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Contents

I *Acts whose publication is obligatory*

Note to our Swedish and Finnish readers (see inside back cover)

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/60/EC

of 20 December 1994

amending for the 14th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Comittee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

Whereas measures should be adopted for the achievement of the internal market; whereas the internal market is an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed;

Whereas work on the internal market should also gradually improve the quality of life, health protection and consumer safety; whereas the measures proposed by this Directive are in line with the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy [4];

Whereas the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted Decision 90/238/Euratom, ECSC, EEC [5] concerning a 1990 to 1994 action plan in the context of the 'Europe against Cancer' programme;

Whereas the substances which appear in Annex I to Council Directive 67/548/EEC [6] and are classified as carcinogens category 1 or 2 may cause cancer; whereas to improve health protection such substances and preparations containing them should not be placed on the market for use by the general public;

Whereas the substances which appear in Annex I to Directive 67/548/EEC and are classified as mutagens category 1 or 2 may cause heritable genetic damage; whereas to improve health protection such substances and preparations containing them should not be placed on the market for use by the general public;

Whereas the substances which appear in Annex I to Directive 67/548/EEC and are classified as toxic for reproductive purposes category 1 or 2 may cause birth defects; whereas to improve health protection such substances and preparations containing them should not be placed on the market for use by the general public;

Whereas, for reasons of transparency and clarity, such substances should be referred to using a recognized nomenclature, preferably that of the Iupac (International Union of Pure and Applied Chemistry); whereas Annex I to Directive 67/548/EEC ('List of dangerous substances') is regularly updated by way of adaptation to technical progress; whereas the Commission will submit to the

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(1) OJ No C 157, 24. 6. 1992, p. 6.
(2) OJ No C 332, 16. 12. 1992, p. 8.
(3) Opinion of the European Parliament of 19 January 1994 (OJ No C 44, 14. 2. 1994, p. 2), Council common position of 16 June 1994 (OJ No C 244, 31. 8. 1994, p. 1) and Decision of the European Parliament of 26 October 1994 (OJ No C 323, 21. 11. 1994).
(4) OJ No C 294, 23. 11. 1989, p. 1.
(5) OJ No L 137, 30. 5. 1990, p. 31.
(6) OJ No 196, 16. 8. 1967, p. 1/67. Directive as last amended by Commission Directive 91/632/EEC (OJ No L 338, 10. 12. 1991, p. 23).

European Parliament and the Council, no later than six months after publication of such adaptation to technical progress in the *Official Journal of the European Communities*, a proposal for a Directive governing the substances newly classified as carcinogenic in categories 1 and 2, mutagenic in categories 1 and 2, and toxic for reproductive purposes in categories 1 and 2, so as to update this Directive;

Whereas the said proposal from the Commission will take account of the risks and advantages of the substances newly classified as well as of the Community legislative provisions on risk analysis;

Whereas Annex I to Directive 67/548/EEC lays down individual concentration limits for such substances and, in the absence of such limits, Table VI of Annex I to Council Directive 88/379/EEC [1], lays down general concentration limits which apply to such substances contained in preparations;

Whereas creosote, as defined in the Annex to this Directive, may be damaging to health because of its content of known carcinogens; whereas for these reasons the use of creosote in wood treatment and the marketing and use of creosote-treated wood should be limited;

Whereas some of the components of creosote are poorly degradable and deleterious to certain organisms in the environment; whereas these components may enter the environment as a result of the use of treated wood;

Whereas some chlorinated solvents present a danger to health and should not be marketed to the general public in substances and preparations;

Whereas the restrictions on the use of creosote in wood treatment, on the marketing and use of creosote-treated wood and on the marketing and use of chlorinated solvents laid down by this Directive take into account the current state of knowledge and techniques regarding safer alternatives;

Whereas restrictions already adopted by certain Member States on the marketing and use of the substances mentioned above or the preparations containing them directly affect the establishment and functioning of the internal market; whereas it is therefore necessary to approximate the laws of the Member States in this field and consequently amend Annex I to Council Directive 76/769/EEC [2];

Whereas this Directive does not affect Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC [3] and in individual directives based thereon, in particular Directive 90/394/EEC [4],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby amended as set out in the Annex hereto.

Article 2

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive no later than one year after the date of its adoption and shall forthwith inform the Commission thereof.

They shall apply these provisions as from 20 June 1995.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1994.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	K. KINKEL

(1) OJ No L 187, 16. 7. 1988, p. 14. Directive as last amended by Commission Directive 93/18/EEC (OJ No L 104, 29. 4. 1993, p. 46).

(2) OJ No L 262, 27. 9. 1976, p. 201. Directive as last amended by Commission Directive 91/659/EEC (OJ No L 363, 31. 12. 1991, p. 36).

(3) OJ No L 183, 29. 6. 1989, p. 1.

(4) OJ No L 196, 26. 7. 1990, p. 1.

ANNEX

The following is added to Annex I to Directive 76/769/EEC:

'Designation of the substance, of the group of substances or of the preparation	Conditions of restriction
29. Substances which appear in Annex I to Directive 67/548/EEC classified as carcinogen category 1 or carcinogen category 2 and labelled at least as "Toxic (T)" with risk phrase R45: "May cause cancer" or risk phrase R49: "may cause cancer by inhalation", and listed as follows: Carcinogen category 1 See List 1 in the Appendix Carcinogen category 2 See List 2 in the Appendix	May not be used in substances and preparations placed on the market for sale to the general public in individual concentration equal to or greater than: — either the concentration specified in Annex I to Directive 67/548/EEC, or — the concentration specified in point 6, Table VI, of Annex I to Directive 88/379/EEC where no concentration limit appears in Annex I to Directive 67/548/EEC. Without prejudice to the implementation of other Community provisions relating to the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations must be marked legibly and indelibly as follows: "Restricted to professional users. Attention — Avoid exposure — obtain special instructions before use". By way of derogation, this provision shall not apply to: (a) medicinal or veterinary products as defined by Directive 65/65/EEC [1]; (b) cosmetic products as defined by Directive 76/768/EEC [2]; (c) — motor fuels which are covered by Directive 85/210/EEC [3], — mineral oil products intended for use as fuel in mobile or fixed combustion plants, — fuels sold in closed systems (e.g. liquid gas bottles); (d) other substances and preparations listed in Annex I to this Directive, under points other than 30 and 31; (e) artists' paints covered by Directive 88/379/EEC [4].
30. Substances which appear in Annex I to Directive 67/548/EEC classified as mutagen category 1 or mutagen category 2 and labelled with risk phrase R46: "May cause	May not be used in substances and preparations placed on the market for sale to the general public in individual concentration equal to or greater than:

(1) OJ No 22, 9. 2. 1965, p. 369/65. Directive as last amended by Directive 93/39/EEC (OJ No L 214, 24. 8. 1993, p. 22).
(2) OJ No L 262, 27. 9. 1976, p. 169. Directive as last amended by Directive 93/35/EEC (OJ No L 151, 23. 6. 1993, p. 32).
(3) OJ No L 96, 3. 4. 1985, p. 25.
(4) OJ No L 187, 16. 7. 1988, p. 14.

heritable genetic damage", and listed as follows:

Mutagen category 1
See List 3 in the Appendix

Mutagen category 2
See List 4 in the Appendix

— either the concentration specified in Annex I to Directive 67/548/EEC, or

— the concentration specified in point 6, Table VI, of Annex I to Directive 88/379/EEC where no concentration limit appears in Annex I to Directive 67/548/EEC.

Without prejudice to the implementation of other Community provisions relating to the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations must be marked legibly and indelibly as follows: "Restricted to professional users. Attention — Avoid exposure — obtain special instructions before use".

By way of derogation, this provision shall not apply to:

(a) medicinal or veterinary products as defined by Directive 65/65/EEC;

(b) cosmetic products as defined by Directive 76/768/EEC;

(c) motor fuels which are covered by Directive 85/210/EEC:

— mineral oil products intended for use as fuel in mobile or fixed combustion plants,

— fuels sold in closed systems (e.g. liquid gas bottles);

(d) other substances and preparations listed in Annex I to this Directive, under points other than 29 and 31;

(e) artists' paints covered by Directive 88/379/EEC.

31. Substances which appear in Annex I to Directive 67/548/EEC classified as toxic for reproductive purposes category 1 or toxic for reproductive purposes category 2 and labelled with risk phrase R60: "May impair fertility" and/or R61: "May cause harm to the unborn child", and listed as follows:

Toxic for reproductive purposes category 1
See List 5 in the Appendix

Toxic for reproductive purposes category 2
See List 6 in the Appendix

May not be used in substances and preparations placed on the market for sale to the general public in individual concentration equal to or greater than:

— either the concentration specified in Annex I to Directive 67/548/EEC, or

— the concentration specified in point 6, Table VI, of Annex I to Directive 88/379/EEC where no concentration limit appears in Annex I to Directive 67/548/EEC.

Without prejudice to the implementation of other Community provisions relating to the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations must be marked legibly and indelibly as follows: "Restricted to professional users. Attention — Avoid exposure — obtain special instructions before use".

By way of derogation, this provision shall not apply to:

(a) medicinal or veterinary products as defined by Directive 65/65/EEC;

(b) cosmetic products as defined by Directive 76/768/EEC;

(c) — motor fuels which are covered by Directive 85/210/EEC,

— mineral oil products intended for use as fuel in mobile or fixed combustion plants,

— fuels sold in closed systems (e.g. liquid gas bottles);

(d) other substances and preparations listed in Annex I to this Directive, under points other than 29 and 30;

(e) artists' paints covered by Directive 88/379/EEC.

32. Substances and preparations containing one or more of the following substances:

(a) Creosote Einecs No 232-287-5 CAS No 8001-58-9

(b) Creosote oil Einecs No 263-047-8 CAS No 61789-28-4

(c) Distillates (coal tar), naphthalene oils Einecs No 283-484-8 CAS No 84650-04-4

(d) Creosote oil, acenaphthene fraction Einecs No 292-605-3 CAS No 90640-84-9

(e) Distillates (coal tar), upper Einecs No 266-026-1 CAS No 65996-91-0

(f) Anthracene oil Einecs No 292-602-7 CAS No 90640-80-5

(g) Tar Acids, Coal, Crude Einecs No 266-019-3 CAS No 65996-85-2

(h) Creosote, wood Einecs No 232-419-1 CAS No 8021-39-4

(j) Low temperature tar oil, alkaline Einecs No 310-191-5 CAS No 122384-78-5

32.1. May not be used for wood treatment if they contain:

(a) benzo-a-pyrene at a concentration of greater than 0,005 % by mass; or

(b) water extractable phenols at a concentration of greater than 3 % by mass or both (a) and (b).

Furthermore wood so treated may not be placed on the market.

However by way of derogation:

(i) Relating to the substances and preparations: these may be used for wood treatment in industrial installations if they contain:

(a) benzo-a-pyrene at a concentration of less than 0,05 % by mass; and

(b) water extractable phenols at a concentration of less than 3 % by mass.

Such substances and preparations:

— may be placed on the market only in packaging of a capacity equal to or greater than 200 litres,

— may not be sold to the general public.

Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations shall be legible and indelibly marked as follows: "For use in industrial installations only".

(ii) Relating to wood treated according to (i) which is placed on the market for the first time: this is permitted for professional and industrial use only, e.g. on railways, in electric power transmission and telecommunications, for fencing and in harbours and waterways.

However, such wood may not be used:

	— inside buildings whether for decorative purposes or not, whatever their purpose (residence, employment, leisure), — for the manufacture of containers intended for growing purposes and any re-treatment and the manufacture of packaging which may come into contact with, or of other materials which may contaminate, raw, intermediate and/or finished products intended for human and/or animal consumption, and any re-treatment, — in playgrounds and in other outdoor places of public pleasure or in other situations where there is a risk that it may come into contact with skin. (iii) Relating to old treated wood: the prohibition shall not apply where this is placed on the second-hand market. However, such wood may not be used: — inside buildings whether for decorative purposes or not, whatever their purpose (residence, employment, leisure), — for the manufacture of containers intended for growing purposes and any re-treatment and the manufacture of packaging which may come into contact with, or of other materials which may contaminate, raw, intermediate and/or finished products intended for human and/or animal consumption, and any re-treatment, — in playgrounds and in other outdoor places of public pleasure.
33. Chloroform CAS No 67-66-3 34. Carbon tetrachloride CAS No 56-23-5 35. 1,1,2 Trichloroethane CAS No 79-00-5 36. 1,1,2,2, Tetrachloroethane CAS No 79-34-5 37. 1,1,1,2 Tetrachloroethane CAS No 630-20-6 38. Pentachloroethane CAS No 76-01-7 39. 1,1 Dichloroethylene CAS No 75-35-4 40. 1,1,1 Trichloroethane CAS No 71-55-6	May not be used in concentrations equal to or greater than 0,1 % by weight in substances and preparations placed on the market for sale to the general public. Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations containing them in concentrations equal to or greater than 0,1 % shall be legible and indelibly marked as follows: "Restricted to professional users". By way of derogation this provision shall not apply to: (a) medicinal or veterinary products as defined by Directive 65/65/EEC, as last amended by Directive 89/381/EEC; (b) cosmetic products as defined by Directive 76/768/EEC, as last amended by Directive 89/679/EEC.

APPENDIX

Point 29 — Carcinogens

List 1, category 1

2-naphthylamine; β-naphthylamine	CAS No 91-5999-8
biphenyl-4-ylamine; xenylamine; 4-aminobiphenyl	CAS No 92-67-1
benzidine; 4,4′-diaminobiphenyl; biphenyl-4,4′-ylenediamine	CAS No 92-87-5
chromium trioxide	CAS No 1333-82-0
arsenic acid and its salts	CAS No —
arsenic pentoxide; arsenic oxide	CAS No 1303-28-2
diarsenic trioxide; arsenic trioxide	CAS No 1327-53-3
asbestos	CAS No 132207-33-1 132207-32-0 12172-73-5 77536-66-4 77536-68-6 77536-67-5
benzene	CAS No 71-43-2
bis (chloromethyl) ether	CAS No 542-88-1
chloromethyl methyl ether, chlorodimethyl ether	CAS No 107-30-2
dinickel trioxide	CAS No 1314-06-3
erionite	CAS No 12510-42-8
nickel dioxide	CAS No 12035-36-8
nickel monoxide	CAS No 1313-99-1
nickel subsulphide	CAS No 12035-72-2
nickel sulphide	CAS No 16812-54-7
salts of 2-naphthylamine	CAS No —
salts of biphenyl-4-ylamine; salts of xenylamine; salts of 4-aminobiphenyl	CAS No —
salts of benzidine	CAS No —
vinyl chloride; chloroethylene	CAS No 75-01-4
zinc chromates including zinc potassium chromate	CAS No —

List 2, category 2

1-methyl-3-nitro-1-nitrosoguanidine	CAS No 70-25-7
1,2-dibromo-3-chloropropane	CAS No 96-12-8
1,2-dimethylhydrazine	CAS No 540-73-8
1,3-butadiene, buta-1,3-diene	CAS No 106-99-0
1,3-dichloro-2-propanol	CAS No 96-23-1
1,3-propanesultone	CAS No 1120-71-4
3-propanolide; 1,3-propiolactone	CAS No 57-57-8
1,4-dichlorobut-2-ene	CAS No 764-41-0
2-nitronaphtalene	CAS No 581-89-5
2-nitropropane	CAS No 79-46-9
2,2′-dichloro-4,4′-methylenedianiline; 4,4′-methylene bis(2-chloroaniline)	CAS No 101-14-4
2,2′-(nitrosoimino)bisethanol	CAS No 1116-54-7
3,3′-dichlorobenzidine; 3,3′-dichlorobiphenyl-4,4′-ylenediamine	CAS No 91-94-1
3,3′-dimethoxybenzidine; o-dianisidine	CAS No 119-90-4
3,3′-dimethylbenzidine; o-tolidine	CAS No 119-93-7
4-aminoazobenzene	CAS No 60-09-3
4-amino-3-fluorophenol	CAS No 399-95-1
4-methyl-m-phenylenediamine	CAS No 95-80-7
4-nitrobiphenyl	CAS No 92-93-3
4,4′-methylenedi-o-toluidine	CAS No 838-88-0
4,4′-diaminodiphenylmethane; 4,4′-methylenedianiline	CAS No 101-77-9
5-nitroacenaphtene	CAS No 602-87-9
4-o-tolylazo-o-toluidine; 4-amino-2′,3-dimethylazobenzene; fast gamet GBC base; AAT; o-aminoazotoluene	CAS No 97-56-3
disodium-{5[(4′-((2,6-hydroxy-3-((2-hydroxy-5-sulphophenyl) azo)phenyl)azo)(1,1′-biphenyl)-4-yl)azo]salicylato(4-)}cuprate(2-); Cl Direct Brown 95	CAS No 16071-86-6
cadmium oxide	CAS No 1306-19-0
Extracts (petroleum), heavy naphthenic distillate solvent	CAS No 64742-11-6
Extracts (petroleum), heavy paraffinic distillate solvent	CAS No 64742-04-7
Extracts (petroleum), light naphthenic distillate solvent	CAS No 64742-03-6

Extracts (petroleum), light paraffinic distillate solvent	CAS No 64742-05-8
Extracts (petroleum), light vacuum gas oil solvent	CAS No 91995-78-7
Hydrocarbons, C26-55-, arom-rich	CAS No 97722-04-8
N,N-dimethylhydrazine	CAS No 57-14-7
acrylamide	CAS No 79-06-1
acrylonitrile	CAS No 107-13-1
α,α,α-trichlorotoluene; benzotrichloride	CAS No 98-07-7
benzo[a]anthracene	CAS No 56-55-3
benzo[a]pyrene; benzo[d,e,f]chrysene	CAS No 50-32-8
benzo[b]fluoranthene; benzo[e]acephenanthrylene	CAS No 205-99-2
benzo[j]fluoranthene	CAS No 205-82-3
benzo[k]fluoranthene	CAS No 207-08-9
beryllium	CAS No 7440-41-7
beryllium compounds with the exception of aluminium beryllium silicates	CAS No —
cadmium chloride	CAS No 10108-64-2
cadmium sulphate	CAS No 10124-36-4
cadmium chromate	CAS No 13765-19-0
captafol (ISO); 1,2,3,6-tetrahydro-N-(1,1,2,2-tetrachloroethylthio)phthalimide	CAS No 2425-06-1
carbadox (INN); methyl-3-(quinoxalin-2-ylmethylene)carbazate 1,4-dioxide; 2-(methoxycarbonylhydrazonomethyl)quinoxaline 1,4-dioxide	CAS No 6804-07-5
chromium III chromate; chromic chromate	CAS No 24613-89-6
diazomethane	CAS No 334-88-3
dibenz[a,h]anthracene	CAS No 53-70-3
diethyl sulphate	CAS No 64-67-5
dimethyl sulphate	CAS No 77-78-1
dimethylcarbamoyl chloride	CAS No 79-44-7
N-nitrosodimethylamine; dimethylnitrosamine	CAS No 62-75-9
dimethylsulfamoylchloride	CAS No 13360-57-1
1-chloro-2,3-epoxypropane; epichlorthydrin	CAS No 106-89-8
1,2-dichloroethane; ethylene dichloride	CAS No 107-06-2
ethylene oxide; oxirane	CAS No 75-21-8
ethyleneimine; aziridine	CAS No 151-56-4
hexachlorobenzene	CAS No 118-74-1
hexamethylphosphoric triamide; hexamethylphosphoramide	CAS No 680-31-9
hydrazine	CAS No 302-01-2
hydrazobenzene; 1,2-diphenylhydrazine	CAS No 122-66-7
methyl acrylamidomethoxyacetate (containing ≥ 0,1 % acrylamid)	CAS No 77402-03-0
methyl-ONN-azoxymethyl acetate; methyl azoxy methyl acetate	CAS No 592-62-1
nitrofen (ISO); 2,4-dichlorophenyl 4-nitrophenyl ether	CAS No 1836-75-5
nitrosodipropylamine	CAS No 621-64-7
2-methoxyaniline; o-anisidine	CAS No 90-04-0
potassium bromate	CAS No 7758-01-2
propylene oxide; 1,2-epoxypropane; methyloxirane	CAS No 75-56-9
o-toluidine	CAS No 95-53-4
2-methylaziridine; propyleneimine	CAS No 75-55-8
salts of 2,2'-dichloro-4,4'-methylenedianiline; salts of 4,4'-methylenebis(2-chloroaniline)	CAS No —
salts of 3,3'-dichlorobenzidine; salts of 3,3'-dichlorobiphenyl-4,4'-ylenediamine	CAS No —
salts of 3,3'-dimethoxybenzidine; salts of o-dianisidine	CAS No —
salts of 3,3'-dimethylbenzidine; salts of o-tolidine	CAS No —
strontium chromate	CAS No 7789-06-2
styrene oxide; (epoxyethyl)benzene; phenyloxirane	CAS No 96-09-3
sulfallate (ISO); 2-chlorallyl diethyldithiocarbamate	CAS No 95-06-7
thioacetamide	CAS No 62-55-5
urethane (INN); ethyl carbamate	CAS No 51-79-6

Point 30 — Mutagens

List 3, category 1

No substances classified in this category

List 4, category 2

1,2-dibromo-3-chloropropane	CAS No 96-12-8
acrylamide	CAS No 79-06-1

benzo[a]pyrene; benzo[d,e,f]chrysene	CAS No 50-32-8
diethyl sulphate	CAS No 64-67-5
ethylene oxide; oxirane	CAS No 75-21-8
ethyleneimine, aziridine	CAS No 151-56-4
hexamethylphosphoric triamide; hexamethylphosphoramide	CAS No 680-31-9
methyl acrylamidomethoxyacetate (containing ≥ 0,1 % acrylamid)	CAS No 77402-03-0

Point 31 — Toxic for reproduction

List 5, category 1

lead hexafluorosilicate	CAS No 25808-74-6
lead acetate	CAS No 1335-32-6
lead alkyls	CAS No —
lead azide	CAS No 13424-46-9
lead chromate	CAS No 7758-97-6
lead compounds with the exception of those specified elsewhere in this Annex	CAS No —
lead di(acetate)	CAS No 301-04-2
lead 2,4,6-trinitroresorcinoxide; lead styphnate	CAS No 15245-44-0
lead(II)methanesulphonate	CAS No 17570-76-2
trilead bis(orthophosphate)	CAS No 7446-27-7
warfarin (*); 4-hydroxy-3-(3-oxo-1-phenylbutyl)coumarin	CAS No 81-81-2

List 6, category 2

2-ethoxyethanol; ethylene glycol monoethyl ether	CAS No 110-80-5
2-ethylhexyl 3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl methyl thio acetate	CAS No 80387-97-9
2-methoxyethanol, ethylene glycol monomethyl ether	CAS No 109-86-4
benzo[a]pyrene; benzo[d,e,f]chrysene	CAS No 50-32-8
binapacryl (ISO); 2-sec-butyl-4,6-dinitrophenyl-3-methylcrotonate	CAS No 485-31-4
N,N-dimethylformamide; dimethyl formamide	CAS No 68-12-2
dinoseb; 6-sec-butyl-2,4-dinitrophenol	CAS No 88-85-7
dinoterb; 2-tert-butyl-4,6-dinitrophenol	CAS No 1420-07-1
ethylene thiourea; imidazolidine-2-thione; 2-imidazoline-2-thiol	CAS No 96-45-7
2-ethoxyethyl acetate; ethylglycol acetate	CAS No 111-15-9
methyl-ONN-azoxymethyl acetate; methyl azoxy methyl acetate	CAS No 592-62-1
2-methoxyethyl acetate; methylglycol acetate	CAS No 110-49-6
nickel tetracarbonyl	CAS No 13463-39-3
nitrofen (ISO); 2,4-dichlorophenyl 4-nitrophenyl ether	CAS No 1836-75-6
salts and esters of dinoseb, with the exception of those specified elsewhere in this Appendix	CAS No —
salts and esters of dinoterb	CAS No —

(*) The name "Warfarin" is not authorized in France.'

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/62/EC

of 20 December 1994

on packaging and packaging waste

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

Whereas the differing national measures concerning the management of packaging and packaging waste should be harmonized in order, on the one hand, to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community;

Whereas the best means of preventing the creation of packaging waste is to reduce the overall volume of packaging;

Whereas it is important, in relation of the objectives of this Directive, to respect the general principle that measures taken in one Member State to protect the environment should not adversely affect the ability of other Member States to achieve the objectives of the Directive;

Whereas the reduction of waste is essential for the sustainable growth specifically called for by the Treaty on European Union;

Whereas this Directive should cover all types of packaging placed on the market and all packaging waste; whereas; therefore, Council Directive 85/339/EEC of 27 June 1985 on containers of liquids for human consumption [4] should be repealed;

Whereas packaging has a vital social and economic function and therefore measures provided for in this Directive should apply without prejudice to other relevant legislative requirements affecting quality and transport of packaging or packaged goods;

Whereas, in line with the Community strategy for waste management set out in Council resolution of 7 May 1990 on waste policy [5] and Council Directive 75/442/EEC of 15 July 1975 on waste [6], the management of packaging and packaging waste should include as a first priority, prevention of packaging waste and, as additional fundamental principles, reuse of packaging, recycling and other forms of recovering packaging waste and, hence, reduction of the final disposal of such waste;

Whereas, until scientific and technological progress is made with regard to recovery processes, reuse and recycling should be considered preferable in terms of environmental impact; whereas this requires the setting up in the Member States of systems guaranteeing the return of used packaging and/or packaging waste; whereas life-cycle assessments should be completed as soon as possible to justify a clear hierarchy between reusable, recyclable and recoverable packaging;

Whereas prevention of packaging waste shall be carried out through appropriate measures, including initiatives taken within the Member States in accordance with the objectives of this Directive;

Whereas Member States may encourage, in accordance with the Treaty, reuse systems of packaging which can be reused in an environmentally sound manner, in order to take advantage of the contribution of such systems to environmental protection;

Whereas from an environmental point of view recycling should be regarded as an important part of recovery with

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(1) OJ No C 263, 12. 10. 1992, p. 1 and OJ No C 285, 21. 10. 1993, p. 1.

(2) OJ No C 129, 10. 5. 1993, p. 18.

(3) Opinion of the European Parliament of 23 June 1993 (OJ No C 194, 19. 7. 1993, p. 177), common position of the Council of 4 March 1994 (OJ No C 137, 19. 5. 1994, p. 65) and Decision of the European Parliament of 4 May 1994 (OJ No C 205, 25. 7. 1994, p. 163). Confirmed on 2 December 1993 (OJ No C 342, 20. 12. 1993, p. 15). Joint text of the Conciliation Committee of 8 November 1994.

(4) OJ No L 176, 6. 7. 1985, p. 18. Directive as amended by Directive 91/629/EEC (OJ No L 377, 31. 12. 1991, p. 48).

(5) OJ No C 122, 18. 5. 1990, p. 2.

(6) OJ No L 194, 25. 7. 1975, p. 39. Directive as last amended by Directive 91/156/EEC (OJ No L 78, 26. 3. 1991, p. 32).

a particular view to reducing the consumption of energy and of primary raw materials and the final disposal of waste;

Whereas energy recovery is one effective means of packaging waste recovery;

Whereas targets set in Member States for the recovery and recycling of packaging waste should be confined within certain ranges so as to take account of the different situations in Member States and to avoid creating barriers to trade and distortion of competition;

Whereas, in order to achieve results in the medium term and to give economic operators, consumers and public authorities the necessary perspective for the longer term, a medium-term deadline should be set for attaining the aforementioned targets and a long-term deadline set for targets to be determined at a later stage with a view to substantially increasing those targets;

Whereas the European Parliament and the Council should, on the basis of reports by the Commission, examine the practical experience gained in Member States in working towards the aforementioned targets and the findings of scientific research and evaluation techniques such as eco-balances;

Whereas Member States which have, or will set, programmes going beyond such target ranges should be permitted to pursue those targets in the interest of a high level of environmental protection on condition shat such measures avoid disturbances on the internal market and do not prevent other Member States from complying with this Directive; whereas the Commission should confirm such measures after appropriate verification;

Whereas, on the other hand, certain Member States may be allowed to adopt lower targets because of the specific circumstances in those Member States, on condition that they achieve a minimum target for recovery within the standard deadline, and the standard targets by a later deadline;

Whereas the management of packaging and packaging waste requires the Member States to set up return, collection and recovery systems; whereas such systems should be open to the participation of all interested parties and be designed to avoid discrimination against imported products and barriers to trade or distortions of competition and to guarantee the maximum possible return of packaging and packaging waste, in accordance with the Treaty;

Whereas the issue of Community marking of packaging requires further study, but should be decided by the Community in the near future;

Whereas, in order to minimize the impact of packaging and packaging waste on the environment and to avoid barriers to trade and distortion of competition, it is also necessary to define the essential requirements governing the composition and the reusable and recoverable (including recyclable) nature of packaging;

Whereas the presence of noxious metals and other substances in packaging should be limited in view of their environmental impact (in particular in the light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled); whereas it is essential, as a first step towards reducing the toxicity of packaging waste, to prevent the addition of noxious heavy metals to packaging and ensure that such substances are not released into the environment, with appropriate exemptions which should be determined by the Commission in specific cases under a Committee procedure;

Whereas, if a high level of recycling is to be attained and health and safety problems are to be avoided by those employed to collect and process packaging waste, it is essential for such waste to be sorted at source;

Whereas the requirements for the manufacturing of packaging should not apply to packaging used for a given product before the date of entry into force of this Directive; whereas a transition period for the marketing of packaging is also required;

Whereas the timing of the provision on the placing on the market of packaging which meets all essential requirements should take account of the fact that European standards are being prepared by the competent standardization body; whereas, however, the provisions on means of proof of conformity of national standards should apply without delay;

Whereas the preparation of European standards for essential requirements and other related issues should be promoted;

Whereas the measures provided for in this Directive imply the development of recovery and recycling capacities and market outlets for recycled packaging materials;

Whereas the inclusion of recycled material in packaging should not contradict relevant provisions on hygiene, health and consumer safety;

Whereas Community-wide data on packaging and packaging waste are needed in order to monitor the implementation of the objectives of this Directive;

Whereas it is essential that all those involved in the production, use, import and distribution of packaging and packaged products become more aware of the extent to which packaging becomes waste, and that in accordance with the polluter-pays principle they accept responsibility for such waste; whereas the development and implementation of the measures provided for in this Directive should involve and require the close cooperation of all the partners, where appropriate, within a spirit of shared responsibility;

Whereas consumers play a key role in the management of packaging and packaging waste and thus have to be adequately informed in order to adapt their behaviour and attitudes;

Whereas the inclusion of a specific chapter on the management of packaging and packaging waste in the waste management plans required pursuant to Directive 75/442/EEC will contribute to the effective implementation of this Directive;

Whereas, in order to facilitate the achievement of the objectives of this Directive, it may be appropriate for the Community and the Member States to use economic instruments in accordance with the provisions of the Treaty, so as to avoid new forms of protectionism;

Whereas Member States should, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1], notify the Commission of drafts of any measures they intend to adopt before adopting them, so that it can be established whether or not they comply with the Directive;

Whereas the adaptation to scientific and technical progress of the packaging identification system and the formats relating to a database system should be ensured by the Commission under a committee procedure;

Whereas it is necessary to provide for specific measures to be taken to deal with any difficulties encountered in the implementation of this Directive in accordance, where appropriate, with the same committee procedure,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives

1. This Directive aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

2. To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste.

Article 2

Scope

1. This Directive covers all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.

2. This Directive shall apply without prejudice to existing quality requirements for packaging such as those regarding safety, the protection of health and the hygiene of the packed products or to existing transport requirements or to the provisions of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [2].

Article 3

Definitions

For the purposes of this Directive:

1. 'packaging' shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. 'Non-returnable' items used for the same purposes shall also be considered to constitute packaging.

   'Packaging' consists only of:

   (a) sales packaging or primary packaging, i. e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

   (b) grouped packaging or secondary packaging, i. e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number

[1] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Directive 92/400/EEC (OJ No L 221, 6. 8. 1992, p. 55).

[2] OJ No L 377, 31. 12. 1991, p. 20.

of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;

(c) transport packaging or tertiary packaging, i. e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship and air containers;

2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste in Directive 75/442/EEC, excluding production residues;

3. 'packaging waste management' shall mean the management of waste as defined in Directive 75/442/EEC;

4. 'prevention' shall mean the reduction of the quantity and of the harmfulness for the environment of:

— materials and substances contained in packaging and packaging waste,

— packaging and packaging waste at production process level and at the marketing, distribution, utilization and elimination stages,

in particular by developing 'clean' products and technology;

5. 'reuse' shall mean any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled; such reused packaging will become packaging waste when no longer subject to reuse;

6. 'recovery' shall mean any of the applicable operations provided for in Annex II.B to Directive 75/442/EEC;

7. 'recycling' shall mean the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

8. 'energy recovery' shall mean the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

9. 'organic recycling' shall mean the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilized organic residues or methane. Landfill shall not be considered a form of organic recycling;

10. 'disposal' shall mean any of the applicable operations provided for in Annex II.A to Directive 75/442/EEC;

11. 'economic operators' in relation to packaging shall mean suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors, authorities and statutory organizations;

12. 'voluntary agreement' shall mean the formal agreement concluded between the competent public authorities of the Member State and the economic sectors concerned, which has to be open to all partners who wish to meet the conditions of the agreement with a view to working towards the objectives of this Directive.

Article 4

Prevention

1. Member States shall ensure that, in addition to the measures to prevent the formation of packaging waste taken in accordance with Article 9, other preventive measures are implemented. Such other measures may consist of national programmes or similar actions adopted, if appropriate in consultation with economic operators, and designed to collect and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1 (1).

2. The Commission shall help to promote prevention by encouraging the development of suitable European standards, in accordance with Article 10.

Article 5

Member States may encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty.

Article 6

Recovery and recycling

1. In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets covering the whole of their territory;

(a) no later than five years from the date by which this Directive must be implemented in national law, between 50 % as a minimum and 65 % as a maximum by weight of the packaging waste will be recovered;

(b) within this general target, and with the same time limit, between 25 % as a minimum and 45 % as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15 % by weight for each packaging material;

(c) no later than 10 years from the date by which this Directive must be implemented in national law, a percentage of packaging waste will be recovered and recycled, which will have to be determined by the Council in accordance with paragraph 3 (b) with a view to substantially increasing the targets mentioned in paragraphs (a) and (b).

2. Member States shall, where appropriate, encourage the use of materials obtained from recycled packaging waste for the manufacturing of packaging and other products.

3. (a) The European Parliament and the Council shall, on the basis of an interim report by the Commission, and four years from the date referred to in paragraph 1 (a) on the basis of a final report, examine the practical experience gained in the Member States in the pursuance of the targets and objective laid down in paragraphs 1 (a) and (b) and 2 and the findings of scientific research and evaluation techniques such as eco-balances.

(b) No later than six months before the end of the first five-year phase referred to in paragraph 1 (a) the Council shall, acting by qualified majority and on a proposal from the Commission, fix targets for the second five-year phase referred to in paragraph 1 (c). This process shall be repeated every five years thereafter.

4. The measures and targets referred to in paragraph 1 (a) and (b) shall be published by the Member States and shall be the subject of an information campaign for the general public and economic operators.

5. Greece, Ireland and Portugal may, because of their specific situation, i. e. respectively the large number of small islands, the presence of rural and mountain areas and the current low level of packaging consumption, decide to:

(a) attain, no later than five years from the date of implementation of this Directive, lower targets than those fixed in paragraph 1 (a) and (b), but shall at least attain 25 % for recovery;

(b) postpone at the same time the attainment of the targets in paragraph 1 (a) and (b) to a later deadline which, however, shall not exceed 31 December 2005.

6. Member States which have, or will, set programmes going beyond the targets of paragraph 1 (a) and (b) and which provide to this effect appropriate capacities for recycling and recovery, are permitted to pursue those targets in the interest of a high level of environmental protection, on condition that these measures avoid distortions of the internal market and do not hinder compliance by other Member States with the Directive. Member States shall inform the Commission thereof. The Commission shall confirm these measures, after having verified, in cooperation with the Member States, that they are consistent with the considerations above and do not constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.

Article 7

Return, collection and recovery systems

1. Member States shall take the necessary measures to ensure that systems are set up to provide for:

(a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;

(b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,

in order to meet the objectives laid down in this Directive.

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.

2. The measures referred to in paragraph 1 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of environmental and consumer health, safety and hygiene; the protection of the quality,the authenticity and the technical characteristics of the packed goods and materials used; and the protection of industrial and commercial property rights.

Article 8

Marking and identification system

1. The Council shall, in accordance with the conditions laid down in the Treaty, decide no later than two years after the entry into force of this Directive on the marking of packaging.

2. To facilitate collection, reuse and recovery including recycling, packaging shall indicate for purposes of its identification and classification by the industry concerned the nature of the packaging material(s) used.

To that end, the Commission shall, not later than 12 months after the entry into force of this Directive determine, on the basis of Annex I and in accordance with the procedure laid down in Article 21, the numbering and abbreviations on which the identification system is based and shall specify which materials shall be subject to the identification system in accordance with the same procedure.

3. Packaging shall bear the appropriate marking either on the packaging itself or on the label. It shall be clearly visible and easily legible. The marking shall be appropriately durable and lasting, including when the packaging is opened.

Article 9

Essential requirements

1. Member States shall ensure that three years from the date of the entry into force of this Directive, packaging may be placed on the market only if it complies with all essential requirements defined by this Directive including Annex II.

2. Member States shall, from the date set out in Article 22 (1), presume compliance with all essential requirements set out in this Directive including Annex II in the case of packaging which complies:

(a) with the relevant harmonized standards, the reference numbers of which have been published in the *Official Journal of the European Communities*. Member States shall publish the reference numbers of national standards transposing these harmonized standards;

(b) with the relevant national standards referred to in paragraph 3 in so far as, in the areas covered by such standards, no harmonized standards exist.

3. Member States shall communicate to the Commission the text of their national standards, as referred to in paragraph 2 (b), which they deem to comply with the requirements referred to in this Article. The Commission shall forward such texts forthwith to the other Member States.

Member States shall publish the references of these standards. The Commission shall ensure that they are published in the *Official Journal of the European Communities*.

4. Where a Member State or the Commission considers that the standards referred to in paragraph 2 do not entirely meet the essential requirements referred to in paragraph 1, the Commission or the Member State concerned shall bring the matter before the Committee set up by Directive 83/189/EEC giving the reasons therefor. This Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform Member States whether or not it is necessary to withdraw those standards from the publications referred to in paragraphs 2 and 3.

Article 10

Standardization

The Commission shall promote, as appropriate, the preparation of European standards relating to the essential requirements referred to in Annex II.

The Commission shall promote, in particular, the preparation of European standards relating to:

— criteria and methodologies for life-cycle analysis of packaging,

— the methods for measuring and verifying the presence of heavy metals and other dangerous substances in the packaging and their release into the environment from packaging and packaging waste,

— criteria for a minimum content of recycled material in packaging for appropriate types of packaging,

— criteria for recycling methods,

— criteria for composting methods and produced compost,

— criteria for the marking of packaging.

Article 11

Concentration levels of heavy metals present in packaging

1. Member States shall ensure that the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium present in packaging or packaging components shall not exceed the following:

— 600 ppm by weight two years after the date referred to in Article 22 (i);

— 250 ppm by weight three years after the date referred to in Article 22 (i);

— 100 ppm by weight five years after the date referred to in Article 22 (i).

2. The concentration levels referred to in paragraph 1 shall not apply to packaging entirely made of lead crystal glass as defined in Directive 69/493/EEC [1].

3. The Commission shall, in accordance with the procedure laid down in Article 21, determine:

[1] OJ No L 326, 29. 12. 1969, p. 36.

— the conditions under which the above concentration levels will not apply to recycled materials and to product loops which are in a closed and controlled chain,

— the types of packaging which are exempted from the requirement referred to in paragraph 1, third indent.

Article 12

Information systems

1. Member States shall take the necessary measures to ensure that databases on packaging and packaging waste are established, where not already in place, on a harmonized basis in order to contribute to enabling Member States and the Commission to monitor the implementation of the objectives set out in this Directive.

2. To this effect, the databases shall provide in particular information on the magnitude, characteristics and evolution of the packaging and packaging waste flows (including information on the toxicity or danger of packaging materials and components used for their manufacture) at the level of individual Member States.

3. In order to harmonize the characteristics and presentation of the data produced and to make the data of the Member States compatible, Member States shall provide the Commission with their available data by means of formats which shall be adopted by the Commission one year from the date of entry into force of this Directive on the basis of Annex III, in accordance with the procedure laid down in Article 21.

4. Member States shall take into account the particular problems of small and medium-sized enterprises in providing detailed data.

5. The data obtained shall be made available with the national reports referred to in Article 17 and shall be updated in subsequent reports.

6. Member States shall require all economic operators involved to provide competent authorities with reliable data on their sector as required in this Article.

Article 13

Information for users of packaging

Member States shall take measures, within two years of the date referred to in Article 22 (1), to ensure that users of packaging, including in particular consumers, obtain the necessary information about:

— the return, collection and recovery systems available to them,

— their role in contributing to reuse, recovery and recycling of packaging and packaging waste,

— the meaning of markings on packaging existing on the market,

— the appropriate elements of the management plans for packaging and packaging waste as referred to in Article 14.

Article 14

Management Plans

In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 17 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5.

Article 15

Economic instruments

Acting on the basis of the relevant provisions of the Treaty, the Council adopts economic instruments to promote the implementation of the objectives set by this Directive. In the absence of such measures, the Member States may, in accordance with the principles governing Community environmental policy, *inter alia*, the polluter-pays principle, and the obligations arising out of the Treaty, adopt measures to implement those objectives.

Article 16

Notification

1. Without prejudice to Directive 83/189/EEC, before adopting such measures, Member States shall notify the drafts of measures which they intend to adopt within the framework of this Directive to the Commission, excluding measures of a fiscal nature, but including technical specifications linked to fiscal measures which encourage compliance with such technical specifications, in order to permit the latter to examine them in the light of existing provisions following in each case the procedure under the above Directive.

2. If the proposed measure is also a technical matter within the meaning of Directive 83/189/EEC, the Member State concerned may indicate, when following the notification procedures referred to in this Directive, that the notification is equally valid for Directive 83/189/EEC.

Article 17

Obligation to report

Member States shall report to the Commission on the application of this Directive in accordance with Article 5 of Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment [1]. The first report shall cover the period 1995 to 1997.

Article 18

Freedom to place on the market

Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.

Article 19

Adaptation to scientific and technical progress

The amendments necessary for adapting to scientific and technical progress the identification system — as referred to in Article 8 (2), Annex I and Article 10, last indent — and the formats relating to the database system — as referred to in Article 12 (3) and Annex III — shall be adopted in accordance with the procedure laid down in Article 21.

Article 20

Specific measures

1. The Commission, in accordance with the procedure laid down in Article 21, shall determine the technical measures necessary to deal with any difficulties encountered in applying the provisions of this Directive in particular to primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.

2. The Commission shall also present a report to the European Parliament and the Council on any other measure to be taken, if appropriate accompanied by a proposal.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee 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. 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.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) 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 a period which may in no case exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 22

Implementation in national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. the methods for making such reference shall be laid down by the Member States.

3. In addition, Member States shall communicate to the Commission all existing laws, regulations and administrative provisions adopted within the scope of this Directive.

4. The requirements for the manufacturing of packaging shall in no case apply to packaging used for a given product before the date of entry into force of this Directive.

5. Member States shall, for a period not exceeding five years from the date of the entry into force of the present Directive, allow the placing on the market of packaging manufactured before this date and which is in conformity with their existing national law.

[1] OJ No L 377, 31. 12. 1991, p. 48.

Article 23

Directive 85/339/EEC is hereby repealed with effect from the date referred to in Article 22 (1).

Article 24

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 25

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1994.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	K. KINKEL

ANNEX I

IDENTIFICATION SYSTEM

The numbering used shall be from 1 to 19 for plastic, from 20 to 39 for paper and cardboard, from 40 to 49 for metal, from 50 to 59 for wood, from 60 to 69 for textiles and from 70 to 79 for glass.

The identification system may also use the abbreviation for the relevant material(s) (e. g. HDPE: high density polyethylene). Materials may be identified by a numbering system and/or abbreviation. The identification marks shall appear in the centre of or below the graphical marking indicating the reusable or recoverable nature of the packaging.

ANNEX II

ESSENTAIL REQUIREMENTS ON THE COMPOSITION AND THE REUSABLE AND RECOVERABLE, INCLUDING RECYCLABLE, NATURE OF PACKAGING

1. **Requirements specific to the manufacturing and composition of packaging**

   — Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer.

   — Packaging shall be designed, produced and commercialized in such a way as to permit its reuse or recovery, including recycling, and to minimize its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.

   — Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimized with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.

2. **Requirements specific to the reusable nature of packaging**

   The following requirements must be simultaneously satisfied:

   — the physical properties and characteristics of the packaging shall enable a number of trips or rotations in normally predictable conditions of use,

   — possiblity of processing the used packaging in order to meet health and safety requirements for the workforce,

   — fulfil the requirements specific to recoverable packaging when the packaging is no longer reused and thus becomes waste.

3. **Requirements specific to the recoverable nature of packaging**

   (a) *Packaging recoverable in the form of material recycling*

   Packaging must be manufactured in such a way as to enable the recycling of a certain percentage by weight of the materials used into the manufacture of marketable products, in compliance with current standards in the Community. The establishment of this percentage may vary, depending on the type of material of which the packaging is composed.

   (b) *Packaging recoverable in the form of energy recovery*

   Packaging waste processed for the purpose of energy recovery shall have a minimum inferior calorific value to allow optimization of energy recovery.

   (c) *Packaging recoverable in the form of composting*

   Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it should not hinder the separate collection and the composting process or activity into which it is introduced.

   (d) *Biodegradable packaging*

   Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water.

ANNEX III

DATA TO BE INCLUDED BY MEMBER STATES IN THEIR DATABASES ON PACKAGING AND PACKAGING WASTE (IN ACCORDANCE WITH TABLES 1 TO 4)

1. For primary, secondary and tertiary packaging:

   (a) quantities, for each broad category of material, of packaging consumed within the country (produced + imported – exported) (Table 1);

   (b) quantities reused (Table 2).

2. For household and non-household packaging waste:

   (a) quantities for each broad category of material, recovered and disposed of within the country (produced + imported – exported) (Table 3);

   (b) quantities recycled and quantities recovered for each broad category of material (Table 4).

TABLE 1

Quantity of packaging (primary, secondary and tertiary) consumed within the national territory

	Tonnage produced	– Tonnage exported	+ Tonnage imported	= Total
Glass				
Plastic				
Paper/cardboard (including composite)				
Metal				
Wood				
Other				
Total				

TABLE 2

Quantity of packaging (primary, secondary and tertiary) reused within the national territory

	Tonnage of packaging consumed	Packaging reused	
		Tonnage	Percentage
Glass			
Plastic			
Paper/cardboard (including composite)			
Metal			
Wood			
Other			
Total			

TABLE 3

Quantity of packaging waste recovered and disposed of within the national territory

	Tonnage of waste produced	– Tonnage of waste exported	+ Tonnage of waste imported	= Total
Household waste				
Glass packaging				
Plastic packaging				
Paper/cardboard packaging				
Cardboard composite packaging				
Metal packaging				
Wood packaging				
Total household packaging waste				
Non-household waste				
Glass packaging				
Plastic packaging				
Paper/cardboard packaging				
Cardboard composite packaging				
Metal packaging				
Wood packaging				
Total non-household packaging waste				

TABLE 4

Quantity of packaging waste recycled or recovered within the national territory

	Total tonnage recovered and disposed of	Quantity recycled		Quantity recovered	
		Tonnage	Percentage	Tonnage	Percentage
Household waste					
Glass packaging					
Plastic packaging					
Paper/cardboard packaging					
Cardboard composite packaging					
Metal packaging					
Wood packaging					
Total household packaging waste					
Non-household waste					
Glass packaging					
Plastic packaging					
Paper/cardboard packaging					
Cardboard composite packaging					
Metal packaging					
Wood packaging					
Total non-household packaging waste					

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/63/EC

of 20 December 1994

on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

Whereas successive programmes of action of the European Communities on the protection of the environment [4] have stressed the importance of preventing and reducing air pollution;

Whereas emissions of volatile organic compounds (VOCs) from petrol and solvents in the Community would be in the order of 10 million tonnes per year if no control measures were taken; whereas VOC emissions contribute to the formation of photochemical oxidants such as ozone, which in high concentrations can impair human health and damage vegetation and materials; whereas some of the VOC emissions from petrol are classified as toxic, carcinogenic or teratogenic;

Whereas on 2 April 1992 the Community signed the Protocol to the 1979 Convention on long range transboundary air pollution concerning the control of emissions of volatile organic compounds (VOCs) or their transboundary fluxes, which provides for a considerable reduction of the VOC emissions;

Whereas a significant step in a strategy for an overall reduction of VOC emissions in the Community was taken by Council Directive 91/441/EEC of 26 June 1991 amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles [5] which aims at reducing by some 80 to 90 %, over 10 to 15 years, VOC emissions from tail-pipe exhaust gases and evaporative emissions from motor vehicles, representing some 40 % of the present emissions of man-made VOCs to the atmosphere; whereas, at the time of adoption of that Directive, the Commission was requested to submit a proposal for a Directive on the measures to reduce evaporation losses at every stage in the process of storage and distribution of motor fuels;

Whereas the VOC emissions from the system for storage and distribution of petrol represent some 500 000 tonnes per year or some 5 % of the total emissions of man-made VOCs in the Community; whereas these emissions, represent a significant contribution to air pollution especially in urban areas;

Whereas available technologies can ensure a considerable reduction of the evaporative losses in the distribution system for petrol, not least through the recovery of vapours which are displaced;

Whereas, on grounds of international standardization and of safety during the loading of ships, standards must be drawn up at International Maritime Organization level for vapour control and recovery systems to apply to both loading installations and ships; whereas the Community must therefore endeavour to ensure that the necessary provisions are introduced into the Marpol Convention during the current revision of Marpol due to be completed in 1996; whereas in the event that the Marpol Convention is not so revised, the Community, after discussion with its major trading partners, should propose appropriate measures to apply to ships and port installations servicing ships;

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(1) OJ No C 227, 3. 9. 1992, p. 3 and OJ No C 270, 6. 10. 1993, p. 12.

(2) OJ No C 73, 15. 3. 1993, p. 6.

(3) Opinion of the European Parliament of 24 June 1994 (OJ No C 194, 19. 7. 1993, p. 325), Council common position of 4 October 1993 (not yet published in the Official Journal) and Decision of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 82). Confirmed on 2 December 1994 (OJ No C 342, 20. 12. 1993, p. 15). Joint text of the Conciliation Committee of 8 November 1994.

(4) OJ No C 112, 20. 12. 1973, p. 1, OJ No C 139, 13. 6. 1977, p. 1; OJ No C 46, 17. 2. 1983, p. 1 and OJ No C 328, 7. 12. 1987, p. 1.

(5) OJ No L 242, 30. 8. 1991, p. 1.

Whereas further action will be needed to reduce the vapour emissions during refuelling operations at service stations, which at present amount so some 200 000 tonnes per year, thereby controlling all vapour emissions during the distribution of petrol;

Whereas, in order to avoid distortion of competition and in order to ensure the operation of the internal market, it is necessary to harmonize certain measures concerning the distribution of petrol on the basis of a high level of environmental protection;

Whereas account should nevertheless be taken of the advantages and burdens which may result from action or the absence of action; whereas it is therefore appropriate to provide for the possibility of derogations and sometimes of exclusions in certain cases; whereas certain Member States should also be given the option of longer periods in which to adapt in order to take account of any major environmental measures of differing kinds which they may already have adopted in this area or of the particular burden imposed by the measures in this Directive owing to the structure of their networks;

Whereas Community action must take account of environmental conditions in the various regions of the Community; whereas in this connection Member States must be able to uphold or impose more stringent measures relating to the evaporative losses from fixed installations throughout their territory or in geographical areas where it is established that such measures are necessary for the protection of human health or the environment because of special conditions;

Whereas the provisions of paragraph 1 of Articles 3, 4 and 6 of this Directive apply without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations;

Whereas it is necessary to introduce harmonized specifications for the equipment for bottom loading of road tankers in order to ensure the possibility of free trade in petrol and equipment within the Community and to ensure a high level of safety; whereas provision should be made for standardizing such specifications and adapting them to technical progress;

Whereas a committee should be set up to assist the Commission in adapting the Annexes to this Directive to technical progress,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive shall apply to the operations, installations, vehicles and vessels used for storage, loading and transport of petrol from one terminal to another or from a terminal to a service station.

Article 2

Definitions

For the purpose of this Directive:

(a) 'petrol' shall mean any petroleum derivative, with or without additives, having a reid vapour pressure of 27,6 kilopascals or more, which is intended for use as a fuel for motor vehicles, except liquefied petroleum gas (LPG);

(b) 'vapours' shall mean any gaseous compound which evaporates from petrol;

(c) 'storage installation' shall mean any stationary tank at a terminal used for the storage of petrol;

(d) 'terminal' shall mean any facility which is used for the storage and loading of petrol onto road tankers, rail tankers, or vessels, including all storage installations on the site of the facility;

(e) 'mobile container' shall mean any tank, transported by road, rail or waterways used for the transfer of petrol from one terminal to another or from a terminal to a service station;

(f) 'service station' shall mean any installation where petrol is dispensed to motor vehicle fuel tanks from stationary storage tanks;

(g) 'existing' petrol storage installations, loading installations, service stations and mobile containers shall mean such installations, service stations and mobile containers which were in operation before the date referred to in Article 10 or for which an individual construction licence or operating licence, where required under national legislation, was granted before the date referred to in Article 10;

(h) 'new' in relation to petrol storage installations, loading installations, service stations and mobile containers shall mean such installations, service stations and mobile containers which are not covered by paragraph (g);

(1) OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 92/400/EEC (OJ No L 221, 6. 8. 1992, p. 55).

(i) 'throughput' shall mean the largest total annual quantity of petrol loaded from a storage installation at a terminal or from a service station into mobile containers during the three preceding years;

(j) 'vapour-recovery unit' shall mean equipment for the recovery of petrol from vapours including any buffer reservoir systems at a terminal;

(k) 'vessel' shall mean an inland waterway vessel as defined in Chapter 1 of Council Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels [1];

(l) 'target reference value' shall mean the guideline given for the overall assessment of the adequacy of technical measures in the Annexes and is not a limit value against which the performance of individual installations, terminals and service stations will be measured;

(m) 'intermediate storage of vapours' shall mean the intermediate storage of vapours in a fixed roof tank at a terminal for later transfer to and recovery at another terminal. The transfer of vapours from one storage installation to another at a terminal shall not be considered as intermediate storage of vapour within the meaning of this Directive;

(n) 'loading installation' shall mean any facility at a terminal at which petrol can be loaded onto mobile containers. Loading installations for road tankers comprise one or more 'gantries';

(o) 'gantry' shall mean any structure at a terminal at which petrol can be loaded on to a single road tanker at any one time.

Article 3

Storage installations at terminals

1. Storage installations shall be designed and operated in accordance with the technical provisions of Annex I.

These provisions are designed to reduce the total annual loss of petrol resulting from loading and storage at each storage installation at terminals to below the target reference value of 0,01 weight by weight (w/w) % of the throughput.

Member States may maintain or require more stringent measures throughout their territory or in geographical areas where it is established that such measures are necessary for the protection of human health or the environment owing to specific conditions.

Member States may adopt technical measures for the reduction of losses of petrol other than those set down in Annex I if such alternative measures are demonstrated to have at least the same efficiency.

Member States shall inform the other Member States and the Commission of any existing measures or of any special measures referred to in this paragraph which they contemplate taking and of their grounds for taking them.

2. The provisions of paragraph 1 shall apply:

(a) from the date referred to in Article 10 for new installations;

(b) three years from the date referred to in Article 10 for existing installations if the throughput loaded at a terminal is greater than 50 000 tonnes/year;

(c) six years from the date referred to in Article 10 for existing installations if the throughput loaded at a terminal is greater than 25 000 tonnes/year;

(d) nine years from the date referred to in Article 10 for all other existing storage installations at terminals.

Article 4

Loading and unloading of mobile containers at terminals

1. Loading and unloading equipment shall be designed and operated in accordance with the technical provisions of Annex II.

These provisions are designed to reduce the total annual loss of petrol resulting from loading and unloading of mobile containers at terminals to below the target reference value of 0,005 w/w % of the throughput.

Member States may maintain or require more stringent measures throughout their territory or in geographical areas where it is established that such measures are necessary for the protection of human health or the environment owing to specific conditions.

Member States may adopt technical measures for the reduction of losses of petrol other than those set down in Annex II if such alternative measures are demonstrated to have at least the same efficiency.

Member States shall inform the other Member States and the Commission of any existing measures or of any special measures referred to in this paragraph which they contemplate taking and of their grounds for taking them. The Commission shall verify the compatibility of these measures with the provisions of the Treaty and those of this paragraph.

All terminals with loading facilities for road tankers shall be equipped with at least one gantry which meets the specifications for bottom-loading equipment laid down in Annex IV. These specifications shall be re-examined at regular intervals and, if appropriate, shall be revised in accordance with the procedure laid down in Article 8.

[1] OJ No L 301, 28. 10. 1982, p. 1.

2. The provisions of paragraph 1 shall apply:

(a) from the date referred to in Article 10 for new terminals for loading onto road tankers, rail tankers and/or vessels;

(b) three years from the date referred to in Article 10 for existing terminals for loading onto road tankers, rail tankers and/or vessels if the throughput is greater than 150 000 tonnes/year;

(c) six years from the date referred to in Article 10 for existing terminals for loading onto road tankers and rail tankers if the throughput is greater than 25 000 tonnes/year;

(d) nine years from the date referred to in Article 10 for all other existing loading installations at terminals for loading onto road tankers and rail tankers.

3. Nine years after the date referred to in Article 10 the requirements for bottom-loading equipment set in Annex IV shall apply to all road tanker loading gantries at all terminals unless exempted under the terms of paragraph 4.

4. By way of derogation, paragraphs 1 and 3 shall not apply:

(a) to existing terminals with a throughput of less than 10 000 tonnes/year and;

(b) to new terminals with a throughput of less than 5 000 tonnes/year located in small remote islands.

Member States shall inform the Commission of terminals concerned by such a derogation through the reporting arrangements referred to in Article 9.

5. The Kingdom of Spain may grant a derogation of one year from the time limit set down in paragraph 2 (b).

Article 5

Mobile containers

1. Mobile containers shall be designed and operated in accordance with the following requirements:

(a) mobile containers shall be designed and operated so that residual vapours are retained in the container after unloading of petrol;

(b) mobile containers which supply petrol to service stations and terminals shall be designed and operated so as to accept and retain return vapours from the storage installations at the service stations or terminals. For rail tankers this is only required if they supply petrol to service stations or to terminals where intermediate storage of vapours is used;

(c) except for release through the pressure relief valves, the vapours mentioned in subparagraphs (a) and (b) shall be retained in the mobile container until reloading takes place at a terminal.

If after the unloading of petrol the mobile container is subsequently used for products other than petrol, in so far as vapour recovery or intermediate storage of vapours is not possible, ventilation may be permitted in a geographical area where emissions are unlikely to contribute significantly to environmental or health problems;

(d) the Member States' competent authorities must ensure that road tankers are regularly tested for vapour tightness and that vacuum/pressure valves on all mobile containers are periodically inspected for correct functioning.

2. The provisions of paragraph 1 shall apply:

(a) from the date referred to in Article 10 for new road tankers, rail tankers and vessels;

(b) three years from the date referred to in Article 10 for existing rail tankers and vessels if loaded at a terminal to which the requirement of Article 4 (1) applies;

(c) for existing road tankers when retrofitted for bottom loading in accordance with the specifications laid down in Annex IV.

3. By way of derogation, the provisions of paragraph 1, subparagraphs (a), (b) and (c) shall not apply to losses of vapours resulting from measuring operations using dipsticks in relation to:

(a) existing mobile containers; and

(b) new mobile containers which come into operation during the four years following the date referred to in Article 10.

Article 6

Loading into storage installations at service stations

1. Loding and storage equipment shall be designed and operated in accordance with the technical provisions of Annex III.

These provisions are designed to reduce the total annual loss of petrol resulting from loading into storage installations at service stations to below the target reference value of 0,01 w/w % of the throughput.

Member States may maintain or require more stringent measures throughout their territory or in geographical areas where it is established that such measures are necessary for the protection of human health or the environment owing to specific conditions.

Member States may adopt technical measures for the reduction of losses of petrol other than those set down in Annex III if such alternative measures are demonstrated to have at least the same efficiency.

Member States shall inform the other Member States and the Commission of any existing measures or of any special measures referred to in this paragraph which they contemplate taking and of their grounds for taking them.

2. The provisions of paragraph 1 shall apply:

(a) from the date referred to in Article 10 for new service stations;

(b) three years from the date referred to in Article 10:

— for existing service stations with a throughput greater than 1 000 m^3/year,

— for existing service stations, regardless of their throughput, which are located under permanent living quarters or working areas;

(c) six years from the date referred to in Article 10 for existing service stations with a throughput greater than 500 m^3/year;

(d) nine years from the date referred to in Article 10 for all other existing service stations.

3. By way of derogation, paragraphs 1 and 2 shall not apply to service stations with a throughput of less than 100 m^3/year.

4. For service stations with an annual throughput of less than 500 m^3/year, Member States may grant a derogation from the requirements of paragraph 1 where the service station is located in a geographical area or on a site where vapour emissions are unlikely to contribute significantly to environmental or health problems.

Member States shall inform the Commission of the details of the areas within which they intend to grant such derogation in the framework of the reporting arrangements referred to in Article 9 and subsequently of any changes to such areas.

5. The Kingdom of the Netherlands may grant a derogation from the timetable set down in paragraph 2, subject to the following conditions:

— the measures required by this Article are implemented as part of a broader, existing national programme for service stations which simultaneously addresses various environmental problems, such as water pollution, air pollution, ground pollution and waste pollution and the implementation of which is tightly scheduled,

— the timetable may only be varied by a maximum of two years, all programmes being completed within the time limit set out in paragraph 2 (d),

— the Commission shall be notified of the decision to diverge from the timetable set down in paragraph 2, including full information on the scope and deadline of the derogation.

6. The Kingdom of Spain and the Portuguese Republic may grant a derogation of one year from the time limit set down in paragraph 2 (b).

Article 7

Amendments to the Annexes

Except for the limit values refered to in Annex II, point 2, the amendments necessary for adapting the Annexes to this Directive to technical progress shall be adopted in accordance with the procedure specified in Article 8.

Article 8

The committee

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee 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. 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.

3. 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.

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

Article 9

Monitoring and reporting

The reports on the implementation of this Directive shall be established according to the procedure laid down in Article 5 of Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment [1]. The Commission is invited to

[1] OJ No L 377, 31. 12. 1991, p. 48.

accompany its first report where appropriate with proposals for the amendment of this Directive, including in particular the extension of the scope to include vapour control and recovery systems for loading installations and ships.

Article 10

Transposition into national legislation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1995. They shall forthwith inform the Commission thereof.

When these measures are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 11

Final provision

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1994.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	K. KINKEL

ANNEX I

REQUIREMENTS FOR STORAGE INSTALLATIONS AT TERMINALS

1. The external wall and roof of tanks above ground must be painted in a colour with a total radiant heat reflectance of 70 % or more. These operations may be programmed so as to be carried out as part of the usual maintenance cycles of the tanks within a period of three years. Member States may grant a derogation from this provision where required for the protection of special landscape areas which have been designated by national authority.

This provision shall not apply to tanks linked to a vapour recovery unit which conforms with the requirements set out in Annex II, point 2.

2. Tanks with external floating roofs must be equipped with a primary seal to cover the annular space between the tank wall and the outer periphery of the floating roof and with a secondary seal fitted above the primary seal. The seals should be designed to achieve an overall containment of vapours of 95 % or more as compared to a comparable fixed-roof tank with no vapour-containment controls (that is a fixed-roof tank with only vacuum/pressure relief valve).

3. All new storage installations at terminals, where vapour recovery is required according to Article 4 of the Directive (see Annex II) must be either:

(a) fixed-roof tanks connected to the vapour recovery unit in conformity with the requirements of Annex II; or

(b) designed with a floating roof, either external or internal, equipped with primary and secondary seals to meet the performance requirements set down in point 2.

4. Existing fixed-roof tanks must either:

(a) be connected to a vapour-recovery unit in conformity with the requirements of Annex II; or

(b) have an internal floating roof with a primary seal which should be designed to achieve an overall containment of vapours of 90 % or more in relation to a comparable fixed-roof tank with no vapour controls.

5. The requirements for vapour-containment controls mentioned under points 3 and 4 do not apply to fixed-roof tanks at terminals, where intermediate storage of vapours is permitted according to Annex II, point 1.

ANNEX II

REQUIREMENTS FOR LOADING AND UNLOADING INSTALLATIONS AT TERMINALS

1. Displacement vapours from the mobile container being loaded must be returned through a vapour-tight connection line to a vapour recovery unit for regeneration at the terminal.

This provision does not apply to top-loading tankers as long as that loading system is permitted.

At terminals which load petrol onto vessels, a vapour incineration unit may be substituted for a vapour recovery unit if vapour recovery is unsafe or technically impossible because of the volume of return vapour. The requirements concerning atmospheric emissions from the vapour recovery unit shall also apply to the vapour incineration unit.

At terminals with a throughput of less than 25 000 tonnes/year, intermediate storage of vapours may be substituted for immediate vapour recovery at the terminal.

2. The mean concentration of vapours in the exhaust from the vapour recovery — unit corrected for dilution during treatment — must not exceed 35 g/normal cubic metre (Nm^3) for any one hour.

For vapour recovery units, installed before 1 January 1993, the United Kingdom may grant a derogation from the limit value of 35 g/Nm^3 for any one hour, set down in this Annex, subject to the following conditions:

— the installation shall meet a limit value of 50 g/Nm^3 for any one hour measured according to the specifications set down in this Annex,

— the derogation shall expire at the latest nine years from the date referred to in Article 10 of the Directive,

— the Commission shall be notified of the individual installations affected by this derogation including information on their throughput of petrol and vapour emissions from the installation.

The Member States' competent authorities must ensure that the measurement and analysis methods and their frequency are established.

The measurements must be made over the course of one full working day (seven hours minimum) of normal throughput.

Measurements may be continuous or discontinuous. If discontinuous measurements are employed, at least four measurements per hour must be made.

The overall measurement error due to the equipment used, the calibration gas and the procedure used must not exceed 10 % of the measured value.

The equipment used must be capable of measuring concentrations at least as low as 3 g/Nm^3.

The precision must be at least 95 % of the measured value.

3. The Member States' competent authorities must ensure that the connection lines and pipe installations are checked regularly for leaks.

4. The Member States' competent authorities must ensure that loading operations are shut down at the gantry in the case of a leak of vapour. Equipment for such shutdown operations must be installed at the gantry.

5. Where top-loading of mobile containers is permissible, the outlet of the loading arm must be kept near the bottom of the mobile container, in order to avoid splash loading.

ANNEX III

REQUIREMENTS FOR LOADING AND STORAGE INSTALLATIIONS AT SERVICE STATIONS AND TERMINALS WHERE THE INTERMEDIATE STORAGE OF VAPOURS IS CARRIED OUT

Vapours displaced by the delivery of petrol into storage installations at service stations and in fixed-roof tanks used for the intermediate storage of vapours must be returned through a vapour-tight connection line to the mobile container delivering the petrol. Loading operations may not take place unless the arrangements are in place and properly functioning.

ANNEX IV

SPECIFICATIONS FOR BOTTOM-LOADING, VAPOUR COLLECTION AND OVERFILL PROTECTION OF EUROPEAN ROAD TANKERS

1. Couplings

1.1. The liquid coupler on the loading arm must be a female coupler which must mate with a 4-inch API (101,6 mm) male adapter located on the vehicle as defined by:

— API Recommended Practice 1004
Seventh Edition, November 1988.

Bottom loading and vapour recovery for MC-306 tank motor vehicles (Section 2.1.1.1 — Type of adapter used for bottom loading)

1.2. The vapour-collection coupler on the loading-gantry vapour-collection hose must be a cam-and-groove female coupler which must mate with a 4-inch (101,6 mm) cam-and-groove male adapter located on the vehicle as defined by:

— API Recommended Practice 1004
Seventh Edition November 1988.

Bottom loading and vapour recovery for MC-306 tank motor vehicles (Section 4.1.1.2 — Vapour-recovery adapter)

2. Loading conditions

2.1. The normal liquid-loading rate must be 2 300 litres per minute (maximum 2 500 litres per minute) per loading arm.

2.2. When the terminal is operating at peak demand, its loading gantry vapour collection system, including the vapour-recovery unit, is allowed to generate a maximum counterpressure of 55 millibar on the vehicle side of the vapour-collection adapter.

2.3. All approved bottom-loading vehicles will carry an identification plate which specified the maximum permitted number of loading arms which may be operated simultaneously whilst ensuring that no vapours are released via the compartment P and V valves, when the maximum plant back pressure is 55 millibar as specified in 2.2.

3. Connection of vehicle earth/overfill detection

The loading gantry must be equipped with an overfill-detection control unit which, when connected to the vehicle, must provide a fail-safe permission signal to enable loading, providing no compartment-overfill sensors detect a high level.

3.1. The vehicle must be connected to the control unit on the gantry via a 10-pin industry-standard electrical connector. The male connector must be mounted on the vehicle and the female connector must be attached to a flying lead connected to the gantry-mounted control unit.

3.2. The high-level detectors on the vehicle must be either 2-wire thermistor sensors, 2-wire optical sensors, 5-wire optical sensors or a compatible equivalent, provided the system is fail-safe. (NB: thermistors must have a negative temperature coefficient.)

3.3. The gantry control unit must be suitable for both 2-wire and 5-wire vehicle systems.

3.4. The vehicle must be bonded to the gantry via the common return wire of the overfill sensors, which must be connected to pin 10 on the male connector via the vehicle chassis. Pin 10 on the female connector must be connected to the control-unit enclosure which must be connected to the gantry earth.

3.5. All approved bottom-loading vehicles must carry an identification plate (see 2.3) which specifies the type of overfill-detection sensors installed (i. e. 2-wire or 5-wire).

4. **Location of the connections**

4.1. The design of the liquid-loading and vapour collection facilities on the loading gantry must be based on the following vehicle-connection envelope.

4.1.1. The height of the centre line of the liquid adapters must be: maximum 1,4 metres (unladen); minimum 0,5 metre (laden), the preferred height being 0,7 to 1,0 metres).

4.1.2. The horizontal spacing of the adapters must be not less than 0,25 metres (preferred minimum spacing is 0,3 metres).

4.1.3. All liquid adapters must be located within an envelope not exceeding 2,5 metres in length.

4.1.4. The vapour-collection adapter should be located preferably to the right of the liquid adapters and at a height not exceeding 1,5 metres (unladen) and not less than 0,5 metres (laden).

4.2. The earth/overfill connector must be located to the right of the liquid and vapour-collection adapters and at a height not exceeding 1,5 metres (unladen) and not less than 0,5 metre (laden).

4.3. The above connections must be located on one side of the vehicle only.

5. **Safety interlocks**

5.1. *Earth/Overfill detection*

Loading must not be permitted unless a permissive signal is provided by the combined earth/overfill control unit.

In the event of an overfill condition or a loss of vehicle earth, the control unit on the gantry must close the gantry-loading control valve.

5.2. *Vapour-collection detection*

Loading must not be permitted unless the vapour-collection hose has been connected to the vehicle and there is a free passage for the displaced vapours to flow from the vehicle into the plant vapour-collection system.

COUNCIL DIRECTIVE 94/67/EC

of 16 December 1994

on the incineration of hazardous waste

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 103s (1) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [3],

Whereas the objectives and principles of the Community's environment policy as set out in Article 130r of the Treaty, aim in particular at preventing pollution, rectifying pollution by acting as a priority at source, and applying the principle that the polluter should pay;

Whereas Council resolution of 7 May 1990 on waste policy [4] invited the Commission to complete its proposals on incinerators for industrial waste, as a matter of urgency;

Whereas the incineration of hazardous waste gives rise to emissions which may cause pollution and thereby, unless properly controlled, harm human health and the environment; whereas in some cases there might be transboundary pollution;

Whereas preventive action is therefore required to protect the environment against dangerous emissions from the incineration of hazardous waste;

Whereas the current differences in national provisions applicable to the incineration of hazardous waste, and in some cases the absence of such provisions, justify action at Community level;

Whereas, in accordance with Article 130t of the Treaty, the adoption of this Directive will not prevent any Member State from maintaining or introducing more stringent measures for the protection of the environment compatible with the Treaty;

Whereas Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste [5], requires Member States to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without harming the environment; whereas, to this end, Article 9 of that Directive stipulates that any installation or undertaking treating waste must obtain a permit from the competent authorities relating, *inter alia,* to the precautions to be taken;

Whereas Articles 3 and 4 of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants [6], provide that prior authorization shall be required for the operation of industrial plants belonging to listed categories among which are waste incineration plants;

Whereas the purpose of the incineration plants established and operated under this Directive is to reduce the pollution-related risks of hazardous waste through a process of oxidation, to reduce the quantity and volume of the waste and to produce residues that can be re-used or diposed of safely;

Whereas a high level of environmental protection requires the setting and maintaining of appropriate operating conditions and emission limit values for hazardous waste incineration plants within the Community; whereas special provisions are necessary in the case of emissions of dioxins and furans which it is essential to reduce by using the most progressive technology;

Whereas high-standard measurement techniques are required to monitor emissions to ensure compliance with the emission limit and guide values for the pollutants;

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(1) OJ No C 130, 21. 5. 1992, p. 1.
(2) OJ No C 332, 16. 12. 1992, p. 49.
(3) Opinion of the European Parliament of 10 March 1993 (OJ No C 115, 26. 4. 1993, p. 90). Council common position of 11 July 1994 (OJ No C 232, 20. 8. 1994, p. 35) and Decision of the European Parliament of 17 November 1994 (OJ No C 341, 5. 12. 1994).
(4) OJ No C 122, 18. 5. 1990, p. 2.
(5) OJ No L 194, 25. 7. 1975, p. 39. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).
(6) OJ No L 188, 16. 7. 1984, p. 20. Directive as amended by Directive 91/692/EEC.

Whereas integrated protection of the environment against emissions resulting from the incineration of hazardous waste is required; whereas, therefore, aqueous waste resulting from the cleaning of exhaust gases may be discharged after separate treatment only, in order to limit a transfer of pollution from one environmental medium to another; whereas specific emission limit values for pollutants in such aqueous waste should be established within two years of the date of entry into force of this Directive;

Whereas provisions should be laid down for cases where the emission limit values are exceeded as well as for technically unavoidable stoppages, disturbances or failures of the purification devices;

Whereas the coincineration of hazardous waste in plants not primarily intended to incinerate hazardous waste should not be allowed to cause higher emissions of polluting substances in that part of the exhaust gas volume resulting from such coincineration and should therefore be subject to appropriate limitations;

Whereas, for better protection of human health and the environment, rapid adaptation of existing incineration plants to the emission limit values laid down in this Directive is required so as to avoid an increased transfer of hazardous wastes to such plants;

Whereas a committee should be set up to assist the Commission in implementing this Directive and adapting it to scientific and technical progress;

Whereas the reports on the implementation of this Directive are an important element for informing the Commission and Member States on the progress achieved in emission control techniques;

Whereas proposals for the revision of the emission limit values and related provisions of this Directive should be submitted to the Council before 31 December 2000 in the light of the expected development of the state of technology, of experience in the operation of incineration plants and of environmental requirements,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The aim of this Directive is to provide for measures and procedures to prevent or, where that is not practicable, to reduce as fas as possible negative effects on the environment, in particular the pollution of air, soil, surface and groundwater, and the resulting risks to human health, from the incineration of hazardous waste and, to that end, to set up and maintain appropriate operating conditions and emission limit values for hazardous waste incineration plants within the Community.

2. This Directive applies without prejudice to other relevant Community legislation, in particular relating to waste and the protection of the health and safety of workers at incineration plants.

Article 2

For the purposes of this Directive:

1. 'hazardous waste' means any solid or liquid waste as defined in Article 1 (4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [1].

   The following hazardous wastes shall however be excluded from the scope of this Directive:

   — combustible liquid wastes including waste oils as defined in Article 1 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils [2] provided that they meet the following three criteria:

     (i) the mass content of polychlorinated aromatic hydrocarbons, e.g. polychlorinated biphenyls (PCB) or pentachlorinated phenol (PCP), amounts to concentrations not higher than those set out in the relevant Community legislation;

     (ii) these wastes are not rendered hazardous by virtue of containing other constituents listed in Annex II to Directive 91/689/EEC in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in Article 4 of Directive 75/442/EEC; and

     (iii) the net calorific value amounts to at least 30 MJ per kilogramme,

   — any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gasoil as defined in Article 1 (1) of Directive 75/716/EEC [3] or a higher concentration of emissions than those resulting from the combustion of gasoil as so defined,

[1] OJ No L 377, 31. 12. 1991, p. 20.
[2] OJ No L 194, 25. 7. 1975, p. 23. Directive as last amended by Directive 91/692/EEC.
[3] Council Directive 75/716/EEC of 24 November 1975 on the approximation of the laws of the Member States relating to the sulphur content of certain liquid fuels (OJ No L 307, 27. 11. 1975, p. 22). Directive as last amended by Directive 91/692/EEC.

— hazardous waste resulting from the exploration for and the exploitation of oil and gas resources from off-shore installations and incinerated on board,

— municipal waste covered by Directives 89/369/EEC [1] and 89/429/EEC [2],

— sewage sludges from the treatment of municipal waste waters which are not rendered hazardous by virtue of containing constituents listed in Annex II to Directive 91/689/EEC in quantities or in concentrations, as defined by the Member States until the list of hazardous wastes referred to in Article 1 (4) of that Directive is established, which are inconsistent with the achievement of the objectives set out in Article 4 of Directive 75/442/EEC. This exlusion is without prejudice to Directive 86/278/EEC [3];

2. 'incineration plant' means any technical equipment used for the incineration by oxidation of hazardous wastes with or without recovery of the combustion heat generated, including pretreatment as well as pyrolysis or other thermal treatment processes, e. g. plasma process, insofar as their products are subsequently incinerated. This includes plants burning such wastes as a regular or additional fuel for any industrial process.

This definition covers the site and the entire installation comprising the waste reception, storage and pretreatment facilities, the incinerator, its wastes, fuel and air-supply systems, exhaust gas and waste water treatment facilities, and devices and systems for controlling incineration operations and continuously recording and monitoring incineration conditions.

The following plants are not covered by this definition:

— incinerators for animal carcases or remains,

— incinerators for infectious clinical waste provided that such waste is not rendered hazardous as a result of the presence of other constituents listed in Annex II to Directive 91/689/EEC, or

— municipal waste incinerators also burning infectious clinical waste which is not mixed with other wastes which are rendered hazardous as a result of one of the other properties listed in Annex III to Directive 91/689/EEC;

3. 'new incineration plant' means a plant for which the permit to operate is granted on or after the date specified in Article 18 (1);

4. 'existing incineration plant' means a plant for which the original permit to operate is granted before the date specified in Article 18 (1);

5. 'emission limit value' means the mass concentration of polluting substances which is not to be exceeded in emissions from plants during a specified period;

6. 'operator' means any natural or legal person who operates the incineration plant, or who has or has been delegated decisive economic power over it.

Article 3

1. The permit referred to in Articles 9 and 10 of Directive 75/442/EEC, in Article 11 of the said Directive, as complemented by Article 3 of Directive 91/689/EEC, and in Article 3 of Directive 84/360/EEC shall be granted only if the application shows that the incineration plant is designed, equipped and will be operated in such a manner that the appropriate preventive measures against environmental pollution will be taken and the requirements provided for in Articles 5 to 12 of this Directive will be met.

2. The permit granted by the competent authorities must explicitly list the types and quantities of those hazardous wastes which may be treated in the incineration plant as well as the total capacity of the incinerator.

3. Where a plant not intended primarily to incinerate hazardous wastes is being fed with hazardous wastes (coincineration), the resulting heat release from which is no higher than 40 % inclusive of the total heat released in the plant at each moment of the operation, at least the following Articles shall apply:

— Articles 1 to 5,

— Article 6 (1) and (5),

— Article 7, including the provisions relating to the measurements referred to in Articles 10 and 11,

— Article 9,

— Articles 12, 13 and 14.

(1) Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incinerations plants (OJ No L 163, 14. 6. 1989, p. 32).

(2) Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incinerations plants (OJ No L 203, 15. 7. 1989, p. 50).

(3) Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment and in particular of the soil, when sewage sludge is used in agriculture (OJ No L 181, 4. 7. 1986, p. 6). Directive as last amended by Directive 91/692/EEC.

4. The permit for coincineration as described in paragraph 3 shall be granted only if it is demonstrated in the application:

— that the hazardous waste burners are located and the waste fed in such a way as to achieve a level of incineration as complete as possible, and

— with calculations as laid down in Annex II that the provisions of Article 7 will be met.

That permit shall explicitly list the types and quantities of those hazardous wastes which may be coincinerated in the plant. It shall, moreover, specify the minimum and maximum mass flows of those hazardous wastes, their lowest and maximum calorific values and their maximum contents of pollutants, e.g. PCB, PCP, chlorine, fluorine, sulphur, heavy metals.

The results of measurements carried out within six months after the start of operation, under the most unfavourable conditions anticipated, shall show that the provisions of Article 7 are complied with. For this period the competent authorities may grant exemptions from the percentage requirement stipulated in paragraph 3.

Article 4

Applications for permits and decisions of the competent authorities thereon, and the results of the monitoring provided for in Article 11 of this Directive, shall be made available to the public in accordance with Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [1].

Article 5

1. The operator shall take all necessary measures concerning the delivery and reception of waste in order to prevent or, where that is not practicable, to reduce as far as possible negative effects on the environment, in particular the pollution of air, soil, surface and groundwater, and the risks to human health. These measures shall cover at least the requirements set out in paragraphs 2 and 3.

2. Prior to accepting the waste at the incineration plant, the operator shall have available a description of the waste covering:

— the physical, and as far as practicable, the chemical composition of the waste and all information necessary to evaluate its suitability for the intended incineration process,

— the hazard characteristics of the waste, the substances with which it cannot be mixed, and the precautions to be taken in handling the waste.

3. Prior to accepting the waste at the incineration plant, at least the following reception procedures shall be carried out by the operator:

— determination of the mass of the waste,

— the checking of those documents required by Directive 91/689/EEC and, where applicable, those required by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [2] and by dangerous goods transport regulations,

— the taking of representative samples, unless inappropriate, as far as possible before unloading, to verify conformity with the description provided for in paragraph 2 by carrying out controls and to enable the competent authorities to identify the nature of the wastes treated. These samples shall be kept for at least one month after the incineration.

4. The competent authorities may grant exemptions from paragraphs 2 and 3 for industrial plants and undertakings incinerating only their own waste at the place of production of the waste provided that the same level of protection is met.

Article 6

1. Plants for the incineration of hazardous wastes shall be operated in order to achieve a level of incineration as complete as possible. This may require the use of appropriate techniques of waste pretreatment.

2. All incineration plants shall be designed, equipped and operated in such a way that the gas resulting from the incineration of the hazardous waste is raised, after the last injection of combustion air, in a controlled and homogeneous fashion and even under the most unfavourable conditions anticipated, to a temperature of at least 850 °C, as achieved at or near the inner wall of the combustion chamber, for at least two seconds in the presence of at least 6 % oxygen; if hazardous wastes with a content of more than 1 % of halogenated organic substances, expressed as chlorine, are incinerated, the temperature has to be raised to at least 1 100 °C.

When the furnace is fuelled with liquid hazardous waste only or with a mixture of gaseous substances and

[1] OJ No L 158, 23. 6. 1990, p. 56.

[2] OJ No L 30, 6. 2. 1993, p. 1.

powdered solids from a thermal pretreatment of hazardous waste under oxygen deficiency, and when the gaseous part accounts for more than 50 % of the entire heat released, the oxygen content after the last injection of combustion air shall amout to at least 3 %.

3. All incineration plants shall be equipped with burners which switch on automatically when the temperature of the combustion gases, after the last injection of combustion air, falls below the relevant minimum temperature stated in paragraph 2. Such burners shall also be used during plant start-up or shut-down operations in order to ensure that the relevant minimum temperature is maintained while unburnt waste is in the combustion chamber.

During start-up and shut-down or when the temperature of the combustion gases falls below the relevant minimum temperature stated in paragraph 2, the burners must not be fed with fuels which can cause higher emissions than those resulting from the burning of gasoil as defined in Article 1 (1) of Directive 75/716/EEC, liquefied gas or natural gas.

It is mandatory to have and to operate a system to prevent hazardous waste feed:

— at start-up, until the required minimum incineration temperature has been reached,

— whenever the required minimum incineration temperature is not maintained,

— whenever the continuous measurements required by Article 11 (1) (a) show that any emission limit value is exceeded owing to disturbances or failures of the purification devices.

4. Requirements different from those laid down in paragraph 2 and specified in the permit for certain hazardous wastes may be authorized by the competent authorities. Such authorization shall be conditional upon at least the provisions of Article 7 being complied with and the levels of dioxins and furans emitted being lower or equivalent to those obtained by applying the requirements laid down in paragraph 2 of the present Article.

All operating conditions determined under the provisions of this paragraph and the results of verifications made shall be communicated to the Commission as part of the information provided in accordance with Article 17.

5. During the operation of the incineration plant the following limit values for carbon monoxide (CO) concentrations shall not be exceeded in the combustion gases:

(a) 50 mg/m³ of combustion gas determined as daily average value;

(b) 150 mg/m³ of combustion gas of at least 95 % of all measurements determined as 10-minute average values or 100 mg/m³ of combustion gas of all measurements determined as half-hourly average values taken in any 24-hour period.

6. All incineration plants shall be designed, equipped and operated in such a way as to prevent emissions into the air giving rise to significant ground-level air pollution; in particular, exhaust gases shall be discharged in a controlled fashion by means of a stack.

The stack height shall be calculated in such a way as to safeguard human health and the environment.

Article 7

1. Incineration plants shall be designed, equipped and operated in such a way that at least the following emission limit values are not exceeded in the exhaust gases:

(a) Daily average values:

1. Total dust	10 mg/m³
2. Gaseous and vaporous organic substances, expressed as total organic carbon	10 mg/m³
3. Hydrogen chloride (HCl)	10 mg/m³
4. Hydrogen fluoride (HF)	1 mg/m³
5. Sulphur dioxide (SO_2)	50 mg/m³

(b) Half-hourly average values:

	A	B
1. Total dust	30 mg/m³	10 mg/m³
2. Gaseous and vaporous organic substances, expressed as total organic carbon	20 mg/m³	10 mg/m³
3. Hydrogen chloride (HCl)	60 mg/m³	10 mg/m³
4. Hydrogen fluoride (HF)	4 mg/m³	2 mg/m³
5. Sulphur dioxide (SO_2)	200 mg/m³	50 mg/m³

(c) All average values over the sample period of a minimum of 30 minutes and a maximum of eight hours;

1. Cadmium and its compounds, expressed as cadmium (Cd) 2. Thallium and its compounds, expressed as thallium (Tl)	total 0,05 mg/m³ (*) 0,1 mg/m³ (**)
3. Mercury and its compounds, expressed as mercury (Hg)	0,05 mg/m³ (*) 0,1 mg/m³ (**)

4.	Antimony and its compounds, expressed as antimony (Sb)	total 0,5 mg/m³ (*) 1 mg/m³ (**)
5.	Arsenic and its compounds, expressed as arsenic (As)	
6.	Lead and its compounds, expressed as lead (Pb)	
7.	Chromium and its compounds, expressed as chromium (Cr)	
8.	Cobalt and its compounds, expressed as cobalt (Co)	
9.	Copper and its compounds, expressed as copper (Cu)	
10.	Manganese and its compounds, expressed as manganese (Mn)	
11.	Nickel and its compounds, expressed as nickel (Ni)	
12.	Vanadium and its compounds, expressed as vanadium (V)	
13.	Tin and its compounds, expressed as tin (Sn)	

These average values also cover the gaseous and the vapour forms of the relevant heavy metal emissions as well as their compounds.

(*) New plants.
(**) Existing plants.

2. The emission of dioxins and furans shall be reduced by the most progressive techniques. At the latest from 1 January 1997, all average values measured over the sample period of a minimum of six hours and a maximum of eight hours shall not exceed a limit value of 0,1 ng/m³ unless, at least six months before that date, the availability of harmonized measurement methods has not been established at Community level by the Commission acting in accordance with the procedure laid down in Article 16. This limit value is defined as the sum of the concentrations of the individual dioxins and furans evaluated in accordance with Annex I.

Until the date of application of this limit value, Member States shall use this value at least as a guide value.

3. The results of the measurements made to verify compliance with the limit and guide values set out in Article 6 and in this Article shall be standardized at the conditions laid down in Article 11 (2).

4. Where hazardous wastes are co-incinerated in accordance with Article 3 (3), the provisions of Article 6 (5) and paragraphs 1, 2 and 3 of this Article shall only apply, according to the criteria laid down in Annex II, to that part of the volume of exhaust gas resulting from the incineration of the hazardous wastes.

Appropriate emission limit and guide values for the relevant pollutants emitted in the exhaust gas of the plants referred to in Article 3 (3) shall be determined in accordance with Annex II.

Article 8

1. Any waste water discharged from an incineration plant shall be subject to a permit granted by the competent authorities.

2. Discharges to the aquatic environment of aqueous waste resulting from the cleaning of exhaust gases shall be limited as far as possible.

Subject to a specific provision in the permit, the aqueous wastes may be discharged after separate treatment on condition that:

— the requirements of relevant Community, national and local provisions are complied with in the form of emission limit values, and

— the mass of heavy metals, dioxins and furans contained in those aqueous wastes in relation to the quantity of hazardous waste processed is reduced in such a way that the mass allowed to be discharged to water is less than that allowed to be discharged into the air.

3. Without prejudice to paragraph 2, the Council, acting on a proposal from the Commission, shall establish within two years of the entry into force of this Directive a set of specific limit values for the pollutants contained in the effluents from the cleaning of exhaust gases to be discharged.

4. Incineration plant sites including associated storage areas for hazardous wastes shall be designed and operated in such a way as to prevent the release of any polluting substance into soil and groundwater following the provisions of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances [1]. Moreover, storage capacity shall be provided for rainwater runoff from the incineration plant site or for contaminated water arising from spillages or firefighting operations. This storage capacity shall be adequate to ensure that such waters can be tested and treated before discharge where necessary.

[1] OJ No L 20, 26. 1. 1980, p. 43. Directive as last amended by Directive 91/692/EEC.

Article 9

1. Residues resulting from the operation of the incineration plant shall be recovered or disposed of in accordance with Directives 75/442/EEC and 91/689/EEC. This may require a pretreatment of the residues. Such residues should be kept separate from each other pending assessment of their recovery or disposal; in order to further facilitate these, the appropriate technologies should be applied.

2. Transport and intermediate storage of dry residues in the form of dust, e.g. boiler dust and dry residues from the treatment of exhaust gases, shall take place in closed containers.

3. Any heat generated by the incineration processes should be used as far as possible.

4. Prior to determining the routes for the disposal or recovery of the residues from incineration, appropriate tests shall be carried out to establish the physical and chemical characteristics and the polluting potential of the different incineration residues. The analysis shall concern in particular the soluble fraction and heavy metals.

Article 10

1. Measurement requirements in order to monitor in accordance with Article 11 the parameters, conditions and mass concentrations of the pollutants relevant to the incineration process shall be laid down in the permit or in the conditions attached to the permit issued by the competent authorities or in the relevant general binding rules on measurement requirements.

2. The permit shall only be granted if the application shows that the proposed measurement techniques comply with Annex III. The values of the confidence interval (95 %) at the emission limit values given in Article 6 (5) (a) and Article 7 (1) (a), Nos 1, 2, 3 and 5, shall not exceed the values given in Annex III, point 4.

The appropriate installation and the functioning of the automated monitoring equipment shall be subject to control and to an annual surveillance test.

3. The sampling and measurement procedures used to satisfy the obligations imposed for periodical measurements of each air pollutant and the location of the sampling or measurement points shall be specified in the permit granted by the competent authorities, or in the conditions attached to the permit or in the relevant general binding rules on sampling and measurement procedures.

The requirements for periodical measurements shall be fixed by the competent authorities in accordance with Annex III.

Article 11

1. The following measurements shall be carried out in accordance with Annex III at the incineration plant:

(a) continuous measurements of the substances referred to in Article 6 (5) and Article 7 (1) (a) and (b);

(b) continuous measurements of the following process operation parameters:

— temperature as referred to in Article 6 (2) and (4),

— concentration of oxygen, pressure, temperature and water vapour content of the exhaust gas;

(c) at least two measurements per year of the substances referred to in Article 7 (1) (c) and (2); one measurement every two months shall however be carried out for the first 12 months of operation;

(d) the residence time, the relevant minimum temperature and the oxygen content of the exhaust gases as specified in Article 6 (2) and (4) shall be subject to appropriate verification, at least once when the incineration plant is brought into service and under the most unfavourable operating conditions anticipated.

The continuous measurement of HF may be omitted if treatment stages for HCl are used which make sure that the emission limit value under Article 7 (1) (a) (3) and (1) (b) (3) is not being exceeded. In this case the emissions of HF shall be subject to periodical measurements.

The continuous measurement of the water vapour content shall not be necessary, provided that the sampled exhaust gas is dried before the emissions are analysed.

Measurements of the pollutants listed in Article 7 (1) shall not be necessary, provided that the permit allows the incineration of only those hazardous wastes which cannot cause average values of those pollutants higher than 10 % of the emission limit values set out in Article 7 (1).

The Commission, acting in accordance with the procedure laid down in Article 16, shall decide, as soon as appropriate measurement techniques are available within the Community, the date from which continuous measurements of the substances referred to in Article 7 (1) (c) and (2) are to be carried out in accordance with Annex III.

2. The results of the measurements made to verify compliance with the emission limit and guide values set out in Articles 6 and 7 shall be standardized at the following conditions:

— Temperature 273 K, pressure 101,3 kPa, 11 % oxygen, dry gas,

— Temperature 273 K, pressure 101,3 kPa, 3 % oxygen, dry gas, in case of incineration of waste oil only as defined in Directive 75/439/EEC.

When the hazardous wastes are incinerated in an oxygen-enriched atmosphere, the results of the measurements can be standardized at an oxygen content laid down by the competent authorities reflecting the special circumstances of the individual case. In a case covered by Article 3 (3), the results of the measurements shall be standardized at a total oxygen content as calculated in Annex II.

When the emissions of pollutants are reduced by exhaust gas treatment, the standardization with respect to the oxygen contents provided for in the first subparagraph shall be done only if the oxygen content measured over the same period as for the pollutant concerned exceeds the relevant standard oxygen content.

3. The emission limit values are complied with if:

— all the daily average values do not exceed the emission limit values set out in Article 6 (5) (a) and Article 7 (1) (a), and

  either all the half-hourly average values over the year do not exceed the emission limit values set out in column A of Article 7 (1) (b),

  or 97 % of the half-hourly average values over the year do not exceed the emission limit values set out in column B of Article 7 (1) (b),

— all average values over the sample period set out in Article 7 (1) (c) do not exceed the emission limit values set out in that subparagraph,

— the provisions of Article 6 (5) (b) are complied with.

The average values determined within the periods referred to in Article 12 (2) shall be excluded from the judgment on compliance.

The half-hourly average values and the 10-minute averages shall be determined within the effective operating time (including the start-up and shut-off periods when hazardous waste is being incinerated) from the measured values after having subtracted the value of the confidence interval specified in point 4 of Annex III. The daily average values shall be determined from those validated average values.

The average values over the sample period and, in the case of periodical measurements of HF, the average values for HF shall be determined in accordance with the requirements of Article 10 (3).

Article 12

1. Should the measurements taken show that the emission limit values laid down in this Directive have been exceeded, the competent authorities shall be informed without delay. The plant concerned shall not continue to feed hazardous waste while failing to comply with emission limit values, until such time as the competent authorities allow the resumption of the feeding of such waste.

2. The competent authorities shall lay down the maximum permissible period of any technically unavoidable stoppages, disturbances, or failures of the purification devices or the measurement devices, during which the concentrations in the discharges into the air of the regulated substances may exceed the emission limit values laid down. Under no circumstances shall the plant continue to incinerate hazardous waste for a time period of more than four hours uninterrupted; moreover, the cumulative duration of operation in such conditions over one year shall be less than 60 hours.

In case of a breakdown, the operator shall reduce or close down operations as soon as practicable until normal operations can be restored. In plants covered by Article 3 (3) feeding of hazardous wastes shall be stopped.

The total dust content of the discharges shall under no circumstances exceed 150 mg/m^3 expressed as a half-hourly average; morever, the emission limit value laid down in Article 7 (1) (a) (2) and (1) (b) (2) must not be exceeded. All other conditions referred to in Article 6 shall be complied with.

Article 13

1. The provisions of this Directive shall apply to existing incineration plants within three years and six months after the date specified in Article 18 (1).

2. However, the operator may notify the competent authorities within six months after the date specified in Article 18 (1) that the existing plant will not be operated for more than 20 000 hours within a period of five years at maximum, starting from the operator's notification, before being definitely shut down. In this case the provisions of paragraph 1 shall not apply.

Article 14

Before 31 December 2000, and notably in the light of the expected development of the state of technology, of experience in the operation of the plants, and of environmental requirements, the Commission shall submit to the Council a report, based on experience of the application of the Directive and on the progress achieved in emission control techniques, accompanied by proposals for revision of the emission limit values and related provisions referred to in this Directive.

Any emission limit value established following such revision shall not apply to existing incineration plants before 31 December 2006.

Article 15

The Commission, acting in accordance with the procedure laid down in Article 16, shall adopt the amendments required to adapt to technical progress the provisions of Articles 10 to 12 and Annexes I to III.

Article 16

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee 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. 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.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) 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 a period 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, save where the Council has decided against the said measures by a simple majority.

Article 17

The reports on the implementation of this Directive shall be established in accordance with the procedure laid down in Article 5 of Directive 91/692/EEC. The first report shall cover the first full three-year period after the entry into force of this Directive.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 1996. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of domestic law which they adopt in the field covered by this Directive.

Article 19

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 20

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1994.

For the Council

The President

A. MERKEL

ANNEX I

EQUIVALENCE FACTORS FOR DIOXINS AND DIBENZOFURANS

For the determination of the summed value referred to in Article 7 (2) the mass concentrations of the following dioxins and dibenzofurans have to be multiplied by the following equivalence factors before summing up (using the concept of toxic equivalents).

		Toxic equivalence factor
2,3,7,8	— Tetrachlorodibenzodioxin (TCDD)	1
1,2,3,7,8	— Pentachlorodibenzodioxin (PeCDD)	0,5
1,2,3,4,7,8	— Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,7,8,9	— Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,6,7,8	— Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,4,6,7,8	— Heptachlorodibenzodioxin (HpCDD)	0,01
	— Octachlorodibenzodioxin (OCDD)	0,001
2,3,7,8	— Tetrachlorodibenzofuran (TCDF)	0,1
2,3,4,7,8	— Pentachlorodibenzofuran (PeCDF)	0,5
1,2,3,7,8	— Pentachlorodibenzofuran (PeCDF)	0,05
1,2,3,4,7,8	— Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,7,8,9	— Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,6,7,8	— Hexachlorodibenzofuran (HxCDF)	0,1
2,3,4,6,7,8	— Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,4,6,7,8	— Heptachlorodibenzofuran (HpCDF)	0,01
1,2,3,4,7,8,9	— Heptachlorodibenzofuran (HpCDF)	0,01
	— Octachlorodibenzofuran (OCDF)	0,001

ANNEX II

DETERMINATION OF EMISSION LIMIT AND GUIDE VALUES FOR THE COINCINERATION OF HAZARDOUS WASTE

The limit or guide value for each relevant pollutant and carbon monoxide in the exhaust gas resulting from the coincineration of hazardous waste must be calculated as follows:

$$\frac{V_{waste} \times C_{waste} + V_{proc} \times C_{proc}}{V_{waste} + V_{proc}} = C$$

V_{waste}: exhaust gas volume resulting from the incineration of hazardous waste only determined from the waste with the lowest calorific value specified in the permit and standardized at the conditions given in Article 11 (2).

If the resulting heat release from the incineration of hazardous waste amounts to less than 10 % of the total heat released in the plant, V_{waste} must be calculated from a (notional) quantity of waste that, being incinerated, would equal 10 % heat release, the total heat release being fixed.

C_{waste}: emission limit values set for plants intended to incinerate hazardous wastes only (at least the emission limit values and guide value for the pollutants and carbon monoxide as laid down in Article 7 (1) and (2) and Article 6 (5)).

V_{proc}: exhaust gas volume resulting from the plant process including the combustion of the authorized fuels normally used in the plant (hazardous wastes excluded) determined on the basis of oxygen contents at which the emissions must be standardized as laid down in Community or national regulations. In the absence of regulations for this kind of plant, the real oxygen content in the exhaust gas without being thinned by addition of air unnecessary for the process must be used. The standardization at the other conditions is given in Article 11 (2).

C_{proc}: emission limit values for the relevant pollutants and carbon monoxide in the flue gas of plants which comply with the national laws, regulations and administrative provisions for such plants while burning the normally authorized fuels (hazardous wastes excluded). In the absence of these measures the emission limit values laid down in the permit are used. In the absence of such permit values the real mass concentrations are used.

C: total emission limit value or guide value for CO and the relevant pollutants replacing the emission limit values and the guide value as laid down in Article 6 (5) and in Article 7 (1) and (2). The total oxygen content to replace the oxygen content for the standardization in Articles 6 and 7 is calculated on the basis of the content above respecting the partial volumes.

Pollutants and CO not resulting directly from the incineration of hazardous wastes or from the combustion of fuels e.g. from materials necessary for production or from products), as well as CO directly resulting from such incineration or combustion if

— the higher CO concentrations in the combustion gas are required by the production process, and

— C_{waste} (as defined above) for dioxins and furans is met,

shall not be taken into account.

In any case, given the authorized hazardous wastes which can be coincinerated, the total emission limit value (C) must be calculated in such a way as to minimize the emissions into the environment.

ANNEX III

MEASUREMENT TECHNIQUES

1. Measurements for the determination of concentrations of air pollutants in gas-carrying products have to be carried out representatively.

2. Sampling and analysis of all pollutants including dioxins and furans as well as reference measurement methods to calibrate automated measurement systems shall be carried out as given by CEN-standards elaborated on the basis of orders placed by the Commission. While awaiting the elaboration of the CEN-standards, national standards shall apply.

3. The procedure to monitor dioxins and furans can only be authorized if the detection limit for the sampling and analysis of the individual dioxins and furans is sufficiently low to allow the determination of a meaningful result in terms of toxicity equivalents.

4. The values of the 95 % confidence intervals determined at the emission limit values shall not exceed the following percentages of the emission limit values:

Carbon monoxide (Article 6 (5) (a)):	10 %
Sulphur dioxide (Article 7 (1) (a) (5)):	20 %
Total dust (Article 7 (1) (a) (1)):	30 %
Total organic carbon (Article 7 (1) (a) (2)):	30 %
Hydrogen chloride (Article 7 (1) (a) (3)):	40 %

COUNCIL DIRECTIVE 94/74/EC

of 22 December 1994

amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 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 it is necessary to exclude the customs procedure for exports from the excise-duty suspension arrangements in order to be able, under the movement arrangements applied for excise-duty purposes, to protect against the risks inherent in the movement of products from their place of dispatch to the office at the point of exit from the Community;

Whereas, when the dispatch of products subject to excise duty gives rise to a declaration placing those products under an internal transit procedure or under the TIR or ATA Convention procedure, it is necessary to establish that such declaration serves as the accompanying document for excise-duty purposes;

Whereas, when products subject to excise duty are released for consumption in a Member State and are intended to be moved to that same Member State via the territory of another Member State, it is necessary to use the simplified accompanying document as provided for in Commission Regulation (EEC) No 3649/92 [4];

Whereas, it is necessary to indicate on the accompanying document any losses occurring in the course of intra-Community movement in order to ensure that that document is correctly discharged and to specify the forms and content of such annotation;

Whereas it is necessary to provide for an optional guarantee, in place of those currently in existence, to be provided by the transporter or owner of the products in order to limit the risks inherent in intra-Community movement;

Whereas it is necessary to provide for the possible waiving of the intra-Community movement guarantee for mineral oils transported by sea or by pipeline;

Whereas it is necessary to allow a new consignee or a new place of delivery to be shown by means of an amendment to the accompanying administrative document;

Whereas it is necessary to lay down the conditions that the consignor of mineral oils must meet if he is not to complete the box relating to the consignee on the accompanying document where the latter is not known at the outset;

Whereas it is necessary to provide for the possibility of additional measures being adopted regarding spot checks in order to increase administrative cooperation between Member States;

Whereas it is necessary to permit the information shown on the copies of the accompanying document intended for the competent authorities of the Member States of departure and destination to be transmitted by computerized means;

Whereas it is necessary to provide for the return copy to be transmitted to the consignor by fax in order to ensure that the operation is duly and speedily concluded;

Whereas it is necessary, for products subject to excise duty moving regularly between tax warehouses located in two Member States, to simplify the procedure for discharging the accompanying document;

Whereas it is necessary to stipulate that the use of tax marking or national identification marks must not affect any provisions laid down by Member States to ensure that current tax legislation is implemented properly and to avoid any fraud, evasion or abuse;

Whereas it is necessary to lay down the conditions under which the armed forces and other organizations may benefit from excise-duty exemption;

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(1) OJ No C 215, 5. 8. 1994, p. 19.
(2) Opinion delivered on 16 December 1994 (not yet published in the Official Journal).
(3) Opinion delivered on 20 October 1994 (not yet published in the Official Journal).
(4) OJ No L 369, 18. 12. 1992, p. 17.

Whereas it is important for the proper functioning of the internal market to define the products which come under the category of mineral oils;

Whereas it is necessary to define the products which come under the category of mineral oils and which are to be subject to the general excise control arrangements;

Whereas it is necessary to allow the refund of excise duties paid on contaminated or accidentally mixed mineral oils sent back to a tax warehouse for recycling;

Whereas it is necessary to grant compulsory exemption at Community level for mineral oils injected into blast furnaces for chemical reduction purposes in order to prevent distortions of competition arising from different taxation arrangements in Member States;

Whereas it is necessary to specify that mineral oils released for consumption in a Member State, contained in the fuel tanks of motor vehicles and intended to be used as fuel by such vehicles are exempt from excise duty in other Member States in order not to impede free movement of individuals and goods and in order to prevent double taxation;

Whereas it is necessary to update the CN codes relating to leaded and unleaded petrol in the light of the amendments made in the latest version of the Integrated Tariff of the European Communities [1];

Whereas, lastly, the amendments to the excise-duty application procedures provided for in this Directive for the purpose of ensuring the smooth functioning of the internal market cannot be made satisfactorily by the Member States individually and call, therefore, for approximation of the Member States' excise-duty legislation at Community level;

Whereas it is accordingly necessary to amend Directives 92/12/EEC [1], 92/81/EEC [2] and 92/82/EEC [3],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/12/EEC is hereby amended as follows:

1. Article 5 shall be amended as follows:

(a) the first indent of paragraph 2 shall be replaced by the following:

'— are coming from, or going to, third countries or territories referred to in Article 2 (1), (2) and (3) or the Channel Islands and are placed under one of the customs suspensive procedures listed in Article 84 (1) (a) of Regulation (EEC) No 2913/92(*) or in a free zone or a free warehouse,

(*) OJ No L 302, 19. 10. 1992, p. 1.';

(b) in paragraph 2, the second indent shall be replaced by the following:

'— are dispatched between Member States via EFTA countries or between a Member State and an EFTA country under the internal Community transit procedure or via one or more non-EFTA third countries under cover of a TIR or ATA carnet,';

(c) in paragraph 2, the first part of the sentence of the second subparagraph shall be replaced by the following:

'In cases where the single administrative document is used:';

(d) the following new paragraph shall be added:

'3. Any additional details that have to be shown on the transport or commercial documents serving as transit documents and the changes that have to be made to adapt the discharge procedure where goods subject to excise duty move under a simplified internal Community transit procedure shall be established according to the procedure provided for in Article 24.'

2. In Article 7, the following paragraphs shall be added:

'7. Where products subject to excise duty and already released for consumption in a Member State are to be moved to a place of destination in that Member State via the territory of another Member State, such movements shall take place under cover of the accompanying document referred to in paragraph 4 and shall use an appropriate itinerary.

8. In the cases referred to in paragraph 7:

(a) the consignor shall, before the goods are dispatched, make a declaration to the tax

(1) OJ No C 143A, 24. 5. 1993, p. 560.
(2) OJ No L 76, 23. 3. 1992, p. 1. Directive as last amended by Directive 92/108/EEC (OJ No L 390, 31. 12. 1992, p. 124).
(3) OJ No L 316, 31. 10. 1992, p. 12. Directive as last amended by Directive 92/108/EEC (OJ No L 390, 31. 12. 1992, p. 124).
(4) OJ No L 316, 31. 10. 1992, p. 19.

authorities of the place of departure responsible for carrying out excise-duty checks;

(b) the consignee shall attest to having received the goods in accordance with the rules laid down by the tax authorities of the place of destination responsible for carrying out excise-duty checks;

(c) the consignor and the consignee shall consent to any check enabling their respective tax authorities to satisfy themselves that the goods have actually been received.

9. Where products subject to excise duty are moved frequently and regularly under the conditions specified in paragraph 7, Member States may agree bilaterally to authorize a simplified procedure in derogation from paragraphs 7 and 8.'

3. In Article 13, point (a) shall be replaced by the following:

'(a) provide a guarantee, if necessary, to cover production, processing and holding and a compulsory guarantee to cover movement, subject to Article 15 (3), the conditions for which shall be set by the competent authorities of the Member State in which the tax warehouse is authorized;'

4. In Article 14, the following paragraph shall be added:

'4. The shortages referred to in paragraph 3 and losses which are not exempted under paragraph 1 shall, in all cases, be indicated by the competent authorities on the reverse of the copy of the accompanying document referred to in Article 18 (1) to be returned to the consignor.

The procedure shall be as follows:

— in the case of losses or shortages occurring during intra-Community transport of products subject to excise duty that are under duty suspension arrangements, the competent authorities of the Member State in which those losses or shortages are established shall annotate the return copy of the accompanying document accordingly,

— on the arrival of the products in the Member State of destination, the competent authorities of that Member State shall indicate whether they are granting partial exemption or no exemption in respect of the losses established.

In the cases referred to above they shall specify the basis for calculation of the excise duty to be levied in accordance with paragraph 3. The competent authorities of the Member State of destination shall send a copy of the return copy of the accompanying document to the competent authorities of the Member State in which the losses were established.'

5. Article 15 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Without prejudice to Articles 5 (2), 16, 19 (4) and 23 (1a), the movement of products subject to excise duty under suspension arrangements shall take place between tax warehouses.

The first subparagraph shall apply to the intra-Community movement of products subject to excise duty at a zero rate which have not been released for consumption.';

(b) paragraph 3 shall be replaced by the following:

'3. The risks inherent in intra-Community movement shall be covered by the guarantee provided by the authorized warehousekeeper of dispatch, as provided for in Article 13, or, if need be, by a guarantee jointly and severally binding on both the consignor and the transporter. The competent authorities in the Member States may permit the transporter or the owner of the products to provide a guarantee in place of that provided by the authorized warehousekeeper of dispatch. If appropriate, Member States may require the consignee to provide a guarantee.

If mineral oils subject to excise duty are transported within the Community by sea or by pipeline, Member States may relieve authorized warehousekeepers of dispatch of the obligation to provide the guarantee referred to in the first subparagraph.

The detailed rules for the guarantee shall be laid down by the Member States. The guarantee shall be valid throughout the Community.';

(c) paragraph 5 shall be replaced by the following:

'5. An authorized warehousekeeper of dispatch or his agent may amend the contents of boxes 4, 7, 7a, 13, 14 and/or 17 of the accompanying document to show a new consignee, who must be an authorized warehousekeeper or registered trader, or a new place of delivery. The competent authority of dispatch must be notified immediately and the new consignee or the new place of delivery shall immediately be indicated on the reverse of the accompanying document.';

(d) the following paragraph shall be added:

'6. In the case of intra-Community movement of mineral oils by sea or inland waterway, the authorized warehousekeeper of dispatch need not complete boxes, 4, 7, 7a, 13 and 17 on the accompanying document if, when the products are dispatched, the consignee is not definitively known, provided that:

— the competent authorities of the Member State of departure authorize the consignor in advance not to complete these boxes,

— the same authorities are notified of the name and address of the consignee, his excise number and the country of destination as soon as they are known or at the latest when the products reach their final destination.'

6. The following Article shall be inserted:

'*Article 15b*

1. With regard to the spot checks provided for in Article 19 (6), the competent authorities in a Member State may request the competent authorities of another Member State for information in addition to that set out in Article 15a. The provisions governing data protection in Directive 77/799/EEC (*) shall apply to such exchanges of information.

2. Where information is exchanged pursuant to paragraph 1 and internal legislation in a Member State stipulates that the persons concerned by the exchange of information must be consulted, such legislation may continue to be applied.

3. The information necessary to carry out spot checks under paragraph 1 shall be exchanged by means of a uniform control document. The form and content of that document shall be established in accordance with the procedure laid down in Article 24.

(*) OJ No L 336, 27. 12. 1977, p. 15.'

7. The following paragraph shall be added to Article 18:

'6. This Article shall also apply to products subject excise duty moving under duty-suspension arrangements between two tax warehouses located in the same Member State via the territory of another Member State.'

8. Article 19 shall be amended as follows:

(a) in paragraph 1, the following subparagraph shall be inserted after the second subparagraph:

'The competent authorities of the Member State of dispatch and destination may stipulate that the information contained in the copies of the accompanying document intended for them is to be sent by computerized means;'

(b) in paragraph 2, the following two subparagraphs shall be inserted after the first subparagraph:

'Notwithstanding the above provisions, Member States of dispatch may provide for a copy of the return copy to be sent immediately to the consignor by fax so that the guarantee may be released quickly. This shall not affect the obligation to return the original pursuant to the first sentence.

Where products subject to excise duty move frequently and regularly between two Member States under duty suspension arrangements, the competent authorities of those Member States may, by mutual agreement, authorize the procedure for discharging the accompanying document to be simplified by means of summary or automated certification.';

(c) paragraph 4 shall be replaced by the following:

'4. Products subject to excise duty that are dispatched by an authorized warehousekeeper established in a Member State for exportation via one or more other Member States shall be permitted to move under the duty-suspension arrangements as defined in Article 4 (c). Those arrangements shall be discharged by an attestation drawn up by the customs office of departure from the Community confirming that the products have indeed left the Community. That office must send back to the consignor the certified copy of the accompanying document intended for him.'

9. In Article 21 (2) the second subparagraph shall be replaced by the following:

'Without prejudice to any provisions they may lay down in order to ensure that this Article is implemented properly and to prevent any fraud, evasion or abuse, Member States shall ensure that these marks or markings do not create obstacles to the free movement of products subject to excise duty.'

10. In Article 23 the following paragraph shall be inserted:

'1a. The armed forces and organizations referred to in paragraph 1 shall be authorized to receive products from other Member States under excise-duty suspension arrangements under cover of the accompanying document referred to in Article 18 provided that the document is accompanied by an exemption certificate. The form and content of the exemption certificate shall be determined in accordance with the procedure laid down in Article 24.'

11. Article 24 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. The measures necessary for the application of Articles 5, 7, 15b, 18, 19 and 23 shall be adopted in accordance with the procedures laid down in paragraphs 3 and 4.';

(b) paragraph 5 shall be replaced by the following:

'5. In addition to the measures referred to in paragraph 2, the Committee shall examine the matters referred to it by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of Community provisions on excise duties.'

Article 2

Directive 92/81/EEC is hereby amended as follows:

1. Article 2 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'1. For the purposes of this Directive, "mineral oil" shall cover:

(a) products falling within CN code 2706;

(b) products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, 2707 91 00, 2707 99 11 and 2707 99 19;

(c) products falling within CN code 2709;

d) products falling within CN code 2710;

(e) products falling within CN codes 2711, including chemically pure methane and propane but excluding natural gas;

(f) products falling within CN codes 2712 10, 2712 20 00, 2712 90 31, 2712 90 33, 2712 90 39 and 2712 90 90;

(g) products falling within CN code 2715;

(h) products falling within CN code 2901;

(i) products falling within CN codes 2902 11 00, 2902 19 90, 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44;

(j) products falling within CN codes 3403 11 00 and 3403 19;

(k) products falling within CN code 3811;

(l) products falling within CN code 3817';

(b) paragraph 4 shall be replaced by the following:

'4. References in this Directive to codes of the combined nomenclature shall be to those of the version of the combined nomenclature in force on 1 October 1994'.

2. The following Article shall be inserted:

'*Article 2a*

1. Only the following mineral oils shall be subject to the control and movement provisions of Directive 92/2/EEC:

(a) products falling within CN codes 2707 10, 2707 20, 2707 30 and 2707 50;

(b) products falling within CN codes 2710 00 11 to 2710 00 78. However, for products falling within CN codes 2710 00 21, 2710 00 25 and 2710 00 59, the control and movement provisions shall only apply to bulk commercial movements;

(c) products falling within CN codes 2711 (except 2711 11 00 and 2711 21 00);

d) products falling within CN code 2901 10;

e) products falling within CN codes 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44.

2. If a Member State finds that mineral oils other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel or motor fuel or or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A decision as to whether the products in question should be made subject to the control and movement provisions of Directive 92/12/EEC shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

3. Member States may, under bilateral arrangements, dispense with some or all of the control measures set out in Directive 92/12/EEC in respect of some or all of the above products, in so far as they are not covered by Article 2 of Directive 92/82/EEC. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.'

3. The following Article shall be inserted:

'*Article 7a*

Member States may refund excise duty already paid on contaminated or accidentally mixed mineral oils sent back to a tax warehouse for recycling.'

4. Article 8 shall be amended as follows:

(a) in paragraph 1, the following point shall be added:

'(d) mineral oils injected into blast furnaces for the purposes of chemical reduction as an addition to the coke used as the principal fuel.'

(b) in paragraph 2, the first sentence shall be replaced by the following:

'2. Without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils or to other products intended for the same uses which are used under fiscal control.'

5. The following Article shall be inserted:

'*Article 8a*

1. Mineral oils released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles as well as in special containers and intended to be used for the operation,

during the course of transport, of the systems equipping those same containers shall not be subject to excise duty in any other Member State.

2. For the purposes of this Article:

"standard tanks" shall mean:

— the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped shall also be considered to be standard tanks,

— tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped,

"Special container" shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.'

Article 3

In Directive 92/82/EEC, Article 2 shall be replaced by the following:

'*Article 2*

1. The mineral oils covered by this Directive are:

— leaded petrol falling within CN codes 2710 00 26, 2710 00 34 and 2710 00 36;

— unleaded petrol falling within CN codes 2710 00 27, 2710 00 29 and 2710 00 32;

— gas oil falling within CN code 2710 00 69;

— heavy fuel oil falling within CN codes 2710 00 74 to 2710 00 78;

— liquid petroleum gas falling within CN codes 2711 12 11 to 2711 19 00;

— methane falling within CN code 2711 29 00;

— kerosene falling within CN code 2710 00 51 and 2710 00 55.

2. References in paragraph 1 to combined nomenclature codes shall be those of the combined nomenclature in force on 1 October 1994.'

Article 4

1. Member States shall bring into force the laws regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

COUNCIL DIRECTIVE 94/75/EC

of 22 December 1994

amending Directive 94/4/EC and introducing temporary derogation measures applicable to Austria and to Germany

(94/000/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 1994 Accession Treaty, and in particular Article 2 (3) thereof, and the 1994 Act of Accession, and in particular Article 151 (2) thereof,

Having regard to the proposal from the Commission,

Whereas, on 5 September 1994, the Republic of Austria requested a derogation based on that applicable from 1 April 1994 to the Federal Republic of Germany pursuant to Article 3 (2) of Council Directive 94/4/EC of 14 February 1994 amending Directives 69/196/EEC and 77/388/EEC and increasing the level of allowances for travellers coming from third countries and the limits on tax-free purchases in intra-Community travel [1];

Whereas that request is aimed in particular at maintaining, until 1 January 1998, the limit currently applicable in Austria to imports of goods by travellers entering its territory by a land frontier linking it to countries other than Member States and members of the European Free Trade Association (EFTA);

Whereas account should be taken of the economic difficulties likely to be caused in Austria by the amount of the allowances in the case of the travellers concerned;

Whereas, however, it is necessary to prevent distortions of competition resulting from the application of different limits when the external frontiers linking the Community to countries other than EFTA members are crossed; whereas it is important that the Federal Republic of Germany and the Republic of Austria should apply the same limit to imports of goods into their respective territories by travellers coming from the said countries,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 3 (2) of Directive 94/4/EC shall be replaced by the following:

'2. By way of derogation from paragraph 1, the Federal Republic of Germany and the Republic of Austria shall be authorized to bring into force the measures necessary to comply with this Directive by 1 January 1998 at the latest for goods imported by travellers entering German or Austrian territory by a land frontier linking Germany or Austria to countries other than Member States and the EFTA members or, where applicable, by means of coastal navigation coming from the said countries.

However, from the entry into force of the 1994 Accession Treaty, those Member States shall apply an allowance of not less then ECU 75 to imports by the travellers referred to in the preceding subparagraph.'

Article 2

1. Subject to the entry into force of the 1994 Accession Treaty, Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive, by the date of entry into force thereof. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the same date as the 1994 Accession Treaty.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

[1] OJ No L 60, 3. 3. 1994, p. 14.

COUNCIL DIRECTIVE 94/76/EC

of 22 December 1994

amending Directive 77/388/EEC by the introduction of transitional measures applicable, in the context of the enlargement of the European Union on 1 January 1995, as regards value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 1994 Accession Treaty, and in particular Articles 2 and 3 thereof, and the 1994 act of Accession, and in particular Article 169 thereof,

Having regard to the proposal from the Commission,

Whereas, subject to the special provisions set out in Chapter IX of Annex XV to the Act of Accession, the common system of value added tax is to apply to the new Member States as from the date on which the Accession Treaty enters into force;

Whereas, as a result of the abolition on that date of the imposition of tax on importation and remission of tax on exportation in trade between the Community as constituted at present and the new Member States, and between the new Member States themselves, transitional measures are necessary to safeguard the neutrality of the common system of value added tax and prevent situations of double taxation or non-taxation;

Whereas such measures must, in this respect, meet concerns akin to those that led to the measures adopted on completion of the internal market on 1 January 1993, and in particular the provisions of Article 28n of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turn-over taxes — Common system of value added tax: uniform basis of assessment [1];

Whereas, in the customs sphere, goods will be deemed to be in free circulation in the enlarged Community where it is shown that they were in free circulation in the current Community or in one of the new Member States at the time of accession; whereas conclusions should be drawn from this, particularly for Article 7 (1) and (3) and Article 10 (3) of Directive 77/388/EEC;

Whereas it is necessary in particular to cover situations in which goods have been placed, prior to accession, under one of the arrangements referred to in Article 16 (1) (B) (a) to (d), under a temporary admission procedure with full exemption from import duties or under a similar procedure in the new Member States;

Whereas it is also necessary to lay down specific arrangements for cases where a special procedure (export or transit), initiated prior to the entry into force of the Accession Treaty in the framework of trade between the current Community and the new Member States and between those Member States for the purposes of a supply effected prior to that date by a taxable person acting as such, is not terminated until after the date of accession,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 77/388/EEC, the following Title and Article shall be inserted:

'TITLE XVIc

Transitional measures applicable in the context of the accession to the European Union of Austria, Finland and Sweden

Article 28p

1. For the purpose of applying this Article:

— 'Community' shall mean the territory of the Community as defined in Article 3 before accession,

— 'new Member States' shall mean the territory of the Member States acceding to the European Union by the Treaty signed on 24 June 1994, as defined for each of those Member States in Article 3 of this Directive,

— 'enlarged Community' shall mean the territory of the Community as defined in Article 3, after accession.

2. When goods:

— entered the territory of the Community or of one of the new Member States before the date of accession, and

— were placed, on entry into the territory of the Community or of one of the new Member States,

[1] OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 94/5/EC (OJ No L 60, 3. 3. 1994, p. 16).

under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16 (1) (B) (a) to (d) or under a similar regime in one of the new Member States, and

— have not left that regime before the date of accession,

the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.

3. When goods:

— were placed, before the date of accession, under the common transit procedure or under another customs transit procedure, and

— have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

For the purposes of the first indent, 'common transit procedure' shall mean the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure [1].

4. The following shall be deemed to be an importation of goods within the meaning of Article 7 (1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

(a) the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;

(b) the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16 (1) (B) (a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;

(c) the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of new Member States for the purposes of a supply of goods for consideration effected before that date in that Member State by a taxable person acting as such;

(d) any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7 (1) where the following conditions are met:

— the supply of those goods has been exempted, or was likely to be exempted, either under Article 15 (1) and (2) or under a similar provision in the new Member States,

— the goods were not imported into one of the new Member States or into the Community before the date of accession.

6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7 (3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.

7. By way of derogation from Article 10 (3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:

(a) the imported goods are dispatched or transported outside the enlarged Community; or

(b) the imported goods within the meaning of paragraph 4 (a) are other than means of transport and are redispatched or transported to the Member State from which they were exported and to the person who exported them; or

(c) the imported goods within the meaning of paragraph 4 (a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject, by reason of their exportation, to any exemption from, or refund of, value added tax.

This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1987 or when the amount of tax due by reason of the importation is insignificant.

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[1] OJ No L 226, 13. 8. 1987, p. 2.'

Article 2

1. Subject to the entry into force of the 1994 Accession Treaty, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on the date of entry into force of this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the provisions of domestic law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the same date as the 1994 Accession Treaty.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER