



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0367 (COD)**

Brussels, 06 November 2023

WK 13905/2023 ADD 2

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Waste shipments Regulation: Follow-up to the WPE on 19 October 2023 – Comments from a delegation

Following the call for comments (WK 13585/2023), delegations will find attached further comments received from the LT.

LITHUANIA

2. Elements for further reflection in view of future negotiations.

Please note that new text proposals in this block of the Steering Note are supposed to replace any provisional text in the draft agreement column of the 4-column-document in Annex I.

A. Timelines (Article 8):

After receiving MS comments and further discussions with the EP, which still considers these elements as a package, the Presidency and the Commission are proposing these new alternative texts that have been also shared with the Parliament.

A.1. Request of additional information by competent authorities to notifiers [Art. 8(3), L221 and Art. 8(5a), L226a] - – We support the proposed compromise text

Art 8(3),
L221

Where the competent authority of dispatch considers that the notification is still not properly carried out as referred to in Article 5(3a), or additional information and documentation ~~have been added to as~~ referred to in Article 5(3b) is still required, it may as soon as possible, and no later than seven working days after the end of the ~~after the requested information and documentation have been added to the notification, or where no period as mentioned in paragraph 2,~~ **repeat its make up to two more** requests for information ~~has been provided by~~ and documentation from the notifier ~~pursuant to~~. For such a request, paragraph 2 shall apply *mutatis mutandis*. “

Art 8(5a),
L226a

Where the competent authority of destination or any competent authority of transit consider that information and documentation in accordance with Article 5(3) or additional information and documentation as referred to in Article 5(3b) is still required, the competent authority concerned may as soon as possible, but no later than seven working days after the ~~;~~ end of the period as mentioned in paragraph 5, **repeat its make up to two more** requests for information and documentation from the notifier according to paragraph 4a. For such a request, paragraph 5 shall apply *mutatis mutandis*.”

A.2. Decision that notification is no longer valid [Art. 8(3a), L222 and Art. 8(5b) first subparagraph, L226b] – We support the proposed compromise text

Art 8(3a),
L222

The competent authority of dispatch **may** decide that the notification is not valid and shall ~~inform the notifier and the other competent authorities concerned of the decision referred to in the first subparagraph~~ not be further processed, if the information and documentation provided is not sufficient or where no information has been provided by the notifier, within ~~seven days after the requested information and documentation have been added to the notification or where no information has been provided by the notifier pursuant to the deadline set out in paragraph 2,~~ **or where a first request pursuant to paragraph 3 was made, within the deadline set out in that paragraph.**

The competent authority of dispatch shall decide that the notification is not valid and shall not be further processed, if the information and documentation provided upon the second request made in accordance with paragraph 3, is not sufficient or where no information has been provided by the notifier, within the deadline set out in paragraph 3.

The competent authority of dispatch shall inform the notifier and the other competent authorities concerned of that decision as soon as possible, but no later than [seven working] days after the end of the period as mentioned in paragraph 2, or, where applicable, paragraph 3.

Art 8(5b)
first
subparagraph
h, Line 226b

The competent authority of destination or any competent authority of transit **may** decide that the notification is not valid and shall not be further processed if the information and documentation provided is not sufficient or where no information has been provided by the notifier, within the deadline set out in paragraph 5, **or where a first request pursuant to paragraph 5 was made, within the deadline set out in that paragraph.**

The competent authority of destination or any competent authority of transit shall decide that the notification is not valid and shall not be further processed if the information and documentation provided upon the second request made in accordance with paragraph 5, is not sufficient or where no information has been provided by the notifier, within the deadline set out in paragraph 5.

A.3. Review clause [Art 80, L924] – We support the proposed compromise text

Art 80, L924

By 31 December 2035, the Commission shall, taking into account, inter alia, the reports drawn up in accordance with Article 69, and the review referred to in Article 59(5), carry out a review of this Regulation and submit a report on the results thereof to the European Parliament and to the Council, accompanied, if the Commission deems it appropriate, by a legislative proposal.

The Commission shall, during its review and as a part of its report, assess in particular the efficiency of the procedure of prior written notification and consent laid down in Chapter 1 of Title II, and notably the related timelines.

B. Renewal of notifications [Art. 9(2a) (new), Annex II Part 1 (2) subpara. 2] – We support the proposed compromise text

Following the discussions at the ITMs, the Parliament proposed an additional provision in order to reduce the time limits and to simplify the notification procedure for all actors involved. This provision takes into account the possibility of using the same information from a prior notification that has already been approved. The Commission subsequently prepared this new paragraph and the addition for Annex II, Part 1.

It should be noted that the new paragraph, in Article 9(2a), only imposes an obligation on the competent authorities to take into account prior information in order to take a decision under paragraph 1. And paragraph 9(1) states that the decision will be taken once the notification has been properly completed. In conclusion, this new text does not preclude a request for information, if necessary, for the notification to be considered properly completed.

Art 9(2a) (new) **2a. If a notifier submits a notification according to Article 5 or a general notification according to Article 13, to ship, compared to a consented notification, the same waste from the same location in the country of dispatch to the same consignee and the same facility and whereby the countries of transit, if any, are the same, the competent authorities concerned shall take into consideration any information previously submitted in accordance with Articles 5(2), (3) and (3b) or Articles 13(2) and (3) and take a decision in accordance with paragraph 1 as soon as possible.**

Annex II Part 1 (1) subpara. 2 “In case the notifier has previously obtained consent(s) for the shipment of the same types of waste **from the same location in the country of dispatch to the same consignee and** the same facility and **whereby the countries of transit, if any, are the same**, the serial number or other accepted identifier of **the** notification document of these previously consented shipments ~~may~~**shall** be referred to. **In addition, changes in the details of a new notification compared to such previously consented shipment shall be indicated in the notification.**”

C. Public access to notifications [Art. 21, L370, 371; R(28), L38; Annex XIa; Art. 75 (new)] – We support the proposed compromise text

The Parliament maintains its position on the addition of the name of the facilities receiving the waste, as long as this information would not be confidential. In view of the need to reach an agreement, the Presidency, together with the Commission, proposes the following compromise amendment.

Art. 21,
L370

Article 21

~~Public access to notifications~~ **Publication of information on notifications of shipments and on shipments of waste subject to the general information requirements**

Art. 21,
L371

~~The competent authorities of dispatch or destination shall make publicly available by appropriate means information on notifications of shipments they have consented or objected to, as well as on shipments of waste subject to the general information requirements, where such information is not confidential under national or Union legislation.~~

The Commission shall publish make the information on notifications of shipments and on shipments of waste subject to the general information requirements contained in Annex XIa publicly available via its website and update it on a monthly basis. The Commission shall for that purpose extract the relevant data from the central system as referred to in Article 26.

Recital 28
L38

With a view to providing transparency contributing to ensure that shipments of waste are carried out pursuant to this regulation and that their **treatment of the waste** management at **its** destination is performed in an environmentally sound manner, ~~public access to~~ information concerning shipments of waste should be **published** ~~facilitated~~. In that regard, the Commission should be required to publish and regularly update certain **non-confidential** data on notifications of shipments that have been consented or objected to by the competent authorities, as well as on shipments of waste subject to the general information requirements of this Regulation. For this purpose, the Commission should use, to the extent possible, the electronic system for the exchange of data on waste shipments. The publication of such information by the Commission should be without prejudice to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention)^[1] and Directive 2003/4/EC of the European Parliament and of the Council^[2] and ~~the obligations of competent authorities~~ **national legislation** of Member

States in this field, and any further requests **to competent authorities** on access to other information concerning waste shipments should be addressed in accordance with that legislation.

[1] OJ L 124, 17.5.2005, p. 4.

[2] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32.

Annex XIa new

Table 1: Information on waste shipments subject to Article 4(1) or 4(2)

Notification number	Consent/ Objection ⁽¹⁾ or Consent withdrawn	Waste identification		Quantities covered by the consent ⁽²⁾ approved (metric tonnes (Mg))	Quantities shipped ⁽⁴⁾ (metric tonnes (Mg))	Country of dispatch ⁽⁵⁾	Country of destination ⁽⁵⁾	Name of the treatment facility at destination ⁽⁶⁾	Disposal or recovery operation ⁽⁷⁾ , as relevant
		Basel or OECD Code or EU48 ⁽²⁾	EU list of wastes Code(s)						

(1) In case of objection, the columns on the quantity are left blank.

(2) If applicable.

(3) Quantity received by the facility according to block 18 of the movement document.

(4) Data in this column were extracted from the central system mentioned in Article 26 and were not validated by the concerned competent authorities. They reflect the state of play on the date of extraction and will be updated on a monthly basis. They may not represent the final updated quantity on the day that the present overview is consulted.

(5) Use 2 digits ISO codes.

(6) The name of the facility shall be published, unless one of the competent authorities involved in the procedure of prior written notification and consent considers that this name **is confidential and therefore** shall not be disclosed, in accordance with ~~the Aarhus Convention, Union Directive 2003/4/EC~~ or national laws. That competent authority shall provide this information in the systems as referred to in Article 26.

(7) Including its R or D code as referred to in Annex II of Directive 2008/98/EC.

Table 2: Information on waste shipments subject to Article 4(3) or 4(4)

Waste identification		Quantities shipped ⁽²⁾⁽³⁾ (metric tonnes (Mg))	Country of dispatch ⁽⁴⁾	Country of destination ⁽⁴⁾	Name of the facility at destination ⁽⁵⁾	Recovery operation ⁽⁶⁾ , as relevant	Date of signature of the Annex VII document by the person who arranges the shipment
Basel or OECD Code or EU301148 ⁽¹⁾	EU list of wastes Code(s)						

(1) If applicable.

(2) Quantity received by the facility according to block 14 of the Annex VII document.

(3) Data in this column were extracted from the central system mentioned in Article 26 and were not validated by the concerned competent authorities.

(4) Use 2 digits ISO codes.

(5) The name of the facility shall be published, unless the person who arranges the shipment or the facility concerned considers that this name **is confidential and therefore** shall not be disclosed, in accordance with **Union EU** or national legislation. The person who arranges the shipment shall provide this information in the systems as referred to in Article 26.

(6) Including its R code as referred to in Annex II of Directive 2008/98/EC.

Art. 75(7) **(7) The Commission is empowered to adopt delegated acts in accordance with Article 76 to amend Annex XIa as regards the information contained in that Annex, based on experiences gained during implementation.**
(new)

D. Electronic submission and exchange of information - Article 26 [Art. 80, L924] – **We support the proposed compromise text**

In the interests of compromise, while deleting Parliament's amendments in Art 26(2), L458, Art 26(2c), L459b and Art 26(3) L462a, the Commission proposes to add the following text in yellow to the review clause of Article 80.

Art. 80, L924 By 31 December 2035, the Commission shall, taking into account, inter alia, the reports drawn up in accordance with Article 69, and the review referred to in Article 59(5), carry out a review of this Regulation and submit a report on the results thereof to the European Parliament and to the Council, accompanied, if the Commission deems it appropriate, by a legislative proposal.

The Commission shall, during its review and as a part of its report, assess in particular the efficiency of the procedure of prior written notification and consent laid down in Chapter 1 of Title II, and notably the related timelines inter alia by analyzing elements such as the amount of objections and consents, and the time between the submission of and a decision taken on a notification. The Commission may use data stored in the systems referred to in Article 26 for this purpose.

E. Obligations on exporters [Art. 43; Annex X, Part A; Recital 39, L49; Recital 39a, L49a] – **We support the proposed compromise text**

On the basis of the comments received from Member States, the Presidency and the Commission are proposing a new compromise text which also retains some other important elements for the Parliament.

Article 43
Obligations on exporters

1. A ~~natural~~ **notifier** or legal person **who arranges a shipment** shall only export waste from the Union if it can demonstrate that the facilities which are to receive the waste in the country of destination will manage it in an environmentally sound manner as referred to in Article 56.

31a. A natural ~~notifier~~ or legal person ~~who arranges a shipment~~ shall not export waste to a facility which does not comply with those ~~the~~ criteria laid down in Part B of Annex X.

2. In order to fulfil the obligation referred to in paragraph 1, a ~~natural~~ **notifier** or legal person **who arranges a shipment** intending to export waste from the Union shall ensure that the facilities which will manage the waste in the country of destination have been subject to an audit ~~either by commissioning an audit or making use of an audit made available in accordance with paragraph 5.~~

This audit shall be carried out by a third party which shall ~~(a)~~ be independent from the notifier or person who arranges the shipment as well as from the audited facility **and**

~~(b) be accredited third party with by a national official body either in the Union or in the country where the audit takes place as being compliant with Union or internationally recognised standards which are relevant for the conduct of audits as defined in this Article, such as ISO standard 19011:2018 or ISO/IEC standard 17020:2012; and (c) have appropriate qualifications in the area~~^s of audits and waste treatment.

When commissioning an audit, a notifier or a person who arranges the shipment shall verify that the third party:

~~complies with the detailed requirements for the third parties conducting audits are~~ laid down in Part A of Annex X; **and**

~~has been authorised or accredited by a national official body to perform audits as defined in this Article.~~

3. The audit referred to in paragraph 2 shall **include both physical and documentary checks and shall** verify compliance of the facility concerned with the criteria laid down in **Part B** of Annex X.

~~3a. A natural ~~notifier~~ or legal person ~~who arranges a shipment~~ shall not export waste to a facility which does not comply with those ~~the~~ criteria laid down in Part B of Annex X.~~

4. A ~~natural~~ **notifier** or legal person **who arranges a shipment** intending to export waste shall ensure, **prior to exporting waste**, that the facility which will manage the waste in the country of destination has been subject to an audit referred to in paragraph 2 ~~prior to exporting waste which was carried out no longer than two years prior to exporting waste to the facility~~

concerned and ~~that the audit is repeated at regular intervals, following a risk-based approach, with a minimum frequency of every three years after the first audit.~~ **which has demonstrated compliance of the facility with the criteria in Part B of Annex X.**

With a view to fulfilling this obligation, a notifier or a person who arranges the shipment shall either:

- (a) **commission an audit in accordance with this Article,**
- (b) **acquire the report of an audit commissioned in accordance with this Article by another notifier or person who arranges the shipment, which was made available in accordance with paragraph 5, after verifying that the audit had been conducted in accordance with paragraphs 2 and 3 and demonstrated compliance of the facility with the criteria laid down in Part B of Annex X, or**
- (c) **acquire the report of an audit commissioned in accordance with this Article by the facility itself, which was made available in accordance with paragraph 5, after verifying that the audit had been conducted in accordance with paragraphs 2 and 3 and demonstrated compliance of the facility with the criteria laid down in Part B of Annex X.**

A ~~natural~~ **notifier** or ~~legal~~ **person who arranges a shipment** ~~exporting waste from the Union~~ shall also ~~carry out~~ **commission** an ad-hoc audit without delay in case it receives ~~plausible~~ **reliable** information that a facility no longer complies with the criteria laid down in **Part B of Annex X.** **In case an ad-hoc audit demonstrates that a facility no longer complies with the criteria laid down in Part B of Annex X, the notifier or the person who arranges the shipment shall immediately stop the export of waste to that facility and inform the competent authorities of dispatch concerned.**

5. A ~~natural~~ **notifier** or ~~legal~~ **person who arranges the shipment** that has commissioned ~~or carried out~~ an audit for a given facility in accordance with paragraph 2 shall ensure that such audit be made available to other ~~natural or legal person~~ **notifiers or persons who arrange a shipment** intending to export waste to the facility in question, under fair commercial conditions.

5a. A notifier or a person who arranges a shipment shall notify the Commission of audits they have commissioned in accordance with paragraphs 2 and 4, and which have demonstrated compliance of a facility with the criteria laid down in Part B of Annex X. The notification shall contain the following information:

- (a) **name and contact details of the facility that has been subject to an audit;**
- (b) **name and contact details of the notifier or the person who arranges the shipment that has commissioned the audit;**
- (c) **name and contact details of the third party that has carried out the audit;**
- (d) **the date of the audit;**

(e) the types of wastes, as listed in Annexes III, IIIA, IIIB or IV or in the list of waste referred to in Article 7 of Directive 2008/98/EC;

(f) the recovery operations (R-codes), as referred to in Annex II of Directive 2008/98/EC.

A notifier or a person who arranges a shipment may notify the Commission of an audit commissioned by the audited facility itself, provided that the notifier or the person who arranges a shipment has verified that the audit had been conducted in accordance with paragraphs 2 and 3 and demonstrated compliance of the facility with the criteria laid down in Part B of Annex X.

5b. The Commission shall establish and keep up to date a register with information on facilities received in accordance with paragraph 5a. The Commission shall make the information in the register publicly available.

6. Upon request by a competent authority or an authority involved in inspections, a ~~natural~~ **notifier** or ~~legal~~ **person who arranges a shipment** shall provide documentary evidence that audits as referred to in paragraph 2 have been carried out in all facilities to which they are exporting the waste in question. Such documentary evidence shall be provided in a language acceptable to the ~~competent~~ authorities concerned.

7. A ~~natural~~ **notifier** or ~~legal~~ **person who arranges a shipment** exporting waste outside the Union shall on a yearly basis make information on how they comply with their obligations under this Article publicly available by electronic means.

8. Where an international agreement between the Union and a third country to which the OECD Decision applies recognises that the facilities in that third country will manage waste in an environmentally sound manner, **as referred to in Article 56 and** in accordance with the criteria laid down in **Part B of Annex X**, ~~natural and legal~~ **notifiers or persons who arrange shipments** which intend to export waste to that third country shall be exempted from the obligation in paragraphs 2 to **5a and 6**.

A notifier or a person who arranges a shipment exporting waste from the Union to a facility in a third country with which the Union has concluded an international agreement shall carry out ad-hoc audit without delay in the event it receives reliable information that a facility no longer complies with the criteria laid down in Part B of Annex X. The notifier or person who arranges a shipment shall in such a case notify the competent authorities of dispatch of that reliable information as well as its plans to carry out an ad-hoc audit.

In case an ad-hoc audit demonstrates that a facility no longer complies with the criteria laid down in Part B of Annex X, the notifier or the person who arranges the shipment shall immediately stop the export of waste to that facility and inform the competent authorities of dispatch concerned.

~~9. Upon request by a competent authority or an authority involved in inspections, a natural or legal person that is exempted pursuant to paragraph 8, shall provide documentary evidence of~~

the relevant international agreement as mentioned in that paragraph in a language acceptable to the competent authorities concerned.

9. The Commission shall make the relevant international agreements referred to in paragraph 8 publicly available on its website.

9a. The Commission may adopt guidelines with regard to the application of this Article.

ANNEX X

PART A new

DETAILED REQUIREMENTS FOR THIRD PARTIES CONDUCTING AUDITS

1. A third party conducting audits in accordance with Article 43 **is shall be considered independent from the notifier or person who arranges the shipment as well as from the audited facility if it is documented that:**

- (a) **it is not dependent from the notifier or person who arranges the shipment as well as from the audited facility, and in particular** it is not a part of **or under control of** these entities;
- (b) it has and implements procedures guaranteeing its impartiality, including:
 - (i) assessment of risks of its impartiality on an ongoing basis;
 - (ii) identification, elimination and mitigation of risks to impartiality resulting from financial, commercial and other types of pressure;
 - (iii) assessment of risk of its impartiality resulting from relationships of its personnel;
- (c) it is structured and managed in a way ensuring its independence and impartially, including:
 - (i) it is clearly identifiable within the legal entity, if the legal entity conducts also activities not related to inspections;
 - (ii) it has reporting rules on the performed audit activity;
 - (iii) its personnel has clearly identifiable responsibilities with respect to conducting audits.

2. A third party conducting audits in accordance with Article 43 shall be considered to have appropriate qualifications in the area of audits and waste treatment if **it has a sufficient number of qualified personnel, directly or via subcontracting, that is regularly trained and if** its personnel involved in conducting such audits has documented professional experience in **two of** the following areas:

- (a) conducting audits of facilities treating waste;
- (b) waste **management treatment** operations;
- (c) environmental and occupational health and safety management systems.

3. In order to demonstrate compliance with the criteria referred to in paragraphs 1 and 2, a third party conducting audits ~~may~~ ~~could~~ refer to its certification with Union or internationally recognised standards relevant for the conduct of audits as defined in Article 43, such as ISO standard 19011:2018 or ISO/IEC standard 17020:2012.

Recital 39, L49 The necessary steps should be taken to ensure that, in accordance with Directive 2008/98/EC and other Union legislation on waste, waste shipped within the Union and waste imported into the Union is managed, throughout the period of shipment and including recovery or disposal in the country of destination, without endangering human health and ~~without using processes or methods which could harm~~ the environment. It is also necessary to ensure that waste exported from the Union is managed in an environmentally sound manner throughout the period of shipment and including recovery or disposal in the third country of destination. To this end, an obligation should be introduced for exporters of waste to ensure that the facility which receives the waste in **the a** third country of destination is made subject to an ~~independent~~ ~~third party~~ audit **by an independent and accredited third party with appropriate qualifications**, prior to exporting waste to the facility in question. The purpose of this audit is to verify compliance of the facility in question with specific criteria laid down in this Regulation, designed to ensure that the waste will be managed in an environmentally sound manner. Where such audit concludes that the criteria laid down in this Regulation ~~are~~ is not fulfilled by the facility in question, the exporter should not be entitled to export waste to this facility. **In order to ensure that audits are conducted in a an professional and impartial manner, it is important to set out criteria on the independence and qualifications of the third party auditors, and to make clear that they should be authorised or accredited by an official public authority to perform these activities. The Commission should lay out specific criteria for accreditation, independency and appropriate qualifications for third party audits in order to ensure uniformity and a high level of quality of third party audits. When establishing such criteria, relevant Union legislation such as Regulation 1221/2009 should be taken into account and relevant international standards, such as ISO 19011, may be recognized as being broadly equivalent with those criteria, if appropriate.** Theis obligation **on audits** should apply with regard to facilities located in all third countries, including those that are member of the OECD. The OECD Decision states that waste exported to another OECD country “shall be destined for recovery operations within a recovery facility which will recover the wastes in an environmentally sound manner according to national laws, regulations and practices to which the facility is subject”. The OECD Decision does not contain any element or criterion specifying how to implement this requirement as regards the “environmentally sound management” of waste. In the absence of common criteria defining the

conditions under which waste ~~shall~~ **is to** be recovered in the relevant facilities, it is necessary to address the risk that waste exported from the EU to countries belonging to the OECD is mismanaged in specific facilities, and hence facilities located in these countries should be subject to the audit requirements foreseen in this Regulation.

Recital
39a, L49a **A register should be established and maintained by the Commission that contains information on facilities that have been subject to an audit. Such a register should provide information that facilitates the preparation of sound shipments by notifiers or persons who arrange a shipment intending to export waste from the Union, but is not intended to demonstrate compliance with conditions and obligations outlined in this Regulation. The register should facilitate for exporters of waste but does not take away the responsibility of the exporter of waste to demonstrate such compliance.**

F. *Obligation on Member States on Exports* [Art. 44(2), L652, L653] – **We support the proposed compromise text**

The Parliament and the Commission in order to make this Article 44(3) full in line with 35(2)(ba), L511a, proposes the following amendment while keeping the deletion of Art. 44(2) as in the Council Mandate.

Art 44(2), *Deleted*
L652

Art 44(3), Where Member States are in possession of **plausible reliable** information,
L653 which indicates that natural or legal persons exporting waste from the Union are not complying with their obligations under Article 43 they shall carry out the necessary verifications.

G. *Environmentally Sound Management - Article 56* [Art. 56(2), L751] – **we are flexible regarding the removal of the term “broadly”. However, we cannot support the addition of the ILO Conventions.**

The Presidency would like to see the views of Member states on the possibility to accept the removal of the term “broadly”, as well as on the addition of the ILO Conventions as reference point for the assessment of environmentally sound management.

H. *Inspection Plans - Article 59* – **We support in principle the Commission's proposed amendments on inspection plans. However, we note that the preparation of the plans poses a number of challenges for competent authorities. It would therefore be very helpful if the Commission were to draw up guidelines for the preparation of inspection plans.**

Following the discussions on the inspection plans at the ITMs, the Commission has proposed the following amendments in order to reflect the approaches taken by both the Parliament and the Council in their mandates.

H.1. Elements that inspection plans should contain [Art. 59(1), L 778; Art. 59(2)(c), L782]

– We support the proposed compromise text

The following amendments would be included while the related articles are maintained as in the Council Mandate: Art. 24(1), L399; Art. 44(2), L652; Art. 58(1), L762; Art. 59(2), L779.

Art. 59(1), second paragraph, L778 Inspection plans shall be based on a risk assessment covering specific waste streams and sources of illegal shipments, the results of previous inspections and considering, where appropriate, intelligence-based data such as data on investigations by police and customs authorities and analyses of criminal activities **as well as reliable information from natural or legal persons on possible illegal shipments, including relevant information related to the management of waste being shipped and information showing that a shipment bears similarities with shipments previously identified as illegal. It shall in particular take into account the need for conducting verifications of whether natural and legal persons exporting waste from the Union comply with the obligations referred to in Article 43.** That risk assessment shall aim, inter alia, to identify the minimum number and frequency of inspections required, including physical checks on establishments, undertakings, brokers, dealers and shipments of waste or on the related recovery or disposal.

Art. 59(2)(c), L782 (c) information on planned inspections, including on **a minimum number of inspections and physical checks to be carried out in each calendar year on establishments, undertakings, brokers, dealers and shipments of waste or on the related recovery or disposal, identified in accordance with the risk assessment referred to in paragraph 1;**

H.2. Review of the inspection plans notified by the Member States [Art. 59(5), L 789] – We support the proposed compromise text

This addition includes part of the Parliament amendment in this line.

Art. 59(5), L789 5. The Commission shall review the inspection plans notified by the Member States in accordance with paragraph 4 and, if appropriate, draw up reports, based on the review of these plans, on the implementation of this Article. Such reports may include, inter alia, recommendations on priorities of inspections and on enforcement cooperation and coordination between the relevant authorities involved in inspections. Such reports may also be presented, where

appropriate, in the meetings of the waste shipment enforcement group established under Article 63 **and shall be made available to the European Parliament and the Council.**

H.3. Deletion of lines 786a and 786b – We support the deletion of the lines 786a and 786b.

Also, L786a and L786b would be deleted.

I. Penalties [Article 60, L790-807a]

We do not support the compromise proposals on Article 60. We ask the Presidency to make every effort to stick as close as possible to the General Approach.

Lithuania remains of the opinion that the setting of penalties is a national competence of Member States. The proposed amendments to Article 60 are incompatible with the Lithuanian legal system.

The system of administrative sanctions in Lithuania is common to all offences, not just environmental ones. Administrative sanctions are imposed in accordance with the Code of Administrative Offences. With the adoption of the Waste Shipment Regulation, we should amend the Code of Administrative Offences. This means that changes to the Waste Shipment Regulation will affect all areas, not just the environment.

We understand that concessions will have to be made in order to reach an agreement with Parliament. However, we note that until now, the standard language used in legislation on penalties has been that penalties must be effective, proportionate and dissuasive. The General Approach adds additional harmonizing elements, which are already concessions.

We disagree with the argument that the compromise proposals use language already agreed in other legislation. The negotiations on the Industrial Emissions Directive are not yet over – nothing is agreed, until everything is agreed.

At the WPE meeting on 19 October, the Council's Legal Service pointed out that similar provisions are used in Article 18 of Regulation 2021/784. Unfortunately, Lithuania is the subject of an EU infringement procedure for failure to transpose Article 18 of Regulation 2021/784 on penalties into national law. We believe that if we have made a mistake and adopted unimplementable provisions, we should acknowledge this instead of repeating them in other legislation.

As regards the specific provisions of the compromise proposal, we cannot accept line 794 and the phrase "the degree of the fault". It is not clear how this should be implemented in practice – by what methodology, in what units the degree of fault can be measured. It seems that there should be some kind of scale by which to measure high or low fault. Such uncertainties undoubtedly lead to endless litigation.

We also disagree with line 795 and the linking of penalties to total turnover or annual income.

We do not agree with the deletion of the phrase "where relevant" in line 803.

At the last ITMs, the Parliament showed their concerns about the number of deletions in the Council mandate in Article 60. The Presidency explained that the amendments were in line with the IED mandate which is currently under negotiation with Parliament.

As a possible compromise solution and, while maintaining the expression “as applicable” in Art. 60(2), L792, the Presidency proposes to reinsert some of the deleted paragraphs using already agreed language of other legislative files. The possible compromise solutions are contained in the table below.

Commission Proposal		Council Mandate	Possible compromise text
Article 60			
790	Article 60 Penalties	Article 60 Penalties	Article 60 Penalties
Article 60(1)			
791	1. Member States shall lay down the rules on administrative penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.	1. <u>Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council¹</u> , Member States shall lay down the rules on administrative penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.	1. <u>Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council¹</u> , Member States shall lay down the rules on administrative penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.

		<u>1. Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law(OJ L 328, 6.12.2008, p. 28).</u>	<u>1. Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law(OJ L 328, 6.12.2008, p. 28).</u> Text Origin: Council Mandate
Article 60(2)			
792	2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following criteria:	2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States <u>shall Member States shall ensure that the penalties established pursuant to this Article</u> give due regard to the following, <u>as applicable</u> criteria:	2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States <u>shall Member States shall ensure that the penalties established pursuant to this Article</u> give due regard to the following, <u>as applicable</u> criteria:
Article 60(2), point (a)			
793	(a) the nature, gravity and duration of the infringement;	(a) the nature, gravity and duration <u>extent</u> of the infringement;	(a) the nature, gravity and duration <u>extent</u> of the infringement;
Article 60(2), point (b)			
794	(b) where appropriate, the intentional or negligent character of the infringement;	deleted	(b) where appropriate, the intentional or negligent character of the infringement; <u>the degree of the fault;</u>
Article 60(2), point (c)			
795	(c) the financial strength of the natural or legal person	deleted	(c) the financial strength <u>situation</u> of the natural or

	held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;		legal person held responsible [, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible];
<i>Article 60(2), point (d)</i>			
796	(d) the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as they can be determined;	<i>deleted</i>	(d) the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as they can be determined; (The inclusion of this element would imply to keep Art. 60(3)(b), L805 on confiscation, deleted as in Council Mandate)
<i>Article 60(2), point (e)</i>			
797	(e) the environmental damage caused by the infringement, insofar as it can be determined;	(e) the environmental damage caused by the infringement, insofar as it can be determined;	(e) the environmental damage caused by the infringement, insofar as it can be determined;
<i>Article 60(2), point (f)</i>			
798	(f) any action taken by the natural or legal person held responsible to mitigate or remedy the damage caused;	<i>deleted</i>	(f) any action taken by the natural or legal person held responsible to mitigate or remedy the damage caused;
<i>Article 60(2), point (g)</i>			
799	(g) the level of cooperation of the natural or legal person held responsible with the competent authority;	<i>deleted</i>	<i>deleted</i>
<i>Article 60(2), point (h)</i>			

800	(h) previous infringements by the natural or legal person held responsible;	(h) previous infringements by the natural or legal person held responsible <u>the repetitive or singular character of the infringement</u> ;	(h) previous infringements by the natural or legal person held responsible <u>the repetitive or singular character of the infringement</u> ;
Article 60(2), point (i)			
801	(i) any action aiming to circumvent or obstruct administrative controls and	<i>deleted</i>	<i>deleted</i>
Article 60(2), point (j)			
802	(j) any other aggravating or mitigating factor applicable to the circumstances of the case.	<i>deleted</i>	(j) any other aggravating or mitigating factor applicable to the circumstances of the case.
Article 60(3)			
803	3. The Member States shall at least be able to impose the following penalties in case of infringements of this Regulation:	3. The Member States shall at least be able to impose the following penalties in case of infringements of this Regulation, <u>where relevant</u> :	3. The Member States shall at least be able to impose the following penalties in case of infringements of this Regulation, where relevant :
Article 60(3), point (a)			
804	(a) fines;	(a) fines;	(a) fines;
Article 60(3), point (b)			
805	(b) confiscation of revenues gained by the natural or legal person from a transaction related to the infringement;	<i>deleted</i>	<i>deleted</i> (The deletion of this element would imply to reinsert Art. 60(2)(d), L796 on the economic benefits derived from the infringement as in Commision proposal)
Article 60(3), point (c)			

806	(c) suspension or revocation of the authorisation to carry out activities related to management and shipment of waste insofar as these activities fall under the scope of this Regulation;	(c) <u>time-limited</u> suspension or revocation of the authorisation to carry out activities related to management and shipment of waste insofar as these activities fall under the scope of this Regulation;	(c) <u>revocation or time-limited</u> suspension or revocation of the authorisation to carry out activities related to management and shipment of waste insofar as these activities fall under the scope of this Regulation;
Article 60(3), point (d)			
807	(d) exclusion from public procurement procedures.	(d) <u>time-limited</u> exclusion from public procurement procedures.	(d) <u>time-limited</u> exclusion from public procurement procedures.
Article 60(4)			
807a		<u>4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.</u>	<u>4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.</u>

J. Debriefing Plastic Waste Export Ban [Art. 37(2), L 555; Art. 41(2)(ca), L610a; Art. 80(a), L924a] – We are sceptical about Parliament's proposal on the plastic waste export ban. We believe that the measures in the Commission's initial proposal are sufficient to address the environmental consequences of the export of plastic waste from the EU to third countries. However, for the sake of compromise, we can agree with the review clause proposed by the Commission and the possible plastic waste export ban in the future.

The Presidency will give a briefing on the last discussion on the plastic waste export ban. Also, the Commission has worked on an intermediate solution to further strengthen the current proposal on monitoring of plastic and a review clause to consider a possible plastic waste export ban in the future. The Parliament has already signalled that this solution would not be accepted as a compromise.

Art. 38(3)(e), (new) **(e) in case of a request relating to plastic waste, it has adopted requirements specifically applying to plastic waste, designed to ensure that such waste will be recycled in an environmentally sound manner**

(The content of this new subparagraph should be reflected in Annex VIII.)	and that residual waste generated through the recycling process will be managed in an environmentally sound manner, including through a prohibition of open burning or dumping of such waste. Information shall be provided on the measures taken to avoid that the import of plastic waste from the Union undermines the environmentally sound management of plastic waste generated domestically. Information shall also be provided showing that specific enforcement and inspections of shipments of plastic waste and facilities managing such waste are carried out at regular intervals to implement these requirements and avoid pollution to air, soil, water or the marine environment linked to the mismanagement of plastic waste.
Art. 69(4), (new)	4. Within 60 months of the entry into force of this Regulation, the Commission shall draw up a report on the effectiveness of the provisions contained in Articles 36 to 44 in addressing the environmental or human health damages linked to the export of plastic waste outside the Union. The report shall in particular assess if the implementation of the provisions contained in Articles 36 to 44 has contributed to improving the management of plastic waste in countries where such waste has been exported from the Union. It shall take into consideration information and elements provided by Member States involved in export of plastic waste, by the competent authorities of the countries of import, as well as by economic operators and civil society organisations. The report shall also provide information on the evolution of the capacity of waste operators in the Union to manage in an environmentally sound manner plastic waste generated in the Member States and imported into the Union.
Art. 80, L924 (new added text in italics):	By 31 December 2035, the Commission shall, taking into account, inter alia, the reports drawn up in accordance with Article 69, and the review referred to in Article 59(5), carry out a review of this Regulation and submit a report on the results thereof to the European Parliament and to the Council, accompanied, if the Commission deems it appropriate, by a legislative proposal. <u>The Commission shall, during its review and as a part of its report, assess in particular the efficiency of the procedure of prior written notification and consent laid down in Chapter 1 of Title II, and notably the related timelines <i>inter alia</i> by analyzing elements such as the amount of objections and consents, and the time between the submission of and a decision taken on a notification. If the report referred to in Article 69(5) shows that the implementation of Articles 36 to 44 has not been effective in addressing the damages on the environment or human health linked to the export of plastic waste</u>

outside the Union, the Commission shall present without undue delay a legislative proposal to amend the provisions in this Regulation pertaining to the export of waste, including, where appropriate, the adoption of stricter conditions on the export of plastic waste to third countries such as a prohibition to export such waste from the Union. The Commission may use data stored in the systems referred to in Article 26 for ~~this purpose~~ these purposes.
