



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.04.2001
COM(2001)216 final

Proposal for a

COUNCIL DECISION

amending Commission Decision 2000/532/EC as regards the list of waste

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The purpose of this Decision concerning the list of waste and hazardous waste is to amend Commission Decision 2000/532/EC, which on its turn has been amended by Commission Decision 2001/118/EC, as regards the list of wastes. The amendment is made in light of notifications from Member States pursuant to the second indent of Article 1(4) of the Directive on hazardous waste. This Article indicates that any waste which is not listed in Decision 94/904/EC and which is considered by a Member State to display one or more of the characteristics of Annex III to Directive 91/689/EEC should constitute a hazardous waste for the purpose of that Directive. Member States shall notify these cases to the Commission; the Commission shall review the notification in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC with a view to adaptation of the list.
2. The Commission had submitted to the Committee, set up in accordance with Article 18 of Directive 75/442/EEC, a draft of the measures to be taken. This draft envisaged amending Commission Decision 2000/532/EC replacing Commission Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous wastes by one new list. The new list included amendments necessary to incorporate around 300 notifications received from Member States.
3. On 7 December 2000 the Committee endorsed the draft Proposal on all modifications except four types of wastes.

There was no qualified majority in favour of the Proposal of the Commission to classify as hazardous waste the following entries

06 08 02 waste containing chlorosilanes

07 02 16 waste containing silicones

17 06 05 construction materials containing asbestos

There was no qualified majority in favour of the Proposal of the Commission to classify as non-hazardous waste the following entry with the current wording:

19 08 09 grease and oil mixture from oil/water separation containing edible oil and fats

4. As required by the procedure in Article 18 of Directive 75/442/EEC the modification of list with the exception of the classification of these four entries has been adopted as Commission Decision 2001/118/EC. According to the same provisions a Proposal for the classification of these four entries is submitted to the Council. If the Council has not acted within three months of the Proposal being submitted to it, the measures will be adopted by the Commission.
5. The Committee pursuant to Article 18 of Directive 75/442/EEC has contested the hazardous character in all cases of entry 06 08 02 waste containing chlorosilanes, which constituted a notification from Germany.

The chlorosilanes is a family of polymers containing, silicon, hydrogen and chlorine among other elements. This family is analogous in structure to halogenated hydrocarbons. Although the possibilities to combine all the elements in this family are endless, several of these compounds, such as the trichlorosilane, dimethyldichlorosilane, trichloromethylsilane, trimethylchlorosilanes are classified, according to the chemical legislation, as highly or extremely flammable, harmful if inhaled or swallowed, irritating to eyes, skin and lungs. Other chlorosilanes will have to be classified and not all can be classified, thus the Commission Proposal classifies in general waste containing chlorosilanes as hazardous waste.

6. The Committee pursuant to Article 18 of Directive 75/442/EEC has contested the hazardous character in all cases of entry 07 02 16 waste containing silicones, which constituted a notification from the Netherlands and Germany.

Silicones are a large group of siloxane polymers based on a structure consisting of alternating silicon and oxygen with various organic molecules attached to the silicon. Here again the number of possible combinations is endless. Nevertheless several of these compounds are known to be harmful if in contact with skin and if swallowed, they cause burns and are toxic to the aquatic environment and ecotoxic in general. Thus the Commission Proposal classifies in general waste containing silicones as hazardous waste.

7. The Committee pursuant to Article 18 of Directive 75/442/EEC has contested the hazardous character in all cases of entry 17 06 05 construction materials containing asbestos, which constituted a notification from the United Kingdom and Denmark.

The Commission Proposal is based on extensive Community legislation for asbestos and asbestos materials. According to Directive 99/45/EC on the classification, packaging and labelling of dangerous substances, asbestos is classified as a carcinogenic category 1. In 1999, the Technical Adaptation Committee of Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations gave a favourable opinion on a Decision amending the Directive and introducing the ban on most of the remaining uses of asbestos such as asbestos used in cement. The decision was made on the basis of scientific evidence (opinion of the Scientific Committee on Toxicity, Ecotoxicity and Environment of September 1998) which shows that it is not possible to identify a level of exposure below which chrysolite asbestos, commonly found in asbestos-cement, does not pose carcinogenic risks. Directive 83/477/EEC on the protection of workers from exposure to asbestos establishes that asbestos waste must be collected and removed from the place of work as soon as possible in suitable sealed and labelled packing (except for mining activities). In addition, it states that asbestos waste shall be dealt with in accordance with Directive 78/319/EEC on toxic and dangerous waste (Article 6), latter amended by Directive 91/689/EEC on hazardous waste. Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos establishes that all asbestos waste (as defined by Directive 75/442/EEC) shall be dealt with in such a way that emissions into air and water are minimised. In light of all of the above, the Commission proposes to classify construction materials containing asbestos as hazardous wastes.

Some Member states argued that in asbestos-cement the asbestos fibres are tightly bound in the cement matrix and thus they are not easily released. Their opposition was strongly linked to the consequences of the classification of asbestos-cement as

hazardous waste for the landfilling of these materials pursuant to Directive 99/31/EC on the landfill of waste. In many Member States, construction materials containing asbestos are currently being disposed of in landfills for inert or non hazardous waste.

The assessment by the Commission of the arguments put forward by the Member States during the deliberations on the Commission Proposal is that asbestos cement could not be put into a landfill for inert waste according to the definition of inert waste laid down in Article 2 e) of the Landfill Directive. Asbestos cement does not fulfil this definition because it may release fibres after landfilling if it is put under pressure and breaks; furthermore its pollutant content (asbestos fibre) is not insignificant and can reach as high as 40%. Therefore, regardless of the classification of asbestos-cement as hazardous or non hazardous, this material shall no longer be disposed of in a landfill for inert waste after the date of implementation of the Directive on the landfill of waste.

Even if classified as hazardous waste, asbestos-cement may be landfilled in a landfill for non-hazardous waste under the provisions of Article 6 c) iii) which states that a landfill for non-hazardous waste may be used for stable, non-reactive hazardous wastes (e.g. solidified, vitrified), with leaching behaviour equivalent to those of non-hazardous wastes. These hazardous wastes shall not be deposited in cells destined for biodegradable non-hazardous waste. Many Member States agree that the co-disposal of asbestos cement with non-hazardous waste and in particular with biodegradable waste should be prevented due to possible degradation of the cement matrix by acidic leachate and risk of release of fibres via the landfill gas capturing system. Disposal of asbestos cement should therefore be done in separate cells in the landfill. This means that there is no difference as regards landfilling practices if asbestos cement is classified as hazardous waste or not. Similar measures would apply if asbestos cement was classified as non-hazardous.

8. The Committee pursuant to Article 18 of Directive 75/442/EEC has contested the non-hazardous character in all cases of entry 19 08 09 grease and oil mixture from oil/water separation containing edible oil and fats. In their opinion, particularly for Spain, the wording of the entry did not reflect that exclusively the mixtures that contain ONLY edible oils and fats could be considered to be non-hazardous.

Thus the Commission for the sake of clarity, proposes, instead of taking an implicit approach, to explicitly specify that the mixtures containing ONLY edible oils and fats (which are themselves non hazardous) can be classified as non hazardous.

9. The suggested date of application is 1 January 2002. This is the same date as the entry into effect of Decision 2000/532/EC and Decision 2001/118/EC. This would allow Member States to adopt national measures for the implementation of all Decisions with one single instrument. This will facilitate the application of the measures by the Competent Authorities and the economic operators since they will in practice only be confronted with one change of legislation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/689/EEC of 12 December 1991 on hazardous waste¹, and in particular Article 1(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) A Community list of waste was established by Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste².
- (2) Article 1(4) of Directive 91/689/EEC requires Member States to notify the Commission of waste not included on the list of hazardous waste which they consider to display one or more of the properties listed in Annex III to that Directive. Several Member States have notified waste containing chlorosilanes, waste containing silicones and construction materials containing asbestos and requested that the list of hazardous waste be adapted accordingly.
- (3) For the sake of clarity, it should be expressly provided that exclusively grease and oil mixture from oil/water separation containing only edible oil and fats can be considered non-hazardous.
- (4) Decision 2000/532/EC should be amended accordingly.
- (5) The measures provided for in this Decision are not in accordance with the opinion delivered by the Committee established by Article 18 of Council Directive 75/442/EEC of 15 July 1975 on waste³. They must therefore, by virtue of the fourth paragraph of Article 18 of Directive 75/442/EEC, be adopted by the Council.

¹ OJ L 377, 31.12.1991, p.20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p.28).

² OJ L 226, 6.9.2000, p. 3. Decision as amended by Decision 2001/118/EC (OJ L 47, 16.2.2001, p. 1).

³ OJ L 194, 25.7.1975, p.39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2000/532/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision shall apply from 1 January 2002.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President
[...]*

ANNEX

The Annex to Decision 2000/532/EC is amended as follows:

- (1) Entry number 06 08 02 waste containing chlorosilanes is replaced by the following:

“06 08 02* waste containing chlorosilanes”

- (2) Entry number 07 02 16 waste containing silicones is replaced by the following:

“07 02 16* waste containing silicones”

- (3) Entry number 17 06 05 construction materials containing asbestos is replaced by the following:

“17 06 05* construction materials containing asbestos”

- (4) Entry number 19 08 09* grease and oil mixture from oil/water separation containing edible oil and fats is replaced by the following:

“19 08 09 grease and oil mixture from oil/water separation containing only edible oil and fats”