

---

## **ENFORCEMENT IN THE NETHERLANDS OF THE EUROPEAN REGULATION ON TRANSFRONTIER SHIPMENT OF HAZARDOUS WASTE**

KLEIN, WOUT

Regional Inspector for the Environment in Gelderland, Ministry of Housing, Spatial Planning and the Environment

P.O. Box 9013, 6800 DR Arnhem, The Netherlands

### **SUMMARY**

This report describes five years' experience of Dutch enforcement of the European regulation for the transboundary movement of hazardous waste. On the basis of this experience 'golden rules' are formulated which such regulation and the implementation thereof must satisfy.

It is pointed out, among other things, that central registration of waste data is of vital importance in order to control the international waste streams. Furthermore, rules with regard to the scale and expertise of monitoring agencies and the practical execution of checks and other enforcement activities are given.

### **1 INTRODUCTION**

During the first International Workshop on Environmental Enforcement (Utrecht 1990) a presentation (1) was given about the Regulation on import, export and transit of hazardous waste in force since 1988. (2). This is the implementation of the European Directive (3) in Dutch legislation.

At that time experience with this regulation had only been brief. Meanwhile the Regulation has been operative now for five years (with some minor formal changes). From 26 May 1994 a new European Regulation (4) will directly come into effect in all Member States of the European Union.

Every reason for a presentation of experiences in The Netherlands.

### **2 THE REGULATION IN A FEW WORDS**

The essence of the regulation is that import, export and transit of hazardous waste is forbidden unless transport has been notified (on time) and the competent authority has given explicit permission.

Ample time before a transport can legally take place the competent authority must be notified; as for transport within the European Union notification must be given to the competent authorities of the country of export as well as to those of the country of import; the competent authority (in both countries) must grant permission; the documents proving notification and permission must accompany the actual transport.

Data acquired through the notifications are used in the Netherlands not only to monitor the individual transports but also to gather general information for the purpose of policy making. By way of example an overview is given in Annex 4 showing the transports exported from the Netherlands in the first half of 1993 and their destinations. Such aggregated information, which, of course, also exists for import and transit, may have implications for the processing capacity desirable in the Netherlands.

### **3 EUROPEAN ASPECTS**

In principle the regulation applies to all countries of the European Union (EU). One would have expected the transport within the European Union to be better regulated than transport to Third World countries. This is only partly true. The reason for this can be found in the current differences in concepts and definitions of the various regulations in the EC countries. Moreover, competence of monitoring agencies and police differs from country to country, also within the European Union.

Only in 1994 when the regulation will uniformly come into force in all Member States it is to be expected that enforcement within the territory of the Union will be leveled and that it can operate effectively and efficiently. On the other hand, control at the European internal frontiers will by that time be so limited that in practice enforcement will not primarily take place at the border. With regard to actual border control, enforcement at the external frontiers with Third World countries will be as effective. Up till now, however, experience has shown that by far most transports take place within the European Union.

### **4 SOME FIGURES**

In the period between 1988 and 1990 the amount of hazardous waste imported into the Netherlands increased from 40 to 200 kiloton. To a large extent this waste came from Germany and Belgium. In 1991 the amount temporarily decreased to 107 kiloton to rise again to approx. 250 kiloton in 1992 and 1993. Fluctuations in these amounts are mainly caused by the stream of polluted soil which is cleaned in Dutch cleaning installations. In addition, it concerned, particularly, specialist physicochemical processing and incineration with chlorine recovery.

The amount of hazardous waste exported from the Netherlands, mainly to Belgium, Germany and France, is practically constant at approx. 150 kiloton a year. In 1988 most of it was destined for special dumping sites of hazardous waste (of which there are none in the Netherlands because of its soil conditions); in 1992 and 1993 most of it went to incineration plants (of which there were too few in the Netherlands at that time). At the same time a great deal of exported waste was intended for use as raw material.

As to transit, about 30 kiloton a year had been transported through our country since 1988; mainly waste from Germany on its way to being processed in the United Kingdom. After a sharp decrease to approx. 15 kiloton in 1992, mainly because a lot of German waste was transported direct to Norway, the amount of waste in transit rose to its original level in 1993.

### **5 ENFORCEMENT**

Notification, registration and approval of transports, including the accompanying mass of paperwork, play, as already mentioned, a vital role in the regulation: firstly, to prove as to whether a certain transport is legal or illegal; secondly, as a means to keep in sight streams of waste on their ways to being processed; the latter for the purpose of enforcement as well as for further policy making with regard to the processing of these waste products. Consequently, this means that enforcement can almost only be implemented by specialized officers well acquainted with all formalities and also able to attach policy conclusions to established facts.

Therefore, a specialized bureau has been set up in the Netherlands from the beginning for the purpose of enforcing the Regulation. It concerns the section 'Inspection Waste Matters' of the Inspectorate for the Environment of the Ministry of Housing, Spatial Planning and the Environment. Still, this bureau cannot carry out its tasks without the assistance of a good network of contacts with other enforcing agencies such as customs, police, harbour authorities and colleagues across the border. (see also the report by DE KROM and KESSELAAR at this conference)

Another key element is the concept of 'land frontier'. After all, it is a question of import or export only if a frontier is being crossed. The lifting of general control of persons and goods at the internal frontiers of the European Union (a process started as from 1993) impedes the important warning function of customs with respect to (possibly illegal) waste transports. The conclusion is that it is impossible to capture all individual transports in a watertight control system at the border.

In order to carry out the most effective control on waste streams one should aim at companies serving as a 'junction' for waste transport, such as large disposers, brokers and transporters.

## **6 ENFORCEMENT STRATEGY**

In the past few years a consistent strategy has been developed for enforcing actions dependent on the nature of the infringement. In the case of minor offences warning is given out and, if necessary, this is followed by an inspection visit to the sender who is also informed about the regulation. As to major violations, such as transports without any notification, but also in the case of repeated smaller violations criminal action is taken and the case is handed over to public prosecution. The aim is always to prevent shipments of hazardous waste from ending up illegally in the environment. In those cases it may be necessary to take special judicial or administrative measures to prevent a violator from shirking his responsibility for the correct processing of his illegal transport.

Even with a consistent strategy of approach it remains necessary to search creatively for the most effective ways of providing information, using legal tools, hitting the violator in his commercial interests, publicity, etc.

Enforcement of the EU - regulation rests with the Member States. Officers have competence beyond their own land frontiers in accordance with a decision dd. 24 January 1994. How this competence can be introduced is still a matter of discussion. The best way to exercise influence on foreign transporters from the Netherlands proved to be via their Dutch trading partners. Consequently, enforcement and criminal action are always aimed at the Dutch companies involved.

## **7 PRACTICAL EXPERIENCE, BOTTLENECKS**

Bona fide senders and transporters are sufficiently acquainted with the regulation by now; in general compliance is satisfactory also because specific enforcement was implemented from the very beginning. It has proved to be useful in that respect to check not merely the transports themselves but also to visit the large senders and processors in particular and inform them about the requirements of the regulation. Those concerned consider the whole procedure of notification and approval quite an official 'mass of paperwork'.

Apart from warnings from the network, company visits to senders and processors of hazardous waste are an important source of information when investigating violations. In addition, road transports are frequently and according to plan stopped in cooperation with the network or by the network independently.

A major bottleneck with regard to compliance and, specifically, acceptance of the regulation is the difference in definitions of waste and of hazardous waste as used by the various countries. It occurs that a transport falls into different categories in two different countries and, as a result, must be notified in two different ways, gain two kinds of permission and be accompanied by two different documents. When the direct EU - regulation enters into force in 1994, this problem will have been solved, if only partly.

Apart from the question of the definitions of waste it is also often difficult to prove that a shipment concerns illegal hazardous waste because of complications and uncertainties when representative samples are taken from the waste batch.

In order to check chains of international transport completely it is always necessary to involve various agencies in more than one country. This extra communication between these agencies in combination with the differences in regulations and competence hampers enforcement.

Even if an illegal transport is intercepted by the enforcing agency, it does not always follow that a environmentally sound way of processing is ensured. Sometimes it is only with the greatest possible difficulty that a shipment which has been wrongfully offered for import can be sent back; sometimes it even poses great problems. Besides, sending a shipment back to the country of origin does by no means always ensure a proper processing.

Finally, another major bottleneck is the fact that there is no central notification and information point for transboundary waste transport. This should gather central information about companies as well as waste products and processing capacity in the various countries.

## **8 EXAMPLES**

### **8.1 Imported waste glue**

Annex 1 gives information about a shipment of illegally imported waste glue which was only discovered when it had already been stored in a dump in the Netherlands. The offenders have been sentenced to fines up to a total of approx. f 15,000 and to imprisonment. Nonetheless, for the time being the proper processing of the waste has cost the Dutch government f 50,000, which cannot yet be recovered from the offenders.

### **8.2 Various imported hazardous wastes**

Annex 2 gives information about another shipment of hazardous waste discovered at a storage site for construction and demolition waste. In this case it turned out that making direct contact with foreign senders can sometimes put an end to an illegal situation.

### **8.3 Transit shredder waste**

Annex 3 gives information about a shipment of shredder waste which, according to the German regulation, was shipped as commodity (Wirtschaftsgut) from Germany to Egypt via Rotterdam. However, as the Dutch regulation also required notification, the Egyptian authorities and the international environmental organization were warned; the ship was forced to leave Egypt and return to Germany.

## **9 IF MAKING ANOTHER REGULATION ...**

On the basis of experience with and bottlenecks encountered in the implementation of the regulation currently in force in the European Union a number of concrete recommendations can be made for a similar regulation in other countries.

These recommendations are set out in the following 'Golden Rules'. Note that these rules represent the personal view of the author; nor does the Dutch regulation comply in every respect with these golden rules.

### **GOLDEN RULES**

1. Give consent only to import from or export to countries with similar regulation, including treaties concerning the returning of illegal consignments and transboundary punishableness.

2. Decide on uniform and in different countries identical definitions of the (hazardous waste) products to which the regulation and treaties apply.
3. Use notifications and registrations not only for checking individual shipments but also for gaining general insight into and control of the waste stream. In other words, data should be made processable and a central, for some waste substances preferably international, registration point should be set up.
4. Form a combination of control by regular police or inspection agencies assisted by specialist monitoring of a separate enforcement department which is organized nationally. Make sure that legal transports can be easily identified ('green label') and that specialists have the competence and knowledge to carry out in-depth control ('looking behind the facts').
5. There should be a balanced scale level of monitoring and controlling agencies partly dependent on the type of waste, places of origin, processing possibilities, etc. Choose the scale small enough to link up, if possible, with existing competence and organisations but large enough to have an overview and to be able to control international streams.
6. Be aware of the differences in legal systems, competence and organisations of other countries. Keep good contacts with the network of officers and agencies across the border.
7. Focus monitoring in particular on the 'junctions' of waste streams, such as large disposers, brokers and transporters; in addition, carry out random checks on the road.
8. Choose a clear and uniform strategy of approach of any type of offence which any enforcing officer can and will put into practice immediately.
9. Impose sanctions on violating the regulation which are in balance with the economic profit or otherwise the environmental loss which violating the rules can entail.

## REFERENCES

1. Netherlands case study in enforcement of hazardous waste import/export, Bouma, J.R. and Gerardu, J.J.A., International Enforcement Workshop, 1990, Utrecht.
2. Regulation on import, export and transit of hazardous waste, Ministry of Housing, Physical Planning and the Environment, 1988, 1994, The Hague.
3. E.G-richtlijn betreffende de afgewerkte olie, afvalstoffen, grensoverschrijdende overbrenging van gevaarlijke afvalstoffen. Publicatiebladen van de Europese Gemeenschappen o.a. nr L 194/31, L 194/47, L 108/41, L 326/31, L 272/1, L 181/13, Europese Gemeenschap, Brussel.
4. Verordening (EEG) nr 259/93 van de Raad van 1 februari 1993 betreffende toezicht en controle op de overbrenging van afvalstoffen binnen, naar en uit de Europese Gemeenschap. Publicatieblad van de Europese Gemeenschappen nr L 30/1, Europese Gemeenschap, Brussel.

**ANNEX 1**

## Case 1

## Imported waste glue

At the end of May 1992 approx. 15,000 litres of waste glue was found in a garage box in A. The local police tracked it down and called in the enforcing officers of the Inspectorate for the Environment. It proved to be a shipment from abroad which had been imported without notification or consent. Moreover, the requirements applying for the Netherlands with regard to the proper handling of hazardous waste had not been met.

The municipality in which the substance had been discovered took action immediately and had it transported to a temporary legal storage, from where it should be sent back to the foreign company. Due to the necessary judicial complications the foreign company could not be forced formally to have the waste collected and processed. As a result processing took place in the Netherlands at the expense of the ministry (approx. f 50,000).

Meanwhile the Dutch offenders have been sentenced to fines of f 3,500, f 10,000 respectively and one of them to 3 months imprisonment as well. At the court session the offenders in vain put forward as a defence that it was not a matter of waste but of raw material.

**ANNEX 2**

## Case 2

## Various imported hazardous wastes

In July 1993 a site was rented for storing construction and demolition waste at H. However, in October 40 ton hazardous waste proved to be stored at the site instead, consisting of hospital waste, old medicine, paint wastes, contaminated solvents and glue remnants probably originating from Germany. Everything had been stored in an environmentally irresponsible manner.

The local police called in the enforcing officers of the Inspectorate for the Environment. The Dutch firm appeared to be well-known to the Inspectorate because of previous offences and because it had been warned expressly before not to import hazardous waste into the Netherlands without the required formalities. Nonetheless, the firm had taken care of a consignment of hospital waste and medicine of a (West) German company, and the paint, glue and solvents of an (East) German company.

After contact with both German companies they were willing to come over to the Netherlands. They consented to have the waste repackaged in an environmentally safe way at their expenses, to return it to Germany and to have it processed there correctly (cost approx. f 600,000 in total). This took place at the end of November 1993. The German authorities were, of course, informed about this transport.

**ANNEX 3**

## Case 3

## Transit of German shredder waste to Egypt

In the harbour of R. in February 1992 shredder waste from Germany was transferred which aroused the suspicions of the harbour authorities. After an investigation by enforcing officers from the Inspectorate for the Environment it was clear that it concerned waste which had resulted after shredding cars and that it was destined for an Egyptian firm. In Egypt it would be used as fuel for cement ovens.

According to the Dutch Regulation shredder waste is considered to be hazardous waste. Transit of this shredder waste took place in violation of this regulation. The German authorities considered this waste 'Wirtschaftsgut' because according to them it still had calorific value. The Netherlands considers incineration of such waste undesirable for environmental reasons.

After consultation with the public prosecution it was decided to make an official report against the German broker and the Dutch agent. However, when the notification duty according to the Regulation had been complied with, the Netherlands had no power to stop the ship from sailing to Egypt. The Egyptian authorities were then informed about the arrival of the transport and about the analysis results.

After the ship's arrival the Egyptian authorities put it under police guard and sent it back to Germany after an investigation, possibly because Greenpeace had also got wind of the transport and because the media had given it a lot of attention.

**ANNEX 4**

Amount (kiloton), destinations and ways of processing of hazardous waste exported from the Netherlands (first half year 1993)

Way of processing	B	G	U.K.	F.	Other	Total
Distilling	0,9	0,6	1,2	0,1	0,7	3,5
Detoxicating, neutralizing, draining	0,4	0,4				0,9
Physicochemical processing	1,4	0,0	0,0			1,5
Metal recovery	1,2	3,6	0,0	0,5	0,6	5,8
Immobilizing	2,1		6,1			8,3
Incinerating	28,8	0,8	0,2	5,4		35,2
Dumping		7,2				7,2
Recycling	12,5	7,5	0,2		0,0	20,1
Other	2,8	0,0				2,8
Total	50,1	20,2	7,7	6,1	1,3	85,4

The remaining countries are: Denmark (0,7), Japan (0,3), Czechia and Slovakia (0,2) and the United States (0,1).