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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the submission, on behalf of the European Union, of proposals to amend Annex IV and certain entries in Annexes II and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal for consideration at the fifteenth meeting of the Conference of the Parties, and on the position to be adopted on behalf of the European Union at that meeting as regards proposals by other Parties to that Convention to amend Annex IV and certain entries in Annexes II, VIII and IX to that Convention

COUNCIL DECISION (EU) 2020/…

of …

on the submission, on behalf of the European Union, of proposals to amend Annex IV and certain entries in Annexes II and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal for consideration at the fifteenth meeting of the Conference of the Parties, and on the position to be adopted on behalf of the European Union at that meeting as regards proposals by other Parties to that Convention to amend Annex IV and certain entries in Annexes II, VIII and IX to that Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the 'Convention') entered into force in 1992 and was concluded by the Union by means of Council Decision 93/98/EEC[1].

(2) Regulation (EC) No 1013/2006 of the European Parliament and of the Council[2] implements the Convention and Decision C(2001)107/FINAL of the Organisation for Economic Co-operation and Development (OECD) Council concerning the revision of Decision C(92)39/FINAL on the control of transboundary movements of wastes destined for recovery operations (the 'OECD Decision') within the Union. The disposal operations listed in Annex IV to the Convention are referred to in several Union acts, such as Directive 2008/98/EC of the European Parliament and of the Council[3].

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1 Council Decision 93/98/EEC of 1 February 1993 on the conclusion, on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention) (OJ L 39, 16.2.1993, p. 1).

2 Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

3 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

(3) Pursuant to the Convention, the Conference of the Parties is to consider and adopt, as required, amendments to the Convention. Amendments to the Convention are to be adopted at a meeting of the Conference of the Parties.

(4) At its fifteenth meeting, which is scheduled to take place in July 2021, the Conference of the Parties will, in accordance with the procedure set out in Article 18 of the Convention, consider proposals submitted by the Union or any other Party to the Convention to amend Annexes II, IV, VIII and IX to the Convention.

(5) A proposal to amend Annex IV to the Convention should be submitted on the Union's behalf in order to: include a general introduction clearly distinguishing the terms 'non-recovery' and 'recovery'; clarify that all disposal operations that occur or might occur in practice are covered regardless of their legal status and regardless of whether they are considered to be environmentally sound, and that operations occurring prior to submission to other operations are also covered; include captions and introductory texts explaining what is meant by 'non-recovery operations' (Annex IVA) and 'recovery operations' (Annex IVB); update and clarify the descriptions of operations in line with scientific, technical and other developments which have occurred since the Convention was adopted in 1989; and ensure, through the introduction of catch-all provisions, that all operations not specifically mentioned are covered by the Convention's requirements.

(6) The descriptions of ‘disposal operations’ contained in Annex IV to the Convention are general and could benefit from further clarification. The Union should therefore propose that explanations or guidance be developed by the Conference of the Parties to further clarify the content of such operations, or be supportive of such a proposal from other Parties. Such explanations or guidance should provide clarifications and examples of the operations covered, and should not be included in the text of the Convention. Such explanations or guidance should preferably be adopted before amendments to Annex IV to the Convention become effective.

(7) The objectives of the proposals concerning Annex IV to the Convention are: to ensure that the appropriate control mechanisms of the Convention are fully applicable and would therefore, if adopted, improve controls on shipments of waste; to facilitate the prevention of illegal shipments; to improve legal clarity and establish a common understanding and interpretation among the Parties to the Convention of the disposal operations ; and to support the environmentally sound management of waste at global level and contribute to the transition towards a global circular economy.

(8) As a consequence of the proposal to amend Annex IV to the Convention, proposals should be submitted on the Union’s behalf to amend entries on plastic wastes in Annexes II and IX to the Convention, as they refer to a certain disposal operation listed in Annex IV to the Convention.

(9) The Union should support in principle amendments subsequently proposed by other Parties to the Convention concerning the list of disposal operations in Annex IV to the Convention, the entries for waste electrical and electronic equipment currently listed in Annexes VIII and IX to the Convention and new proposed entries for such waste in Annex II (Categories of wastes requiring special consideration) to the Convention, provided that they could achieve the same objectives as those behind the Union's proposals concerning Annex IV to the Convention.

(10) It is appropriate to establish the position to be adopted on the Union's behalf at the fifteenth meeting of the Conference of the Parties with regard to proposals by other Parties to the Convention to amend Annex IV and certain entries in Annexes II, VIII and IX to the Convention, as the envisaged act (amendments to Annexes to the Convention) will be binding on the Union and affect the scope and the content of Union law, in particular Regulation (EC) No 1013/2006 and Directive 2008/98/EC.

(11) It is appropriate to maintain the current situation for shipments of non-hazardous waste electrical and electronic equipment within the Union and the European Economic Area (EEA), and therefore not use the control system stemming from the possible addition of entries in Annex II to the Convention for such shipments. To that end, the Union should, to the extent necessary, use the procedures set out in the OECD Decision, without prejudice to the notification submitted in accordance with Article 11 of the Convention, to ensure that no additional control is imposed on shipments of non-hazardous waste electrical and electronic equipment within the Union and the EEA, as a result of the adoption of amendments to Annex II to the Convention,

HAS ADOPTED THIS DECISION:

Article 1

1. With regard to proposals to amend Annex IV and certain entries in Annexes II and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the 'Convention') as well as proposals to amend Annexes II, VIII and IX to the Convention in respect of waste electrical and electronic equipment at the fifteenth meeting of the Conference of the Parties, the Union shall pursue the following objectives:

   (a) to ensure that the appropriate control mechanisms of the Convention are fully applicable, to improve controls on shipments of waste and to facilitate the prevention of illegal shipments of waste;

   (b) to support the environmentally sound management of waste at global level and to contribute to the transition towards a global circular economy; and

   (c) to improve legal clarity and to establish a common understanding and interpretation among the Parties of the disposal operations covered by Annex IV to the Convention;.

2. In order to pursue the objectives listed in paragraph 1, the Union shall submit for consideration at the fifteenth meeting of the Conference of the Parties a proposal to amend Annex IV to the Convention in order to:

(a) include in Annex IV a general introduction clearly distinguishing the terms ‘non-recovery’ and ‘recovery’, and clarify that all disposal operations that occur or might occur in practice are covered regardless of their legal status and regardless of whether they are considered to be environmentally sound, and that operations occurring prior to submission to other operations are also covered;

(b) include in Annex IV captions and introductory texts explaining what is meant by ‘non-recovery operations’ (Annex IVA) and ‘recovery operations’ (Annex IVB); and

(c) update and clarify the descriptions of operations in Annex IV in line with scientific, technical and other developments which have occurred since the Convention was adopted in 1989, and ensure, through the introduction of catch-all provisions in Annex IV, that all operations not specifically mentioned are covered by the Convention’s requirements.

A detailed proposal to amend Annex IV to the Convention is set out in Part I of the Annex to this Decision.

3. The Union shall submit for consideration at the fifteenth meeting of the Conference of the Parties proposals to amend entries on plastic wastes in Annexes II and IX to the Convention. Detailed proposals concerning those amendments are set out in Part II of the Annex to this Decision.

4. The Commission, on behalf of the Union, shall communicate the proposals referred to in paragraphs 2 and 3 to the Secretariat of the Convention.

5. The Union shall propose that the Conference of the Parties develop explanations or guidance, not to be included in the Convention itself, providing clarifications and examples with regard to the disposal operations covered by Annex IV to the Convention, or shall support such a proposal from other Parties.

Article 2

The position to be adopted on the Union's behalf at the fifteenth meeting of the Conference of the Parties as regards proposals by other Parties to the Convention to amend Annex IV and certain entries in Annexes II, VIII and IX to the Convention shall be that the Union may support amendments proposed by other Parties to the Convention, provided that they contribute to achieving the Union's objectives as listed in Article 1(1), concerning:

(a) disposal operations listed in Annex IV to the Convention;

(b) new proposed entries for waste electrical and electronic equipment in Annex II (Categories of wastes requiring special consideration) to the Convention; and

(c) the entries for waste electrical and electronic equipment currently listed in Annexes VIII and IX to the Convention.

Article 3

Refinement of the position referred to in Articles 1 and 2 may be agreed to, in the light of developments at the fifteenth meeting of the Conference of the Parties, by representatives of the Union, in consultation with the Member States, during on-the-spot coordination meetings, without a further decision of the Council.

Article 4

In the event that new entries for non-hazardous waste electrical and electronic equipment in Annex II to the Convention are adopted at the fifteenth meeting of the Conference of the Parties, the Union shall, to the extent necessary, take the steps required under the OECD Decision, without prejudice to the notification submitted in accordance with Article 11 of the Convention, to ensure that the current controls on shipments of non-hazardous waste electrical and electronic equipment within the Union and the EEA remain unaffected.

Article 5

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President

ANNEX

Part I

Proposal on behalf of the European Union
for amendments to Annex IV to the Basel Convention on the Control
of Transboundary Movements of Hazardous Wastes and their Disposal

(proposal for a new text for Annex IV)

Annex IV[1]
Disposal operations

There are two categories of disposal operations, namely recovery operations and non-recovery operations. Section A encompasses non-recovery operations and section B recovery operations.

This Annex also covers in both sections A and B disposal operations that occur prior to submission to any of the operations in the respective section[2].

This Annex covers all disposal operations, regardless of their legal status and regardless of whether they are considered to be environmentally sound.

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1 The amendments to this Annex become effective as of [date occurring [three][four] years after adoption by the Conference of the Parties].

2 See operations D31 to D36 in section A and operations R26 to R31 in section B.

A. Non-recovery operations

A non-recovery operation is an operation which is not a recovery operation even where the operation has as a secondary consequence the reclamation of substances or energy.

D20 Deposit in an aboveground engineered landfill isolated from the environment

D21 Surface impoundment (e.g. placement of liquids or sludge into pits, basins or tailing dams)

D22 Deposit onto land other than covered by D20 and D21 (e.g. permanent aboveground storage)

D23 Permanent underground storage (e.g. placement of containers in a mine)

D24 Deposit into land other than covered by D23 (e.g. injection into wells, salt domes of naturally occurring repositories)

D25 Treatment of land in situ (e.g. biodegradation or biological or chemical treatment)

D26 Release into a water body except seas/oceans

D27 Release into seas/oceans including sea-bed insertion

D28 Release to the atmosphere (e.g. venting of compressed or liquefied gases)

D29 Thermal treatment other than covered by R24 in section B (e.g. incineration)

D30 Non-recovery other than covered by D20 to D29

D31 Biological treatment prior to submission to any of the operations in section A

D32 Mixing, including blending, prior to submission to any of the operations in section A

D33 Manual treatment (e.g. separation), physical/mechanical treatment other than covered by D32 (e.g. separation, size reduction, evaporation, drying, autoclaving), physical/chemical treatment (e.g. solvent extraction), chemical treatment (e.g. neutralization, chemical precipitation) or immobilization (e.g. stabilization, solidification) prior to submission to any of the operations in section A

D34 Repackaging prior to submission to any of the operations in section A

D35 Other treatment than covered by D31 to D34 prior to submission to any of the operations in section A

D36 Temporary storage prior to submission to any of the operations in section A

B. Recovery operations

A recovery operation is an operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.

R20 Preparing for reuse (e.g. checking, cleaning, repair, refurbishment)

R21 Recycling of organic substances (e.g. physical/mechanical treatment, chemical treatment)

R22 Recycling of metals and metal compounds (e.g. smelting, hydrometallurgy, physical/mechanical treatment)

R23 Recycling of inorganic materials other than covered by R22 (e.g. physical/mechanical treatment, chemical treatment)

R24 Thermal treatment with the principal result to generate energy (e.g. incineration)

R25 Recovery other than covered by R20 to R24

R26 Biological treatment prior to submission to any of the operations in section B

R27 Mixing, including blending, prior to submission to any of the operations in section B

R28 Manual treatment (e.g. separation), physical/mechanical treatment other than covered by R27 (e.g. separation, size reduction, evaporation, drying, autoclaving), physical/chemical treatment (e.g. solvent extraction) or chemical treatment (e.g. neutralization, precipitation) prior to submission to any of the operations in section B

R29 Repackaging prior to submission to any of the operations in section B

R30 Other treatment than covered by R26 to R29 prior to submission to any of the operations in section B

R31 Temporary storage prior to submission to any of the operations in section B

Part II

Proposals on behalf of the European Union
for amendments to Annexes II and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

In two footnotes of entry Y48 in Annex II to the Convention and in two footnotes of entry B3011 in Annex IX to the Convention, the text “Recycling/reclamation of organic substances that are not used as solvents (R21 in Annex IV, sect. B)” shall be replaced by “Recycling of organic substances (e.g. physical/mechanical treatment, chemical treatment) (R21 in Annex IV, sect. B)” and the text “operation R3” shall be replaced by “operation R21”.

Those changes shall become effective when the amendments to Annex IV to the Convention become effective.