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REPORT

on the follow-up report on Council Directive 75/442/EEC (Waste Framework Directive)
(COM(2003) 250 – 2003/2124(INI))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Hans Blokland

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PROCEDURAL PAGE

By letter of 19 May 2003 the Commission forwarded to Parliament its report to the Council and the European Parliament on the implementation of Community waste legislation for the period 1998-2000 (COM(2003) 250), which had been referred to the Committee on the Environment, Public Health and Consumer Policy for information.

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on the Environment, Public Health and Consumer Policy had been authorised to draw up an own-initiative report on the subject pursuant to Rules 47(2) and 163.

At the sitting of 9 October 2003 the President of Parliament announced that he had also asked the Committee on Petitions for its opinion.

The committee had appointed Hans Blokland rapporteur at its meeting of 24 March 2003.

It considered the draft report at its meetings of 1 and 2 October 2003 and 4 November 2003.

At the last meeting it adopted the draft resolution unanimously.

The following were present for the vote Caroline F. Jackson (chairman), Mauro Nobilia (vice-chairman), Alexander de Roo (vice-chairman), Guido Sacconi (vice-chairman), Hans Blokland (rapporteur), María del Pilar Ayuso González, María Luisa Bergaz Conesa, John Bowis, Hiltrud Breyer, Dorette Corbey, Chris Davies, Avril Doyle, Anne Ferreira, Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Robert Goodwill, Hedwig Keppelhoff-Wiechert (for Martin Callanan), Christa Klač, Eija-Riitta Anneli Korhola, Bernd Lange, Giorgio Lisi (for Raffaele Costa), Caroline Lucas (for Patricia McKenna), Torben Lund, Minerva Melpomeni Malliori, Rosemarie Müller, Antonio Mussa (for Jim Fitzsimons), Riitta Myller, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Frédérique Ries, Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Ursula Schleicher (for Françoise Grossetête), Inger Schörlling, Jonas Sjöstedt, Renate Sommer (for Peter Liese), María Sornosa Martínez, Robert William Sturdy (for Giuseppe Nisticò), Nicole Thomas-Mauro, Antonios Trakatellis, Elena Valenciano Martínez-Orozco, Peder Wachtmeister and Phillip Whitehead.

The opinion of the Committee on Petitions is attached.

The report was tabled on 6 November 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the follow-up report on Directive 75/442/EEC (Waste Framework Directive) (COM(2003) 250 – 2003/2124(INI))

The European Parliament,

- having regard to the Commission report on the implementation of Community waste legislation for the period 1998-2000 (COM(2003) 250)¹,
- having regard to Council Directive 75/442/EEC of 15 July 1975 on waste²,
- having regard to its resolution of 16 September 1998³ on the communication from the Commission to the European Parliament and the Council concerning the application of the directives on waste management,
- having regard to its resolution of 14 November 1996⁴ and to the Council resolution of 24 February 1997⁵ on the communication from the Commission to the European Parliament and the Council on waste policy,
- having regard to its resolution of 3 April 2001⁶ on the Commission Green Paper on environmental issues of PVC,
- having regard to Decision no 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme⁷, particularly Article 8 thereof,
- having regard to the judgments of the Court of Justice of the European Communities, particularly in cases C-203/96, C-365/97, C-209/98, C-418/99, C-419/99, C-228/00 and C-458/00,
- having regard to Articles 2 and 6 of the EC Treaty, by virtue whereof environmental protection requirements must be integrated into the various sectors of Community policy with the aim of promoting environmentally sustainable development of economic activities,
- having regard to Article 175 of the EC Treaty,
- having regard to Rule 47(2) and Rule 163 of its Rules of Procedure,
- having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinion of the Committee on Petitions (A5-0394/2003),

¹ Not yet published in OJ.

² OJ L 194, 25.7.1975, p. 47, as amended by Directive 91/156/EEC (OJ L 78, 18.3.1991, p. 32).

³ OJ C 313, 12.10.1998, p. 99.

⁴ OJ C 362, 2.12.1996, p. 241.

⁵ OJ C 76, 11.3.1997, p. 1.

⁶ OJ C 21, 24.1.2002, p. 25.

⁷ OJ L 242, 10.9.2002, p.1.

- A. whereas all Member States submitted their reports late, Portugal and Ireland indeed more than a year after the deadline; whereas in the case of some Member States, even after having received reminders from the Commission, significant shortcomings remain,
- B. whereas Article 3(1) of Council Directive 75/442/EEC on waste as amended requires that Member States shall take appropriate measures to encourage firstly the prevention or reduction of waste production and its harmfulness,
- C. whereas Article 4 of Council Directive 75/442/EEC on waste as amended requires that Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment,
- D. whereas Article 7(1) of Council Directive 75/442/EEC on waste as amended requires that Member States draw up as soon as possible one or more waste management plans to attain the objectives of environmentally sound waste treatment referred to in Article 3, 4 and 5 and to comply with the principles of proximity and self-sufficiency,
- E. whereas Article 8(1) of the Sixth Environment Action Programme includes the following objectives:
- achieving a significant overall reduction in the volumes of waste generated through waste prevention initiatives, better resource efficiency and a shift towards more sustainable production and consumption patterns,
 - a significant reduction in the quantity of waste going to disposal and the volumes of hazardous waste produced, while avoiding an increase of emissions to air, water and soil,
 - encouraging re-use and for wastes that are still generated: the level of their hazardousness should be reduced and they should present as little risk as possible; preference should be given to recovery and especially to recycling; the quantity of waste for disposal should be minimised and should be safely disposed of; waste intended for disposal should be treated as closely as possible to the place of its generation, to the extent that this does not lead to a decrease in the efficiency in waste treatment operations,
- F. whereas Article 8(2)(ii) of the Sixth Environment Action Programme includes the following priority actions to develop and implement measures on waste prevention and management:
- developing a set of quantitative and qualitative reduction targets covering all relevant waste, to be achieved at Community level by 2010, inviting the Commission to prepare a proposal for such targets by 2002;
 - the formulation of operational measures to encourage waste prevention, e.g. stimulating re-use and recovery, the phasing out of certain substances and materials through product-related measures,
- G. whereas pursuant to Article 8(2)(iv) of the Sixth Environment Action Programme these objectives are to be pursued by means, inter alia, of the following actions:
- developing or revising various directives on waste,
 - clarification of the distinction between waste and non-waste,

- development of adequate criteria for the further elaboration of Annex IIA (disposal operations) and IIB (recovery) of the Waste Framework Directive,
- H. whereas in many Member States the definition of waste does not correspond to that given in Article 1 of Directive 75/442/EEC, although the obligation for it to do so has been in force since 1993; whereas consequently unacceptable disparities exist between Member States¹,
- I. whereas, partly in the light of the judgments of the Court of Justice of the EC concerning the scope of the definition of waste, a new definition of waste will not result in greater clarity,
- J. whereas progress has been made in comparison with the previous reporting period as regards the drafting of waste management plans, but in part of the European Union these plans are still unsatisfactory; whereas in 2002 the Court of Justice of the EC confirmed that France, Italy and the United Kingdom had not implemented any waste management plans,
- K. whereas most Member States have not indicated what they have done about waste prevention and recovery since 1997; whereas the average quantity of domestic refuse generated per capita of the population in the EU has risen from approximately 400 kg to approximately 500 kg since the previous reporting period (1995-1997); whereas the generation of hazardous wastes continues to increase in many countries; whereas the continuing increases in waste generation raise serious questions about the implementation of Article 3(1)(a) of the Waste Framework Directive,
- L. whereas the recycling rates for domestic refuse vary widely in the various Member States: five Member States (Austria, Belgium, Germany, the Netherlands and Sweden) have achieved rates of over 40% while five Member States (France, Greece, Ireland, Italy and the United Kingdom) have achieved less than 10%,
- M. whereas the most widely used method of waste disposal is still dumping; whereas five Member States even dump more than 60% of their waste; whereas incineration of waste with recovery of energy is the second most widely used method of disposal, although waste is no longer incinerated at all in Ireland and Greece,
- N. whereas most Member States dispose of nearly all their waste themselves,
- O. whereas in Greece 59.6% of waste is disposed of at sites which do not comply with current legislation,
- P. whereas the Commission has opened infringement procedures against Greece, Italy and France in connection with illegal waste-disposal sites,
- Q. whereas the Court of Justice of the EC (C-209/98) has confirmed that a Member State may take measures with regard to the transport of waste if such transport does not accord with its waste management plan on condition that the plan accords with the rules of the EC Treaty and Directive 75/442/EEC,

¹ Italy has a definition which does not correspond - cf. judgments of the Court of Justice of the EC; Luxembourg has not implemented the EWC; Austria and the United Kingdom likewise apply disparate definitions.

- R. whereas different market conditions exist in the European Union; whereas, for example, there is no ban on dumping of waste in Belgium (Wallonia), Greece, Ireland, Italy, Portugal, Spain and the United Kingdom and whereas taxes on dumping of waste differ between Member States and there is no such tax in Germany, Greece, Ireland, Portugal and Spain,
- T. whereas recent judgments of the Court of Justice of the EC concerning the distinctions between different methods of recovery and final disposal have resulted in uncertainty about the classification of recovery and disposal as referred to in Annex II to Directive 75/442/EEC,
- U. whereas Article 2(2) of Council Directive 75/442/EEC on waste as amended stipulates that specific rules on the management of particular categories of waste may be laid down by means of individual Directives,
1. Concludes that in general Member States do not take reporting to the Commission seriously enough;
 2. Calls on the Commission to initiate proceedings pursuant to Article 226 of the EC Treaty against Member States whose reports still display serious shortcomings;
 3. Observes that, due to the inadequate reports submitted by Member States, it is not sufficiently clear to what extent the Framework Directive has been implemented and the objectives described have been achieved; observes, furthermore, that the Member States do not notify the Commission, pursuant to Article 3(2) of Directive 75/442, of the measures which they adopt in order to achieve the objectives laid down in that Directive;
 4. Calls upon the Commission to exercise its powers in order to ensure that the national measures intended to achieve the objectives laid down in the Directive pursuant to Article 3(2) thereof are notified to the Commission;
 5. Does not question the current definition of waste; urges all the Member States to incorporate the definition of waste laid down in Article 1 of Directive 75/442/EEC in their domestic legislation; considers that, if necessary, the Commission should make use of its powers to force the Member States concerned to do so;
 6. Urges Member States to draw up waste management plans or, where they exist, improve them, putting as the first option measures to encourage the prevention or reduction of waste production; considers that the Commission shall supervise and monitor the development and implementation of national waste management plans so that they are in line with the Community legislation;
 7. Notes that the objective of stabilising waste production in 2000 at the 1985 level of 300 kg per capita of the population laid down in the Commission's Fifth Environment Action Programme is not being attained; urges the Member States to make far greater efforts to prevent and reduce waste generation, in particular that of hazardous waste, and to put

prevention or reduction of waste production as the first option in their waste management plans;

8. Regrets that the Commission has not yet adopted proposals to develop a set of quantitative and qualitative reduction targets covering all relevant waste, to be achieved at Community level by 2010; considers that the current statistics although still partly deficient can and need to serve as a starting point for the adoption of reduction targets if the 2010 target is to be met, given that the first set of harmonised statistics will only be available in 2006 at the earliest; reiterates its invitation to the Commission to come forward with such a proposal, at the latest before the end of its mandate;
9. Calls on the Member States to find ways to promote separate collection of recyclable waste, since it has been identified as a fundamental shortcoming in achieving higher levels of recycling;
10. Urges Member States which are not satisfactorily implementing or are delaying the application of directives on waste to implement them and urges the Commission to make optimum use of its powers to ensure this;
11. Calls upon the Commission to open Article 226 infringement procedures for failure to comply with Directive 75/442/EEC (taking into account the Court of Justice judgment in Case C-365/97) against all the Member States in which illegal or unsupervised waste-disposal sites exist;
12. Calls on the Commission to propose measures to enable Member States to become or remain self-sufficient in waste disposal, appropriately applying the proximity principle;
13. Considers that all Member States must make available sufficient recovery and recycling capacity for domestic refuse and that domestic refuse intended for incineration must not be exported to other Member States or to third countries;
14. Considers that all Member States must make available sufficient incineration capacity for domestic refuse, recovering energy from it, in particular for such fractions for which no alternative ways of treating waste located higher in the EU waste hierarchy are available, such as reuse and recycling of materials;
15. Calls on Member States, insofar as there is an open market for waste management in the European Community, to eliminate distortions caused by incomplete implementation of EU directives;
16. Calls on the Commission to check that the waste directives are implemented in such a way as to prevent unfair competition due to cost differentials, thus avoiding the flow of waste to environmentally inferior treatment operations;
17. Calls on the Commission to review Directive 75/442/EEC with a view to establishing clear and enforceable conditions for the definition of the waste disposal and waste recovery operations, and to actively monitor their proper implementation; considers that these conditions should be based on minimum quality criteria such as:

- calorific value of the waste to be incinerated,
 - emissions of pollutants into air, water and soil,
 - separation of waste flows,
 - energy efficiency of incineration/co-incineration plants,
 - capacity to destroy organic components,
 - capacity to concentrate inorganic components or dramatically reduce their volume,
 - absence of hazardous substances in the end-product of co-incineration;
18. Calls on the Commission and Member States to set up a permanent waste Steering and Advisory Committee, along the lines of the existing structures on the Clean Air For Europe Strategy, to allow thorough and consistent monitoring and coordination of implementation of current Waste Legislation and stakeholder consultation on all waste legislation;
19. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

1. Reports by Member States

The Commission's report, which has been drawn up pursuant to Article 5 of Directive 91/692/EEC¹, informs us about the implementation of the legislation on waste in the period 1998-2000 inclusive, particularly the implementation of Directive 75/442/EEC on waste. The report is mainly based on information received from the Member States; thus its content is heavily dependent on the completeness, quality and accuracy of the national contributions.

Pursuant to Directive 91/692/EEC, Member States were required to submit their reports before 30 September 2001. Austria, Germany, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, Sweden, the Netherlands and the United Kingdom submitted theirs between November 2001 and February 2002. The three regions of Belgium submitted their reports between April and September 2002. Portugal submitted its reports in October 2002. Ireland submitted its report under Directive 94/62/EC in January 2003.

The Commission's initial assessment of the Member States' reports revealed a number of lacunae and/or inconsistencies, which were drawn to the Member States' attention. Some of them supplied additional information. Where reports remain seriously deficient, the Commission ought to initiate proceedings pursuant to Article 226 of the EC Treaty.

It is clear from the above that in general Member States do not take reporting to the Commission seriously enough. Because the Member States' reports are inadequate, it is not sufficiently clear to what extent the Waste Framework Directive has been implemented and the prescribed objectives attained.

2. Provisions of Directive 75/442/EEC

Directive 75/442/EEC is the legislative framework for Community policy on waste management. It entered into force in 1977 and was subsequently amended by Directive 91/156/EEC to take account of the guidelines laid down in the Community waste management strategy of 1989. When the strategy was updated on 30 July 1996², the main elements were confirmed and adjusted in line with the requirements for the next five years.

The main provisions of Directive 75/442/EEC as amended concern:

- the definition of waste, further details of which were laid down in the European Waste Catalogue (EWC), which was adopted by Commission Decision 94/3/EC³, and other waste management terminology (Article 1);
- the hierarchy of the principles of waste management: prevention, recovery, safe disposal of waste (Articles 3 and 4);
- the principle of proximity and self-sufficiency in disposing of such waste as is definitively disposed of and the establishment of an integrated network of disposal installations, taking account of the best available technology and ensuring a high level of protection of the environment (Article 5);

¹ OJ L 377, 23.12.1991, p. 48.

² COM(1996) 399, 30.7.1996.

³ OJ L 5, 7.1.1994, p. 15.

- the requirement for Member States to draw up waste management plans, which are essential for the implementation of this policy (Article 7);
- permits for establishments and undertakings which perform disposal and recovery operations (Articles 9 and 10);
- the 'polluter pays' principle (Article 15);
- reporting obligations (Article 16).

3. Definition of 'waste' and the European Waste Catalogue (Article 1(a))

Pursuant to Directive 75/442/EEC, 'waste' is defined as 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard' (Article 1(a)). The Commission has taken measures to develop the European Waste Catalogue (EWC) pursuant to Article 1(a). This has now been adopted in consolidated form by Commission Decision 2000/532/EC as amended.

The previous report on implementation in the period 1995-1997 mentioned that there were numerous disparities between Member States as regards transposition into domestic law of the general definition of 'waste' as referred to in Article 1(a). Clearly, correct implementation of the definition of 'waste' is vital in order to ensure that Member States correctly comply with their waste management obligations under Directive 75/442/EEC and associated waste legislation¹. This is particularly necessary in order to ensure that a Community level of environmental protection applies throughout the Community and that the operation of the internal market is not undermined.

The Commission considers that a number of Member States (Austria, Italy, Luxembourg and the United Kingdom) have still not correctly transposed the definition of 'waste' since the previous report on implementation between 1995 and 1997. Particularly where the definition of hazardous waste is concerned, the situation has improved since the last report, but there are still some Member States which have not fully transposed all aspects of this definition.

In **Italy** the decree transposing Directive 75/442/EEC lays down criteria for interpreting the concept of disposal. Essentially, it provides that waste is not waste if the materials in question are recovered at any point. Certain materials (such as untreated metal and wood waste) are consequently excluded from the scope of Italian waste legislation, although in Community legislation they are simply defined as waste. Your rapporteur agrees with the Commission that this Italian decree is incompatible with the case law of the Court of Justice.

Despite recent amendments to domestic framework legislation, proceedings are also pending relating to violation of Community law by **Austria**, the subject at issue being incorrect transposition of the Community definition of 'waste', particularly the transposition of the EWC.² Section 5 of Austria's Waste Management Act 2002³ adopts the position that certain residues

¹ In this connection it should be observed that, in its judgments in joined cases C-418/99 and C-419/99 (ARCO Chemie Nederland et al.), the Court of Justice of the EC particularly held that, when assessing whether a material constitutes waste for the purposes of the Directive, all the circumstances must be taken into account, including the objective of Directive 75/442/EEC, and that care must be taken to ensure that its effectiveness was not impaired.

² Case pending before the Court of Justice of the EC (*C-194/01 Commission v Austria*).

³ Abfallwirtschaftsgesetz 2002, BGBl I, 16 July 2002, no 102, p. 989.

contained in waste (*Altstoffe*¹) are no longer waste if such residues or elements of the material are directly used to replace products obtained from primary raw materials. It is established case law of the Court of Justice of the EC that the fact that waste can be used to replace products does not in itself mean that the waste can be excluded from the definition of waste for the purpose of Directive 75/442/EEC. The use of waste must be assessed in the light of whether it accords with the requirements of appropriate waste management as laid down in Directive 75/442/EEC and associated legislation on waste.

Since the previous report on implementation in 1995-1997, a number of Member States have clearly still not correctly transposed the definition of 'waste' in domestic legislation. The deadline for doing so was 1 April 1993. Evidently the reason for failing to do this lies in a desire to evade the requirements of proper waste management as laid down in Directive 75/442/EEC and related legislation on waste.

However, it is not necessary to amend the definition of 'waste'. Although the definition has often given rise to debate, its scope is sufficiently clear, thanks to several judgments by the Court of Justice of the EC. A new definition would generate fresh debate, leading to yet further judgments by the Court of Justice concerning its correct interpretation.

4. Prevention and recycling of waste (Articles 3 and 4)

The degree of success in recycling waste still varies widely from one Member State to another, as was already observed in the previous report on implementation between 1995 and 1997. The average recycling rate has increased, but a number of Member States are still only achieving relatively low or modest rates in the case of domestic refuse. Although dumping is on the whole decreasing, some Member States remain highly dependent on it for the disposal of domestic refuse. Indeed, five Member States dump more than 60% of this waste. Some Member States incinerate large quantities, but even if energy is recovered in the process (for which different criteria are used at national level), incineration is generally a less satisfactory option than other alternative ways of treating waste which are located higher in the waste hierarchy, such as reuse and recycling of materials.

Future and recent legislative initiatives relating to packaging waste², end-of-life vehicles³ and waste electrical and electronic equipment⁴ are geared to particularly high recycling rates and separate collection of waste at source as a basis for processing. These directives are likely to produce better results with regard to the recycling of waste.

5. Self-sufficiency in waste disposal (Article 5)

¹ According to the definition in section 2(4)(1) of the Abfallwirtschaftsgesetz 2002, wastes which have been separated from other waste or substances obtained by means of waste treatment to enable the substances to undergo a recovery operation are 'Altstoffe'.

² COM(2001) 729 final. Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste.

³ Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles, OJ L 269, 21.10.2000, p. 34.

⁴ COM(2000) 347 final. Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment. The Council and the European Parliament approved the proposal on 16-19 December 2002 (not yet published in the Official Journal). (For further details, see <http://www.europa.eu.int/prelex/apcnet.cfm?CL=en>).

On the whole, most Member States reported that they had attained a high level of self-sufficiency in waste disposal (approximately 99%), which essentially confirms the situation described in the previous report on implementation between 1995 and 1997. However, in the case of Greece, the following problem exists:

Greece reports that it has not taken any measures to comply with Article 5(1). Measures to this end are included in the revised version of Greece's waste strategy (2002), which is designed to achieve integrated management at regional level. Without supplying any further details, Greece confirms that for this purpose cooperation exists between Greece and other Member States with regard to cross-border shipments of both hazardous and non-hazardous waste for recovery or disposal. Greece reports that such shipments are being arranged through cooperation between undertakings operating in the field of waste management, on condition that the competent authorities approve¹. With regard to the degree of self-sufficiency in disposing of waste, Greece reports that 31.7% of domestic refuse is disposed of at so-called 'hygienic tips', while 59.6% is disposed of at sites in Greece which do not comply with the conditions laid down in the relevant legislation. Greece reports that 8% and 0.7% respectively of such waste is recycled and composted.

6. Waste management plans (Article 7) and exports of waste

In the period 1997-2000, the Commission initiated legal proceedings against various Member States which had not introduced any waste management plans. By the end of the period, most Member States had drawn up plans. The problems with France, the United Kingdom and Italy persist. The Member States have concluded a number of agreements with one another on certain aspects of waste management planning, particularly for areas on either side of national borders. It is striking that, despite the level of self-sufficiency in waste disposal, many shipments of waste still cross borders. The nature of the relationship between local and national waste management planning and the requirements of the internal market continues to give rise to a number of legal issues.

In the *Copenhagen* case², the Court of Justice handed down a judgment which provides clear guidelines on cross-border transportation of waste for recovery. A Member State may adopt measures with regard to the transportation of waste if the transport does not accord with its waste management plan, on condition that the plan accords with the provisions of the EC Treaty and Directive 75/442/EEC.

Since the late 1990s, the Commission has brought infringement proceedings against a number of Member States which had taken steps to prevent or restrict exports of waste for recovery³. Two cases in which judgments were given recently are worth citing. According to the judgment given by the Court of Justice in Case C-458/00 concerning Luxembourg, the incineration of domestic refuse in an incinerator constitutes not recovery but disposal, even if energy is recovered.

¹ Council Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, as amended (OJ L 30, 6.2.1993, p. 1).

² Case C-209/98 *FFAD/Københavns Kommune* [2000] ECR I-3743.

³ Cases currently pending before the Court of Justice of the EC: C-113/02 *Commission v the Netherlands*, C-228/00 *Commission v Germany* and C-458/00 *Commission v Luxembourg*.

According to the judgment given by the Court of Justice in Case C-228/00 concerning Germany, co-incineration of waste in a cement kiln does constitute recovery.

The problem in this whole debate is that, even if waste is recovered, this is not necessarily better on environmental grounds. Clear criteria for recovery therefore need to be drawn up. The Explanatory Memorandum on the Commission proposal on shipments of waste recognises this problem (COM(2003) 379, p. 15, section 4.2.4 (6)), observing inter alia that 'there are only few Community environmental requirements for waste recovery operations'. However, there is still no prospect of a solution to this problem, except that the Commission intends to make proposals in the context of the thematic strategy for recycling.

Nonetheless, for the time being it is possible to conclude that European legislation needs to be amended with regard to two important aspects:

- standards for emissions of pollutants into air and water should be the same for incineration, co-incineration and other processes which generate gaseous emissions;
- additional conditions need to be formulated for recovery of waste, so as to ensure a major role for the environmental impact aspect.

7. Final conclusion

Despite positive results, the progress which has been made in implementing Community waste legislation cannot yet be deemed satisfactory. The number of infringement procedures reflects the current state of affairs. Considerable efforts therefore need to be made to achieve full implementation of Directive 75/442/EEC and thus also of other directives on waste; particular attention needs to be devoted to the hierarchy of the principles of waste management.

The adoption of the consolidated European Waste Catalogue and of the new regulation on waste statistics is likely to result in improvements. In addition, future and recent legislative initiatives relating to waste, especially packaging waste, end-of-life vehicles and waste electrical and electronic equipment, must help to improve the situation as regards prevention, recovery and recycling of waste.

6 November 2003

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee the Environment, Public Health and Consumer Policy

on the follow-up report on Council Directive 75/442/EEC (Waste Framework Directive)
(COM(2003) 250 – 2003/2124(INI))

Draftsman: Marie-Hélène Descamps

PROCEDURE

The Committee on Petitions appointed Marie-Hélène Descamps draftsman at its meeting of 11 September 2003.

It considered the draft opinion at its meeting of 6 November 2003.

At the latter meeting it adopted the following suggestions unanimously.

The following were present for the vote: Vitaliano Gemelli (chairman), Proinsias de Rossa (vice-chairman), Marie-Hélène Descamps (draftsman), Uma Maija Aaltonen, Richard A. Balfe, Felipe Camisón Asensio, Margot Keßler, Jean Lambert, Marie-France Stirbois and Eurig Wyn.

COMMENTS UPON THE REPORT BY THE COMMISSION

Environmental legislation and its application in the European Union is one of the most important benchmarks by which citizens judge the value of 'Europe' in their day-to-day lives. Politicians often point to environmental policy as one of the most suitable areas for European cooperation, since environmental concerns do not stop at national borders. With elections approaching, Members and candidates have to be in a position to know where things stand regarding this policy area, and citizens ought to have the information enabling them to hold their politicians to account. What is more important is for the citizen to know which institution is responsible when European legislation is not properly applied or executed.

Most European citizens are, fortunately, concerned about the protection of nature and natural habitats, but such concerns are general ones, as people are aware that they have something to do with their natural heritage. Concerns about waste, and its treatment, bring us right back to citizens' immediate concerns about their quality of life, their local environment and the health and well-being of their families. It also touches upon the quality of life in a given neighbourhood. Not surprisingly, the European Parliament receives far more petitions on the location or the functioning of waste facilities, landfill sites and incinerators than on any other issue.

The voluminous report submitted to Parliament and Council by the Commission is not very helpful to the European citizen, even though it is intended to inform the public about the state of play regarding the waste directives and the environment. Addressing ourselves to each directive in turn, as the Environment Committee rapporteur indicates, we can gauge how far the Member States have incorporated the directives into national law and how the directives have been implemented in general terms. We can thus see which Member States have done well and which have not.

Lost in the welter of detail in the report, and the statistical references, is the impact on citizens resulting from poor enforcement of legislation. Lost also is any reference to desirable objectives for the citizen. The directives are, of course, the result of a legislative compromise between Parliament and the Council, representing the Member States. Some Member States have been reluctant to give too much ground to the Union and what we see emerging through the pages of the report is that citizens are consequently suffering. Planning permission for waste sites or incinerators remains a national responsibility, but the EU is often blamed.

Some examples are eloquent, and the following petitions are highly significant in that they demonstrate how far away we are, because of the laxness of Member States, from compliance with waste legislation.

An Italian citizen wrote to Parliament to complain, early in 2001, about the public health hazard caused by a landfill site near Verona where toxic substances had been dumped (No 446/2001). At the request of the Petitions Committee, the Commission wrote to the Italian authorities 'requesting information' and eventually an answer was provided. On the basis of additional information provided by the petitioner (note: not by the Italian authorities or by the Commission itself), the Commission decided in October 2002 to open infringement proceedings. This was followed in July this year by a reasoned opinion, about which the Petitions Committee was

informed in September. But the site is still functioning, we are nowhere near the European Court of Justice, and people's health and their neighbourhood are still threatened.

Quite clearly, though necessary, the use of the infringement procedure is not a deterrent. The citizen in the meantime can obtain no redress, for none is provided for by the Treaty except, indirectly, through Article 226. In such cases the authorities need to be shamed into resolving the matter and this does not seem good enough.

In Greece, which is mentioned in the report as having a few problems with transposing the waste directives into national legislation, a petitioner wrote a year or so ago to Parliament about the situation regarding the 25 waste sites situated near villages around Messinia, where he lives (No1061/2002). He drew attention to the fact that fires were lit to incinerate rubbish and to the strong smells emanating from the sites. The local official responsible admitted his powerlessness.

The Commission, having received many other similar complaints, opened a file about problems in the application of Directive 75/442/EEC. We learned subsequently that the Greek authorities recognised they were in breach of the legislation and admitted that 2 180 waste sites were either illegal or totally uncontrolled by any authority. In the Messinia area, the committee was informed that 22 of the illegal waste tips would be closed, perhaps by the end of 2005! The Commission has written to say that if this were not done, then it would not hesitate to bring a case before the European Court of Justice in 2006? That would be four years after the petition was sent.

Petition 1085/2002, also by a Greek petitioner, paints a similar picture at Kouroupitos in Crete. Greece finally had to pay a fine of €5.5 million after a Court of Justice judgement, but, in spite of the fine, the problem is continuing.

In Wales, a petitioner wrote to Parliament in 1998 about a waste site in the Rhondda Valley at Nantygwyddon (No 876/1998). The UK authorities followed up the committee's enquiries, addressed through the Commission, until in March 2002 the owners finally decided to close the site to all new refuse. The underlying health issues and the capping of the site, among other things, remain unresolved. The outcome has been considered a success, though one clearly mitigated once again by all the years which have passed while authorities and site owners failed to comply with EU legislation.

The European Commission does not have the human resources available to properly investigate petitioners' claims in most cases and it is dependent on what it is told by the authorities it is supposed to investigate. This is unsatisfactory. Examples in France (Petitions Nos 140/1999 – Lanvaux, Brittany – and 553/2001 – Nord-Cotentin) show that the Commission expects the petitioner to investigate the case for it as it does not have the means to follow up complaints adequately.

CONCLUSION

In the light of these and many other examples, the Committee on Petitions urges the Environment Committee to be more demanding in the interests of European citizens. It also calls for more radical means of redressing such breaches of EU legislation as might occur, so that more realistic penalties can be imposed where necessary. Better means of redress mean better deterrence in the face of lax authorities or unscrupulous businesses, which make large sums of money from waste. Better forms of redress mean that citizens are more protected.

The Committee on Petitions calls upon the European Commission to be more decisive in its investigations, and much less passive and complicit.