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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056. – Report: state of play

I. INTRODUCTION

1. The aim of this report is to provide an overall state of play and an overview of the progress made on the proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056. This proposal aims to replace the current regulation on cross-border shipments of waste and to amend the regulation on ship recycling. It has the overall aim of increasing the level of protection of the environment and public health from the impacts of unsound transboundary shipments of waste, and implements the Basel Convention and incorporates the OECD rules.

2. On 17 November 2021, the European Commission published a proposal for a recast of Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste. This Regulation concerns transfers of waste within the EU and to third countries (OECD and other countries). The proposal is part of the implementation of the European Green Deal and in particular of the Circular Economy Action Plan and the Zero Pollution Action Plan as well as the EU Strategy to tackle Organised Crime 2021-2025. The proposal was accompanied by a Commission communication entitled ‘Our waste, our responsibility: Waste shipments in a clean and more circular economy’.
3. The Commission proposes to use a mutually reinforcing mix of policies centred around the four building blocks below:
 - a) facilitating the shipment of waste within the EU for recycling and reuse;
 - b) stricter requirements for the export of waste outside the European Union;
 - c) strengthening the fight against illegal waste trafficking.
4. The proposal for a regulation contains 82 articles and 16 annexes. They are organised under 8 titles, 3 of which introduce entirely new provisions compared with the current version. Title II contains provisions on shipments within the EU, with or without transit through third countries. Title IV contains provisions on exports from the EU to third countries. Title VII contains provisions on enforcing this Regulation. Annexes VIII and X have also been newly created in connection with the provisions of title IV. Annex X sets out the criteria designed to demonstrate environmentally sound management in the destination treatment facilities in third countries.

Annex VIII provides the form for requesting inclusion in the list of countries to which the export from the EU of non-hazardous waste destined for recovery is authorised.

5. At the European Parliament, the proposal was examined by the Committee on the Environment, Public Health and Food Safety. The draft report was issued on 11 April 2022. The date of the vote on the report is not yet known. A total of 599 amendments have been submitted.
6. The Committee of the Regions and the Economic and Social Committee were consulted. The Committee of the Regions decided not to give an opinion. The European Economic and Social Committee adopted its report on 23 February 2022.

II. WORK IN THE COUNCIL

7. Within the Council the Working Party on the Environment is responsible for examining the proposal. The proposal for a Regulation and its impact assessment were presented by the Commission at an informal video conference of the Working Party on the Environment on 6 December 2021. The Commission also presented its proposal at the Environment Council on 20 December 2021.
8. The revision of the Regulation on shipments of waste was one of the main priorities of the French Presidency with a view to an initial examination of all the articles of the proposal. During the French Presidency, seven meetings of the Working Party on the Environment - on 14 and 28 January, 10 and 28 March, 12 April and 17 May - and one informal video conference of the same Working Party on 27 April were dedicated to discussing this proposal. The provisions concerning the role of the European Anti-Fraud Office (OLAF) were also presented to the Working Party on Combating Fraud at its meeting on 20 May 2022. In addition, many written comments were received from the delegations. These meetings provided the opportunity for an initial discussion about all the provisions of the Regulation as well as the opportunity to examine a first compromise proposal from the Presidency on Titles I and II. The main elements of the discussion are as follows:

Shipments of waste within the EU

9. The main new feature in the rules on shipments of waste within the EU concerns the introduction of a digital system to enable communication between the actors and the authorities concerned. The introduction of a digital system was supported by all delegations. The discussions showed a strong interest in better understanding the precise functionalities of this system and how it would be able to connect with existing systems in some Member States.
10. With the main purpose of introducing the digital system being to shorten consent procedures for shipments of waste, the Commission proposed shorter deadlines for the competent authorities and the notifying parties. This generated concern among the delegations, which, in most cases, questioned the shorter deadlines in the belief that the deadlines proposed could put at risk the time needed for dialogue between the parties.
11. The proposal to ban shipments of waste for disposal was viewed favourably by most delegations. Nonetheless, delegations stressed the practical aspects and the implementation of the proposed provisions. Thus questions were raised about the interpretation of the conditions for exemption as well as the specific situation of the small Member States and cross-border regions.
12. Many comments were submitted on the new approach regarding tacit consent by the competent authority of dispatch.

Provisions on exports of waste to third countries

13. The delegations were generally in favour of the Commission's proposal to implement a stricter regime for the export of waste to third countries. The need to ensure that all the waste exported to third countries is managed sustainably in environmental terms was highlighted by several delegations.

14. Under the Commission's proposal, the export of waste to non-OECD countries will, in principle, be banned, unless the country in question has notified the Commission of its wish to receive waste from the EU and has demonstrated its ability to sustainably manage it. The approach by the Commission to establish a list of non-OECD countries that are willing to receive waste from the EU was welcomed by the delegations, as was the proposal to require waste-exporting companies to verify that sites receiving waste are subject to an independent audit. At the same time, a number of questions were raised about the practical implementation of the audits.
15. Some delegations argued that the Regulation should not negatively affect small Member States that are heavily dependent on exports for the treatment, and in particular the disposal, of their waste.

Strengthening the control of illegal waste flows and the role of OLAF

16. Delegations were generally in favour of strengthening control measures but raised questions on the new role of the European Anti-Fraud Office (OLAF) and the provisions on administrative and criminal sanctions.
17. On 27 April, an informal videoconference of the Working Party on the Environment was held to discuss the provisions in the Regulation on the role of OLAF. Member States had many questions on the mandate of this agency, its role in relation to other bodies, such as INTERPOL and EUROPOL, and what powers it would have to launch investigations in the Member States. Questions were also raised about the staffing and capacity of OLAF and specific practices in terms of cooperation with national authorities and inspections on the ground.
18. With regard to sanctions, delegations raised questions about the relationship between administrative and criminal sanctions and the possibility of adopting stricter sanctions than those provided for in the Regulation.

19. Many delegations called for the group of correspondents to continue in its current form and asked for clarification from the expert group provided for in the proposed Regulation.

III. WORK OF THE PRESIDENCY

20. Based on the discussions and written comments, the Presidency prepared compromise proposals for Title I of the proposed Regulation concerning the purpose, scope and definitions. The Presidency also reworked Title II, on shipments of waste within the European Union, incorporating changes that it considers acceptable to the delegations. Nevertheless, in the Presidency's view, there is still a need for further discussion.
21. The Presidency's proposal for Title I concerns the general provisions on the purpose, scope and definitions of the proposal. It takes into account the proposed corrections and some of the comments made by the delegations. A large number of definitions were therefore clarified and a definition of 'the person who arranges the shipment' added. The proposed Regulation was presented at the meeting of the Working Party on the Environment on 17 May and the ensuing discussion did not raise any comments other than those that had led the Presidency to make these proposals.
22. Title II was worked on in order to incorporate some of the changes proposed by the delegations and proposals for agreed amendments. These proposals relate in particular to the time frame for introducing the general notification and the prior consent procedure.

The delegations had raised a number of concerns during the discussions and considered the new rules too restrictive. Several Member States agreed that the use of a new electronic system would not resolve the need for time for exchanges between the Parties, nor the need for the competent authorities to examine the dossier and for notifiers to send the required documents.

The Presidency deemed this procedure, which is at the heart of the revision of the Regulation, to be a matter of priority in terms of the tasks of the competent authorities responsible for the Regulation's application. The draft compromise prepared on Title II is in line with this objective.

In addition, the Presidency considers that the following points require further discussion:

- in order to avoid several rounds of exchanges with the notifier and an increased workload for the various stakeholders, the decision to discontinue the procedure could be an option offered to the competent authority and not an obligation imposed on it;
- in order to avoid an increased workload resulting from the filing of successive applications, consideration could be given to reducing the likelihood of a decision to discontinue the investigation if the application is unsuccessful by reserving such a decision for the authorities of dispatch and destination alone;
- lastly, the tacit consent of the competent authority of dispatch could be deemed to have been obtained under two cumulative conditions: the prior issuance of its formal decision and its validation of the financial guarantee or equivalent insurance.

Thus, the proposals to be circulated by the Presidency concerning Titles I and II should only be understood as contributions to the work on the draft Regulation which will have to continue under the Czech Presidency.

IV. CONCLUSIONS

23. The Presidency considers that the work carried out during its term of office has significantly helped to clarify the proposal for a Regulation on shipments of waste and can serve as a basis for further discussion on the proposal.

24. The French Presidency will work closely with the incoming Czech Presidency to ensure that this work continues. The Presidency would also like to thank the Commission for its excellent cooperation and support as well as for the non-papers provided, and the Member States for their engagement and cooperation.
25. In conclusion, the Permanent Representatives Committee is invited to take note of this Presidency progress report and forward it to the Environment Council on 28 June 2022.
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