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## **TRANSFRONTIER SHIPMENTS OF WASTE: SUCCESSES AND PROBLEMS WITH THE ENFORCEMENT OF SUPRANATIONAL LEGISLATION**

DEKROM, RUUD

Inspectorate for the Environment, Ministry of Housing, Spatial Planning and the Environment, IPC 681, P.O. Box 30945, 2500 GX The Hague, The Netherlands

### **SUMMARY**

This article provides an overview of successes and problems in enforcing European Regulation No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community (EC).

### **1 INTRODUCTION**

#### **1.1 Background**

The problems caused by dioxin-containing waste following an explosion at a factory in Seveso in Italy in 1984, led the European Community to draw up Directives designed to control the processing and transfrontier shipment of hazardous waste. The transfrontier aspect was also dealt with in the Basel Convention and within the Waste Management Policy Group of the Organization for Economic Cooperation and Development (OECD).

The results were incorporated into EC Directive 84/631 on the transfrontier shipments of hazardous waste, which has now been implemented by the European Member States.

Several European countries had to contend with waste between 1988 and 1989, searching the world over for somewhere to dispose of it. It became clear that there was a lack of communication between enforcement organizations within the European Union (EU).

The Inspectorate for the Environment therefore took the initiative in 1992 to organize a European enforcement project. The aim was to build a network of enforcement organizations involved with monitoring compliance with and enforcement of legislation governing transfrontier shipments of waste.

The project, entitled "Transfrontier Shipments of Hazardous Waste (TFS-1), was carried out by monitoring transfrontier shipments of paint waste and spent solvents between five participating countries (Belgium, Germany, Luxembourg, the United Kingdom and the Netherlands). The project was completed in May 1994 and a follow-up and continuation of joint enforcement activities was recommended.

#### **1.2 European legislation**

European Community Directive 84/631 concerning the transfrontier shipments of "hazardous waste" was replaced on May 6th 1994 by European Regulation No. 259/93. The official title is "Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community." One major difference between EC Directive 84/631 and European Regulation No. 259/93 is that the latter regulates wastes of all types, not just hazardous wastes.

## 2 “TRANSFRONTIER SHIPMENTS OF WASTE” (TFS-2) ENFORCEMENT PROJECT

### 2.1 Grounds for the project

The final report on TFS-1 recommended a follow-up, with the following aim in mind:

*“To develop a permanent structure (not as a project limited in time) to allow existing cooperation and coordination to continue and expand to other countries.”*

The first step towards this structure was to design a new enforcement project entitled “Transfrontier Shipments of Waste in Europe (TFS-2).”

The essence of “TFS-2” is, in conjunction with a number of European Member States, to monitor proper compliance with European Regulation No. 259/93 with a view to improving compliance and enforcement and to continue to develop the enforcement network at operational level.

### 2.2 Outline of the project

The project is being conducted under the auspices of the IMPEL (Implementation and enforcement of environmental law) network. This network was set up in November 1992 to provide a mechanism for the exchange of information and experience between environmental enforcement bodies within the European Union. Its objective is to raise professional standards within national inspectorates and to enhance the quality of pollution control enforcement throughout the Union.

TFS-2 has been adopted by the IMPEL network as “Ad hoc working group IIIa.”

The project is structured as follows:

- Orientation:  
Contacting organizations that are interested in participating.
- Desk-research:  
Conducting a survey of information on the waste flows being investigated (PCBs/ PCTs), some non-ferrous metal wastes and etchants). The purpose of this phase was to form some picture of the waste flows selected on the basis of the documentation and data files available.
- Company visit and shipment inspection plans:  
Visiting companies (including those acting as producers, disposers, treaters and brokers of transfrontier shipments of waste), primarily to acquire the information required to form an overall picture of the waste flows selected.
- Final report:  
Compiling the final report with conclusions and recommendations on how to improve enforcement of European Regulation No. 259/93.

### 2.3 Results

Enforcement organizations from 13 European Member States are currently involved. Although not an EU member, Norway is also participating as an observer.

Thanks to the joint enforcement activities, a number of European companies involved in waste production or disposal are now familiar with their compliance with European Regulation No. 259/93 being monitored.

The desk-study identified 1.370 waste flows. This overview lists the companies involved in transfrontier waste shipments, describes the waste and provides some further details.

More than a hundred company inspection site visits are planned on the basis of the desk-study findings. Approximately 30% had been carried out by October 1995. Although some companies require further investigation, the general impression so far is that companies are complying with the Regulation.

Additionally, 25 shipment inspections were carried out in seven European Member States in week 25 of 1995. More than 3,000 shipments have been checked. A number of infringements were identified, with various administrative errors on shipments with which the competent authorities were not familiar. A number of these shipments were sent back to the country of origin. Sound communication with enforcement organizations is a particular must in such cases - demonstrating the need for a good network.

Apart from these tangible results, there was a growing need for greater structure in the approach to enforcing the Regulation as enforcement was not uniform in the various Member States. The Regulation is also very complicated and requires Member States to cooperate in monitoring compliance. Although the Regulation is directly binding on all Member States and should therefore be clear, many problems of interpretation and definition remain.

### 3 FUTURE DEVELOPMENTS

#### 3.1 Introduction

A task force was formed within the framework of ad hoc working group IIIa to develop a more structural approach to enforcement of the Regulation 259/93 in Europe. It concluded that a permanent forum would be effective by promoting joint enforcement. Ad hoc working group IIIa will put forward a proposal for a permanent forum under the responsibility of the IMPEL network.

#### 3.2 Permanent forum

The objective is as follows:

*“The establishment of a permanent forum in order to coordinate, stimulate and support the enforcement of European Regulation No. 259/93 in Europe.”*

The forum will help improve the clarity and quality of enforcement of the Regulation. The word “forum” has been chosen to highlight the fact that this is not just some new institution but a body concerned with the approach adopted to practical enforcement and finding solutions. The members are representatives of the European Member States involved in enforcing the Regulation.

#### 3.3 Tasks of the permanent forum

The forum has seven tasks:

- providing the proper bodies (such as the IMPEL network and the European Commission) with problems encountered and recommendations/proposals for solutions concerning European Regulation No. 259/93;
- maintaining relations with other organizations (the European Commission, the police network and possible others) in order to exchange information on the enforcement of European Regulation No. 259/93;

- stimulating and facilitating European enforcement activities such as the current TFS-2 project (activities to be carried out by more than one Member State);
- developing a multi-year plan (working program) for enforcement activities;
- supporting the development of a central information and communication system;
- sharing experiences and information/solutions in respect of practical (interpretation) problems; and
- involving all Member States in the enforcement of European Regulation No. 259/93.

One of the forum's main tasks is to build upon the joint enforcement activities of several Member States.

It will therefore draw up a multi-year plan for the work. The plan will map out a vision of enforcement, along with goals and enforcement targets agreed by all Member States as well as specific enforcement projects and task forces.

One key element in the plan is to organize the swapping of information, knowledge and experiences. This exchange will provide a European understanding of monitoring compliance with the Regulation. The information thus gleaned will form the basis for a uniform enforcement strategy.

## **4 CONCLUSIONS**

### **4.1 Enforcement problems**

A number of problems were identified in enforcing EC Directive 84/631 and European Regulation No. 259/93 to date, breaking down into the following areas:

- definition;
- interpretation;
- practical enforcement; and
- communication.

For example: there were no procedures for returning illegal shipments and no guarantee of their arrival at the proper destination.

### **4.2 Successes**

Finding a solution to the problems mentioned requires effective communication and cooperation between enforcement organizations within the European Member States.

A network of enforcement organizations in Europe, the IMPEL network, was established in 1992.

Under the auspices of the network, two European enforcement projects were carried out. The outcome was a practical network of enforcement organizations responsible for enforcing European Regulation No. 259/93.

The number of enforcement organizations involved has grown from five in five European Member States to approximately twenty five in 13 Member States. The network will continue to expand into a solid, practical enforcement network involved in day-to-day enforcement of the Regulation. This will also enhance the uniformity of approach.

A proposal for a more structural approach as a permanent enforcement forum has been agreed by the organizations involved in the TFS-2 project and will be submitted to the IMPEL network for implementation.

In the meantime a start has been made on tackling the enforcement problems encountered, by discussing solutions and drawing up manuals. Agreements have also been reached on new joint enforcement projects on transfrontier shipments of waste in the near future.

## REFERENCES

1. Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community.
2. Proceedings of the third international conference on environmental enforcement, April 25-28, 1994, Oaxaca, México.
3. Conference reports on the "Transfrontier Shipments of Waste in Europe (TFS-2)" project.