absence of a list of hazardous waste. In order to rectify this position, the Member States took a political Decision to act as if 78/319/EEC was still in force, and this political Decision was then retrospectively legitimized by Directive 94/31/EC which postponed the date of repeal of 78/319/EEC until 27 June 1995, thus resurrecting for a brief period a Directive that was apparently already repealed. Directive 94/31/EC also extended the deadline for establishing the list of hazardous waste to 27 December 1994, a feat which was finally accomplished by Decision 94/904/EC on 22 December 1994.

List of hazardous waste merged with European Waste Catalogue

In May 2000 the Commission approved a revised list of waste (Decision 2000/532/EC) which merged the list of hazardous waste with the European Waste Catalogue, established under the Waste Framework Directive 75/442/EEC. The unified list entered into force on 9 September 2000 and took effect from 1 January 2002. It incorporates amendments on the basis of 280 notifications from Member States on wastes not previously listed, but deemed hazardous by

Annex III. Decisions 2001/118/EC and 2001/119/EC of January 2001 and Decision 2001/573/EC of July 2001 amend Decision 2000/532/EC on the basis of further notifications by Member States.

More recent updates

In January 2006 Regulation (EC) No 166/2006 was published, which contains one small amendment to Directive 91/689/EEC: the deletion of Article 8(3) which referred to the notification to the Commission of information for every establishment or undertaking involved with disposal and/or recovery of hazardous waste on behalf of third parties.

Framework Directive 2008/98/EC on waste

On 19 November 2008 a new framework Directive on Waste was published. This Directive [2008/98/EC](#) will repeal and replace a number of pieces of waste legislation, including Directive 91/689/EEC, on 12 December 2010.

Implementation of the Directive

A list of measures transposing the Directive in the Member States can be found in their national [execution measures](#).

Member States must report regularly on the implementation of waste legislation. This is done via the means of a questionnaire sent by the Commission every three years. To date four reports have been adopted by the Commission on the implementation of several pieces of waste legislation including Directive 91/689/EEC: ([COM\(99\)752](#)), adopted in January 2000, covering the period 1995–1997; ([COM\(2003\)250](#)), adopted in May 2003 and covering the period 1998–2000; ([COM\(2006\)406](#)), adopted in July 2006 and covering the period 2001–2003; and ([COM\(2009\)633](#)), adopted in November 2009 and covering the period 2004–2006. Additionally, in May 2009 a separate report¹ on the implementation of Directive 91/689/EEC during the period 2004–2006 was published.

Previous implementation status

In the earlier days of the Directive, several implementation problems were encountered. In the consolidated progress report ([COM\(99\)752](#)) on implementation of waste legislation for the period 1995 to 1997, in respect of Directive 91/689/EEC there were noted a number of problems. In particular, the Commission concluded that only four Member States – Finland, Greece, Luxembourg and Spain – had correctly transposed all of the relevant elements of the hazardous waste definition. The Commission took issue with the United Kingdom and Italy for excluding household waste from the definition of hazardous waste, and further criticized the United Kingdom for using the different term ‘special waste’. The report also noted that, up to the beginning of 1999, the Commission had received 471 notifications from Member States concerning wastes not on the hazardous waste list which nevertheless were considered to display hazardous properties. In the light of this, the Commission decided to adapt the hazardous waste list and to merge it ‘for practical reasons’ with the European Waste Catalogue established under the waste framework Directive. The unified list was approved in May in the form of Decision 2000/532/EC (See ‘List of hazardous waste’ above), since amended.

The subsequent consolidated report ([COM\(2003\)250](#)), covering the period 1998–2000, found that there were still a number of Member States that had not correctly transposed all the elements of the hazardous waste definition. Although hazardous waste from households is exempt from the Directive, Member States were asked whether they distinguish domestic hazardous waste from non-domestic waste. A number of countries have established separate collection systems for household hazardous waste. Not all Member States carry out periodical inspections of all generators of hazardous waste, as required by the Directive.

In July 2002 the Commission released a report² on hazardous household waste, prepared by consultants, which recommended EU wide introduction of separate collection and treatment of several items of household waste. The study was commissioned to evaluate different national experiences with the management of hazardous products likely to become hazardous household waste (defined as wastes that could potentially increase the hazardous properties of municipal solid waste when landfilled, incinerated or composted), and to suggest strategies for its management. It looked at 14 priority chemicals: arsenic; lead; cadmium; chromium; copper; nickel; mercury; zinc; PCBs; benzene; tetrachloroethylene; trichloroethylene; tetrachloromethane; and sodium cyanide. The report concluded that the most likely products to contribute to the input of these priority substances were paints, fluorescent lightbulbs, arsenic-treated wood and pesticides. It was anticipated that the report would relaunch efforts to draft EU legislation on hazardous household waste, but this did not come to fruition.

Current situation

This most recent report shows that, in general, practical implementation of Directive 91/689/EEC is of a good standard. The legislation is nearly 20 years old and is by now fairly well established. There are, however, a couple of areas with room for improvement, as detailed in Table 1, below.

Table 1. The main implementation issues in the Directive on hazardous waste

Implementation issue	Member State reporting comments
Exemptions from the prohibition on mixing hazardous waste with other waste	The criteria used by some Member States to apply exemptions from the ban on mixing are sometimes unclear or use vague wording, making it difficult to discern to what extent mixing is allowed, and whether it is always truly justified
Exemptions for the permitting of establishments or undertakings which deal with the disposal of hazardous waste	Only three Member States reported having made use of exemptions from permitting, but of these, two (Italy and the United Kingdom) produce some of the largest quantities of hazardous waste of all the Member States
Inspections	The frequency of the periodic inspections required by the Directive varies considerably between Member States. Several Member States – for example, Malta and Hungary – carry out inspections on the basis of complaints. It is questionable whether this method of conducting inspections is acceptable by the standards of the Directive

Enforcement and court cases

One case concerning the Directive on hazardous waste has been decided by the ECJ, and no other infringement proceedings have been begun by the Commission.

- [C-286/08](#) 10.9.2009. This was a judgement against Greece for a breach of Articles 1(2) and 6 of the Hazardous Waste Directive (and Articles 5(1) and (2), 7(1), 4 and 8 of Directive 2006/12/EC on waste; and Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC on of 26 April 1999 on the landfill of waste). It related to a failure to draw up an adequate hazardous waste management plan and to establish an integrated and adequate network of disposal installations for hazardous waste.

Further developments

As of 12 December 2010, a Directive specifically focused on hazardous waste management will no longer exist, having been repealed by Directive [2008/98/EC](#) on waste. The Directive is intended to bring together key provisions on the management of waste, providing a clearer baseline and streamlined legislative approach at EU level. The majority of requirements for hazardous waste management are retained. However, derogations are now provided from the mixing ban placed in the landfilling of hazardous waste with other materials provided that: activities are permitted; the environment and human health are protected; and mixing operations conform to best-available techniques. While many of the provisions for hazardous waste management are retained within the Directive, definitions and specifications as to how waste is defined will alter with potential impacts on the management of hazardous waste.

Related legislation

There are a number of other EU Directives which has a strong interaction with the Directive on hazardous waste. These include:

- Waste Framework Directive ([75/442/EEC](#)).
- Directive on Waste ([2008/98/EC](#)).
- Waste Shipment Regulation (EC) No [1013/2006](#).
- Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register

The issues of relevance to these pieces of legislation are covered in the chapters which deal with them. However, a brief outline of their relevance to the Directive on hazardous waste is given below.

The Waste Framework Directive 75/442/EEC, lays out general requirements for the management of all waste types. The Hazardous Waste Directive, 91/689/EEC, details the additional and/or specific requirements for the management of waste that is considered hazardous, as well as furnishing a definition of ‘hazardous waste’ and providing a list of such waste for clarification.

There are certain prohibitions on the shipment of hazardous waste, as laid down by Regulation (EC) No 1013/2006, which in turn refers to the Directive 91/689/EEC as a means of determining whether waste is defined as hazardous and is therefore subject to prohibitions.

The Directive on Waste 2008/98/EC incorporates measures relevant to the management of hazardous waste, negating the need for a separate Directive on this. For this reason, Directive 91/689/EEC will be repealed with effect from 12 December 2010.

References

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