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## **MEETING DOCUMENT**

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	Waste Shipments Regulation: WPE on 6 March 2023 - Presidency steering note

With a view to the WPE meeting on 6 March 2023, delegations will find attached a steering note including a legal text proposal by the Presidency.

# Working party on the Environment

## Presidency steering note for WPE 6 March 2023

### Regulation on Shipments of Waste

WPE on 6 March 2023 will continue the examination of the revised Waste Shipment Regulation. The discussions will be focused on **Title IV** (Exports from the Union to third countries), **Title V** (Imports into the Union from third countries), **Title VI** (Transit through the Union from and to third countries), and **Title VII** (Environmentally sound management and enforcement), as well as **recitals** and **Annexes** related to these Titles.

The discussions will be structured into three blocks, as outlined below.

### 1. Title IV (Exports from the Union to third countries)

Title IV was discussed at the meetings of the WPE on 28 March 2022 and 10 January 2023. During these sessions as well as in written comments submitted after the meetings, several questions were raised, and clarification was sought from the Commission on certain aspects of the proposal.

At the WPE meeting on 10 January, the Commission provided clarifications of the proposals to establish a list of non-OECD countries to which exports of non-hazardous waste from the Union for recovery would be authorised (Articles 37-40), and to oblige exporters to demonstrate that the facilities which are to receive the waste in a country of destination outside the Union will manage it in an environmentally sound manner as referred to in Article 56 (Article 43). The proposed safeguard procedure concerning exports of waste for recovery to which the OECD Decision applies was also discussed (Article 42).

Based on these discussions, as well as written proposals provided by Member States in the follow-up to the WPE meeting on 10 January, the Presidency proposes amendments and clarifications to Articles 36-39 and 41-43 as laid out in the Annex. The Presidency invites Member States to share their view on the text as it is now and if delegations can support moving forward as proposed, with particular focus on the following key issues:

#### **a. Exports to non-OECD countries and types of waste included (Article 36-37)**

In Article 37, it has seemed unclear to many Member States exactly which categories of waste would be covered by the general export prohibitions in relation to non-OECD countries, in particular as regards so called “unlisted waste”. The Presidency proposes amendments, building on suggestions by Member States, that aim to clarify this.

Wastes not listed in Annex IX to the Basel Convention would be seen as “unlisted” and be subject to the PIC procedure. In addition, amendments are proposed to clarify that certain wastes cannot be exempted from the export prohibition in Article 37. The Presidency also proposes to add restrictions on export of waste for interim treatments, building on proposals by Member States.

#### **b. Safeguards procedure (Article 42)**

There have been differing views on the monitoring and safeguard procedure (Article 42), to which some Member States have expressed certain objections, while others have proposed improvements and clarifications to the proposed procedure. The Presidency has sought to reconcile these views by making a few amendments, building on text proposals received.

The purpose is to clarify that the procedure would be based on the requirement to ensure environmentally sound management in line with Article 56. In the same time a more prominent role is given to Member States in the application of Article 42 by specifying that prohibition of export of the waste in question should be adopted through an implementing act rather than a delegated act.

#### **c. Obligations on exporters (Article 43) and Member states (Article 44)**

The Presidency is aware that Member States have expressed divergent views on the obligations on exporters (Article 43) and on Member States of export (Article 44). The Presidency proposes a number of amendments to Article 43, that would to some extent release the burden on the actors involved, by facilitating access to information on audits, which would also reduce duplication of auditing efforts, including through the establishment of a register on facilities that have been subject to audits. There have been some different views on what information should be contained in such a register, and the amendments in Article 43 are proposed to find a good balance between these views.

On Article 44, the Presidency has noted that several Member States are concerned about the burden on Member States and also that verification of compliance with Article 43 relate to enforcement and to some extent is covered by Title VII. The Presidency therefore proposes amendments aiming to avoid overlap with Title VII, while easing the burden on Member States.

***Communication with third countries regarding the new requirements in title IV***

As requested by some Member States, the Presidency will circulate copies of the communication that has taken place between the Commission and third country OECD members, within the framework of WTO/TBT.

**2. Title V (Imports into the Union from third countries) and Title VI (Transit through the Union from and to third countries)**

Titles V and VI were discussed during the French Presidency, at the meeting of the WPE on 12 April 2022, and recently at the meeting on 10 January 2023. Several suggestions for improvement were received in the context of these meetings.

In addition, at the meeting of the WPE on 24 January 2023, approval of a financial guarantee for waste transports transiting the Union from and to third countries was discussed in the context of Title II, and some Member States suggested that this proposed text could be moved to Title VI (Articles 54 and 55).

The Presidency has proposed amendments to the text in Title V and VI, based on these suggestions (see Annex).

**3. Title VII (Environmentally sound management and enforcement)**

Title VII was discussed in its entirety during the French Presidency, at the meeting of the WPE on 12 April 2022. On 27 April 2022, the French Presidency organised an informal video conference on Section 3 Actions performed by the Commission, where Member States were given an opportunity to ask the Commission and its Anti-fraud office (OLAF) for clarification of the provisions proposed.

Chapter 2 on Enforcement was also discussed during the Czech Presidency, at the WPE meeting on 29 November 2022. At this occasion, discussions focused to a large extent on provisions related to penalties (Article 60), the proposed Waste Shipment Enforcement Group (Article 63) and the need for continued exchange of information between Member States on implementation issues, as well as the Commission's powers in relation to investigations and inspections (Articles 64-65).

The Commission has also provided two non papers on the proposed provisions regarding inspections by the Commission (WK 5433/2022 and WK 15696/2022).

Based on the discussions, Member States' written proposals, as well as the Commission's non papers, the Presidency has prepared draft compromise text for discussion as laid out in the Annex. The Presidency invites delegations to express their view of these proposals and of whether the way forward can be supported, in particular when it comes to the provisions on penalties, enforcement cooperation and actions by the Commission. The proposed amendments are described further below.

#### **a. Penalties (Article 60)**

As requested by some Member States, the Presidency has intended to strive for consistency between the legislative acts currently discussed in WPE. In this regard, the Presidency has proposed some amendments to Article 60, which now is similar, but not identical, to the proposed article 79 in IED and article 31 in the Regulation on Fluorinated gases.

Several Member States have raised questions relating to the interpretation of Article 60 and, in particular, the scope of the Article and how this article relates to the Environmental Crime Directive. The Presidency is of the view that the following is applicable to the interpretation of Article 60.

- It is now clarified in the beginning of article 60.1 that the WSR does not affect the Environmental Crime Directive ("Without prejudice to the obligations of Member states under Directive 2008/99/EC..."). This means that the WSR and the Environmental Crime Directive shall apply in parallel. The same sentence is included in IED, article 79.1.

- The wording “penalties” in Article 60 does not specify which kind of penalties need to be adopted. Therefore, Member States remain free to adopt or maintain stricter rules for infringements of the WSR.
- The penalties shall according to article 60.1 be effective, proportional and dissuasive. As a minimum, the Member States, shall be able to impose fines, suspension of authorisations and exclusion of public procurements (article 60.3). When determining the type and level of the penalties Member States shall, among other things, give due regard to the intentional or negligent character of the infringement (article 60.2). This means that Member States’ authorities can impose penalties regardless of the degree of fault of the offender, including in cases where the offender has acted without negligence or wilful misconduct, and that the degree of fault, or the intentionality, if any, on the part of the offender shall be taken into account when determining the level of the penalty.
- Consequently, the criminal law system and the administrative law system shall work in parallel for the infringements of the WSR. This would mean that if someone is responsible for an infringement of the Regulation, he/she should always be subject to penalties, either administrative or criminal or both. Furthermore, the Member States must set up a system which ensures that the principle *Ne bis in idem* (a criminal law principle under which a person cannot be punished twice for the same facts) is respected when a penalty is imposed.

**b. The Waste Shipment Enforcement Group (Article 63)**

As regards the proposed Waste Shipment Enforcement Group (Article 63), the Presidency notes that some Member States have expressed a wish to expand the scope of the group, as a way to maintain the current Correspondents’ group or a similar body, with a purpose of collaboration between Member States on implementation issues.

However, based on the previous discussions, the explanations from the Commission and the written comment from MS, the Presidency proposes to keep the main focus for the Enforcement group on enforcement and the fight against illegal waste shipments. The matter of collaboration on implementation issues, the correspondents’ group and more generally, will be dealt with in Title VIII, in the context of Article 72 and in relation to the comitology procedure (Articles 76 or 77).

**c. Actions performed by the Commission (Articles 64-68)**

According to the discussions and written comments on Section 3 of Chapter 2 (Actions performed by the Commission), the Presidency is of the view that there is a general support from Member states for the objective to strengthen the enforcement of the regulation and to impede illegal shipments of waste, including that the Commission should have a role in supporting and complementing the enforcement activities of the Member states and contribute to a uniform implementation of the regulation.

In order to clarify and in some sense limit the empowerment to the Commission the Presidency proposes several amendments to the Articles 64-68, as laid out in the Annex. These amendments build on the explanations provided by the Commission in its non papers (WK 5433/2022 and WK 15696/2022), in particular on the legal basis for entrusting certain tasks to OLAF and on the explanations on what types of criminal activities that should trigger the Commission's action.

In the text proposal, the Presidency also intends to provide more clear-cut limitations to the Commission's power to act on its own initiative, as proposed in i.a. 65.1bis. Furthermore, in article 64.5, it is proposed that the Commission should take into account the inspections or legal proceedings in progress or already carried out by the authorities of a Member State and ensure not to unduly interfere with such legal proceedings. An amendment is also proposed concerning the procedural guarantees, to ensure a correct legal procedure. This also includes a provision to ensure the power of courts and competent authorities to freely assess the evidential value of reports drawn up by the Commission.

In article 68 there have been some questions on the meaning of the reference to Regulation (EC) No 515/97. The Presidency is of the view that this might need to be clarified and written in a more explicit way and invites Member States to share their views if this is needed and how this can be achieved.

- (34) It is necessary, in order to protect the environment of the countries concerned, to clarify the scope of the prohibition of exports laid down in accordance with the Basel Convention from the Union of any waste destined for disposal in a third country other than an EFTA (European Free Trade Association) country.
- (35) Countries that are Parties to the Agreement on the European Economic Area may adopt the control procedures provided for shipments within the Union. In such cases, shipments between the Union and these countries should be subject to the same rules as shipments within the Union.
- (36) To protect the environment of the countries concerned, it is necessary to clarify the scope of the prohibition of exports of hazardous waste destined for recovery in third countries to which the OECD Decision does not apply, in accordance with the Basel Convention. In particular, it is necessary to clarify the list of waste to which that prohibition applies and to ensure that it also includes the waste listed in Annex II to the Basel Convention, namely waste collected from households, residues from the incineration of household waste and hard-to-recycle plastic waste.

**(36bis) To ensure the control, traceability and environmentally sound management of wastes containing or contaminated with persistent organic pollutants (POPs), such wastes should always be subject to the procedure of prior written notification and consent and also not be allowed for export from the Union to countries that are not members of the OECD, when containing or contaminated with POPs exceeding the concentration limits specified in Annex IV to Regulation (EU) 2019/1021 on persistent organic pollutants<sup>1</sup>.**

- (37) It is necessary to establish strict rules concerning the export for recovery of non-hazardous waste to third countries to which the OECD Decision does not apply, in order to ensure that this waste does not create damages to environment and public health in these countries. Under these rules, export from the Union should be allowed only to countries included in a list drawn up and to be updated by the Commission, when these countries have submitted a request to the Commission stating their willingness to receive certain non-hazardous waste from the Union and demonstrating their ability to manage such waste in an environmentally sound manner, on the basis of criteria laid down in this Regulation. Exports to countries other than those included in that list should be prohibited. To ensure sufficient time for the transition to this new regime, a transitional period of three years after the general date of application of this Regulation should be foreseen.
- (38) Countries to which the OECD decision applies are subject to the rules and recommendations laid down by the OECD on the shipment and management of waste, and have generally higher standards for the management of waste than countries to which the OECD decision does not apply. It is however important that the export from the Union of non-hazardous waste for recovery does not create damages to environment and public health in countries to which the OECD decision applies. It is therefore necessary to establish a mechanism to monitor shipments of non-hazardous waste to such countries. In cases where the export of non-hazardous waste from the Union to the **country concerned has considerably increased within a short period of time and there is a lack of information available demonstrating the ability of the country**

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<sup>1</sup> **Regulation (EU) 2019/1021 of the European Parliament and the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p 45).**



concerned to recover this waste in an environmentally sound manner, the Commission should enter into a dialogue with the country concerned and, if the information is not sufficient to prove that the waste is recovered in an environmentally sound manner, be empowered to suspend such exports.

- (39) 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 third country of destination is made subject to an independent third party audit, 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. This obligation 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 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.

**(39bis) 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 natural or legal persons intending to export waste from the Union, but is not intended to demonstrate compliance with conditions and obligations outlined in this Regulation.**

- (40) Considering the right of each Party to the Basel Convention, pursuant to Article 4(1) thereof, to prohibit the import of hazardous waste or of waste listed in Annex II to that Convention, imports into the Union of waste for disposal should be permitted where the exporting country is a Party to that Convention. Imports into the Union of waste for recovery should be permitted where the exporting country is one to which the OECD Decision applies or is a Party to the Basel Convention. In other cases, imports should be allowed only if the exporting country is bound by a bilateral or multilateral agreement or arrangement compatible with Union legislation and in accordance with Article 11 of the Basel Convention, except when this is not possible during situations of crisis, peacemaking, peacekeeping or war.

- (41) This Regulation should reflect the rules regarding exports and imports of waste to and from the overseas countries and territories laid down in Council Decision 2013/755/EU<sup>1</sup>.
- (42) In the specific cases of shipments taking place within the Union with transit via third countries, specific provisions pertaining to the consent procedure by third countries should apply. It is also necessary to adopt specific provisions pertaining to the procedures applying to the transit of waste through the Union from and to third countries.
- (43) For environmental reasons and in view of the particular status of the Antarctic, this Regulation shall explicitly prohibit the export of waste to this territory.
- (44) To ensure harmonised implementation and enforcement of this Regulation, it is necessary to lay out obligations for Member States to carry out inspections of the shipments of waste. Adequate planning of inspections of shipments of waste is also necessary to establish the capacity needed for inspections and to effectively prevent illegal shipments. Regulation (EC) No 1013/2006 required Member States to ensure that inspection plans for waste shipments be established by 1 January 2017. To facilitate more consistent application of the provisions related to inspection plans and to ensure harmonised approach for inspections across the Union, Member States should notify their inspection plans to the Commission, which should be tasked to review these plans and, where appropriate, issue recommendations for improvements.
- (45) Diverging rules exist in the Member States as regards the power of, and possibility for, authorities involved in inspections in Member States to require evidence to ascertain the legality of shipments. Such evidence could concern, inter alia, whether the substance or object is waste, whether the waste has been correctly classified, and whether the waste will be shipped to facilities managing waste in an environmentally sound manner in accordance with this Regulation. This Regulation should therefore provide the possibility for authorities involved in inspections in Member States to require such evidence. Such evidence may be requested on the basis of general provisions or on a case-by-case basis. Where such evidence is not made available or is considered to be insufficient, the carriage of the substance or object concerned, or the shipment of waste concerned should be considered as an illegal shipment and should be dealt with in accordance with the relevant provisions of this Regulation.
- (46) Member States should lay down rules on ~~administrative~~ penalties applicable to infringements of this Regulation and **should** ensure that those rules are enforced. The penalties provided for should be effective, proportionate and dissuasive. **Member States may lay down rules for administrative as well as criminal penalties for the same infringements. In any case, the imposition of criminal and administrative penalties should not lead to a breach of the right not to be tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem) as interpreted by the Court of Justice.** The evaluation of Regulation (EC) No 1013/2006 found that one of the shortcomings is that national rules on penalties differ significantly across the Union. Therefore, to facilitate more consistent application of penalties, common non-exhaustive criteria should be established for determining the types and levels of penalties to be imposed in case of infringements of this Regulation. These criteria should include, inter alia, the nature and gravity of the infringement and the economic benefits derived from and the environmental damage caused by the infringement, insofar as these can be determined. Furthermore, in addition to the

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<sup>1</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ( ‘Overseas Association Decision’ ); OJ L 344, 19.12.2013, p. 1–118.

administrative penalties required under this Regulation, Member States should ensure that illegal shipment of waste constitutes a criminal offence ~~in serious cases~~, in accordance with the provisions laid down in Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008<sup>1</sup>.

- (47) Experience with the application of Regulation (EC) No 1013/2006 showed that the involvement of multiple actors at the national level creates challenges to coordination and cooperation in relation to enforcement. Therefore, Member States should ensure that all relevant authorities involved in enforcement of this Regulation have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of enforcement policies and activities to address illegal shipments of waste, including for the establishment and implementation of the inspection plans.
- (48) It is necessary for Member States to cooperate, bilaterally and multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments of waste. To further improve coordination and cooperation across the Union, a dedicated enforcement group should be established with the participation of designated representatives of the Member States and of the Commission, as well as representatives of other relevant institutions, bodies, offices, agencies or networks. This enforcement group should meet regularly. It should be a forum, inter alia, for sharing information and intelligence on trends in illegal shipments and for exchanging views on enforcement activities, including best practices.
- (49) To support and complement the enforcement activities of the Member States, the Commission should be empowered to carry out investigative and coordinating actions in respect of illegal shipments, which might have serious adverse effects on human health or the environment. In carrying out these activities, the Commission should act in full respect of procedural guarantees. The Commission may consider, as a matter of its internal organisation, entrusting certain enforcement actions foreseen by this Regulation to the European Anti-Fraud Office (OLAF), which possesses relevant expertise in that regard.
- (50) Member States should provide the Commission with information concerning the implementation of this Regulation, both through the reports submitted to the Secretariat of the Basel Convention and on the basis of a separate questionnaire. The Commission should produce a report every four years on the implementation of this Regulation, based on the information provided by the Member States as well as on other information, gathered in particular through ad hoc reports by the Commission and the European Environment Agency on the shipments of plastic waste and other specific waste streams that are a source of concern.
- (51) Efficient international cooperation regarding control of shipments of waste is instrumental in ensuring that shipments of waste are controlled and monitored on an appropriate level. Information exchange, shared responsibility and cooperative efforts between the Union and its Member States and third countries should be promoted with a view to ensuring sound management of waste.

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~~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).~~

# Title IV

## Exports from the Union to third countries

### Chapter 1

#### Exports of waste for disposal

##### Article 34

##### *Prohibition of exports of waste destined for disposal*

1. Exports from the Union of waste destined for disposal are prohibited.
2. The prohibition in paragraph 1 shall not apply to exports of waste destined for disposal to EFTA countries which are also Parties to the Basel Convention.
3. By way of derogation from paragraph 2, exports of waste destined for disposal to an EFTA country that is a Party to the Basel Convention shall be prohibited:
  - (a) where the EFTA country prohibits imports of such waste;
  - (b) where the conditions laid down in Article 44(2) **11(1)** are not fulfilled;
  - (c) where the competent authority of dispatch has reason to believe that the waste will not be subject to environmentally sound management as referred to in Article 56 in the country of destination.
4. The prohibition **in** paragraph 1 shall not apply to waste that is subject to a take-back obligation pursuant to Articles 22 or 24.

##### Article 35

##### *Procedures for exports of waste destined for disposal to EFTA countries*

1. Where waste is exported from the Union to an EFTA country that is a Party to the Basel Convention and destined for disposal in that country, the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additional provisions set out in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) the notifier shall submit in accordance with Article 26 the notification **and any requested additional request** ~~and the information and documentation in accordance with Article 5(3)~~, and at the same time, provide **these** ~~it~~ by post, **or if accepted by all parties involved, by** fax or email with digital signature, to the **concerned** ~~competent authorities concerned in the countries of destination and transit and destination~~ outside the Union, unless those authorities are connected to ~~the~~ **a** central system referred to in Article 26(2);
  - (b) ~~the notifier shall submit in accordance with Article 26 any additional information and documentation in accordance with Article 5(4)5(5), and at the same time, provide it by post, or if accepted by all parties involved, by fax or email with digital signature, to the competent authorities concerned in the countries of transit and destination outside the Union, unless those authorities are connected to the central system referred to in Article 26(2);~~

**(bbis)the notifier shall provide, annexed to the notification document, documentary evidence that an audit as referred to in Article 43(2) has been**

**carried out in the facility to which waste is being exported, unless the exemption in Article 43(8) applies;**

- (c) the competent authority of dispatch shall inform the competent authorities concerned in the countries of transit and destination outside the Union of any request for information and documentation from its side and of its decision regarding the planned shipment, by post, **or if accepted by all parties involved, by** fax or email with digital signature, unless those competent authorities are connected to ~~the~~ **a** central system referred to in Article 26(2);
- (d) ~~the a~~ competent authority of transit outside the Union shall have 60 days after the date of transmission of its acknowledgement of receipt of the notification to provide, ~~where~~ **if** the country concerned has decided not to require prior written consent and has informed the other Parties to the Basel Convention thereof in accordance with Article 6(4) of that Convention, tacit consent or to give a written consent with or without conditions;
- (e) the competent authority of dispatch in the Union shall take the decision to consent to the shipment as referred to in Article 9 only after having received written consent from the competent authority of destination and, where appropriate, the tacit or written consent of ~~the a~~ competent authority of transit outside the Union, and not earlier than 61 days after the date of transmission of the acknowledgement of receipt of the notification by ~~the a~~ competent authority of transit **outside the Union**, unless the competent authority of dispatch has the written consent of the other competent authorities concerned, in which case it may take the decision as referred to in Article 9 before that time limit.

3. The following additional provisions shall apply:

- (a) ~~the a~~ competent authority of transit in the Union shall ~~send~~ **provide** an acknowledgment of receipt of the notification to the notifier and copies to the other competent authorities concerned; **in case they have no access to a system referred to in Article 26;**
- (b) the competent ~~authorities~~ of dispatch and, where appropriate, the competent authorities of transit in the Union shall ensure that the customs office of export and the customs office of exit are informed of their decisions to consent to the shipment;
- (c) a copy of the movement document shall be provided by the carrier to the customs office of export and the customs office of exit either by post, **or if accepted by all parties involved, by** fax or email with digital signature, or, where the customs office of export has access to it, via the central system referred to in Article 26(2);
- (d) as soon as the waste has left the Union, the customs office of exit shall inform the competent authority of dispatch in the Union that the waste has left the Union;
- (e) where, 42 days after the waste has left the Union, the competent authority of dispatch in the Union has received no information from the facility about receipt of the waste, it shall without delay inform the competent authority of destination thereof;
- (f) the contract referred to in Article 6 shall contain the following terms and conditions:
  - (i) where a facility issues an incorrect certificate of disposal with the consequence that the financial guarantee is released, the consignee shall

bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and from its recovery or disposal in an alternative and environmentally sound manner;

(ii) the facility shall, within three days of receipt of the waste for disposal, send signed copies of the completed movement document, except for the certificate of disposal referred to in point (iii), to the notifier and the competent authorities concerned;

(iii) the facility shall, as soon as possible but no later than 30 days after completion of the disposal and in any case no later than one calendar year after the receipt of the waste under its responsibility, certify that the disposal has been completed and shall send signed copies of the movement document containing that certification to the notifier and to the competent authorities concerned;

(g) the notifier shall, within three working days of receipt of the copies referred to in point (f)(ii) and (f)(iii), make the information contained in those copies electronically available in accordance with Article 26.

4. The shipment may take place only if all the following conditions are fulfilled:

(a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit outside the Union and if the conditions laid down in ~~those decision~~ **that consent or its annexes** have been met;

(b) environmentally sound management of the waste as referred to in Article 56, is ensured.

5. Where waste is exported, it shall be destined for disposal operations within a facility which, under applicable national law, is operating or is authorised to operate in the country of destination.

6. Where a customs office of export or a customs office of exit discovers an illegal shipment, it shall without delay inform the competent authority in the country of the customs office thereof. That competent authority shall:

(a) without delay inform the competent authority of dispatch in the Union of the illegal shipment; and

(b) ensure detention of the waste until the competent authority of dispatch has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained; **and**

**c) without delay communicate the decision of the competent authority of dispatch referred to in (b) to the customs office of exit that discovered the illegal shipment.**

## Chapter 2

### Exports of waste for recovery

#### SECTION 1

#### EXPORTS OF HAZARDOUS AND CERTAIN OTHER WASTE TO COUNTRIES TO WHICH THE OECD DECISION DOES NOT APPLY

##### Article 36

##### *Prohibition of exports of hazardous and certain other wastes*

1. Exports from the Union of the following wastes destined for recovery in countries to which the OECD Decision does not apply are prohibited:
  - (a) wastes listed as hazardous in Part 1 of Annex V to this Regulation;
  - (b) wastes listed as hazardous in the list of waste referred to in Article 7 of Directive 2008/98/EC;
  - (c) wastes **referred to in Article 4(2bis) and wastes** listed in Part 2 of Annex V to this Regulation;
  - (cbis) wastes listed in Annex III or Annex IIIB and mixtures of wastes listed in Annex IIIA that are contaminated by other materials to an extent that increases the risks associated with the waste sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the provisions of Article 7 and Annex III of Directive 2008/98/EC, or prevents the recovery of the waste in an environmentally sound manner;**
  - (cter) wastes or mixtures of wastes containing or contaminated with persistent organic pollutants (POPs) in quantities meeting or exceeding a concentration limit indicated in Annex IV to Regulation (EU) 2019/1021;**
  - (d) hazardous wastes not classified under one single entry in Annex V to this Regulation or in the list of waste referred to in Article 7 of Directive 2008/98/EC;
  - (e) mixtures of hazardous wastes and mixtures of hazardous wastes with non-hazardous wastes not classified under one single entry in Annex V to this Regulation or in the list of waste referred to in Article 7 of Directive 2008/98/EC;
  - (f) wastes that the country of destination has notified as hazardous under Article 3 of the Basel Convention;
  - (g) wastes the import of which has been prohibited by the country of destination;
  - (h) wastes which the competent authority of dispatch has reason to believe will not be managed in an environmentally sound manner as referred to in Article 56, in the country of destination concerned;
  - (i) — waste referred to in Article 4(5).**
2. Paragraph 1 shall not apply to waste that is subject to a take-back obligation pursuant to Articles 22 or 24.
3. Member States may, in exceptional cases, provide, on the basis of documentary evidence provided by the notifier, that a specific hazardous waste listed in Annex V to this Regulation or in the list of waste referred to in Article 7 of Directive 2008/98/EC

is excluded from the export prohibition referred to in paragraph 1, where it does not display any of the properties listed in Annex III to Directive 2008/98/EC, taking into account the criteria and applicable cut-off values and concentration limits for the classification of waste as hazardous as specified in that Annex. Where a hazardous property of a waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in Annex III to Directive 2008/98/EC, the results of the test shall prevail.

4. The fact that waste is not listed as hazardous in Annex V or in the list of waste as referred to in Article 7 of Directive 2008/98/EC, or that it is listed in Part 1, List B of Annex V, shall not preclude, in exceptional cases, characterisation of such waste as hazardous and therefore subject to the export prohibition if it displays any of the properties listed in Annex III to Directive 2008/98/EC, taking into account the criteria and applicable cut-off values and concentration limits for the classification of waste as hazardous, specified therein. Where a hazardous property of a waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in Annex III to Directive 2008/98/EC, the results of the test shall prevail.
5. In the cases referred to in paragraphs 3 and 4, the Member State concerned shall inform the envisaged country of destination prior to taking a decision to consent to planned shipments to that country. Member States shall notify such cases to the Commission before the end of each calendar year. The Commission shall forward that information to all Member States and to the Secretariat of the Basel Convention. On the basis of the information provided, the Commission may make comments and, ~~where appropriate,~~ **is empowered to adopt delegated acts** adapt Annex V to this Regulation in accordance with Article 72 ~~76~~ **to amend Annex V**.

## SECTION 2

### EXPORTS OF NON-HAZARDOUS WASTE TO COUNTRIES TO WHICH THE OECD DECISION DOES NOT APPLY

#### *Article 37*

#### *Prohibition of exports of non-hazardous waste*

1. Exports from the Union of the following wastes destined for recovery in countries to which the OECD Decision does not apply are prohibited:
  - (a) **non-hazardous wastes listed in Annex III or Annex IIIB and mixtures of non-hazardous wastes listed in Annex IIIA;**
  - (b) non-hazardous wastes **and mixtures of non-hazardous wastes** included in the list of waste referred to in Article 7 of Directive 2008/98/EC, when not already listed in Annex III, Annex IIIA or Annex IIIB;
  - (c) **non-hazardous wastes and mixtures of non-hazardous wastes not classified under one single entry in Annex III, IIIA or IIIB or in the list of waste referred to in Article 7 of Directive 2008/98/EC;**
2. Paragraph 1 shall not apply to exports of wastes destined for recovery to a country included in the list of countries established in accordance with Article 38, for the waste specified in that list.

Such export may only take place on the condition that the waste is;

- a)** destined to a facility licensed under the domestic legislation of the country concerned, to undertake recovery operations for that waste;



- b) not destined for interim operations, unless the subsequent non-interim or interim recovery operations will take place in the same country of destination;
- c) not contaminated by other materials to an extent which increases the risks with the waste sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the provisions of Article 7 and Annex III of Directive 2008/98/EC, or prevents the recovery of the waste in an environmentally sound manner; and
- d) not containing or contaminated with persistent organic pollutants (POPs) in quantities meeting or exceeding a concentration limit indicated in Annex IV to Regulation (EU) 2019/1021.

3. Exports allowed in accordance with paragraph 2 shall;

a) for waste listed in Annex IX to the Basel Convention, be subject to the general information requirements laid down in Article 18 or, in case the country concerned so indicates in the request referred to in Article 39, the procedure of prior written notification and consent referred to in Article 35;

b) for non-hazardous wastes and mixtures of non-hazardous wastes not listed in Annex IX to the Basel Convention, be subject to the procedure of prior written notification and consent.

4. In the case of exports in accordance with paragraph 2 subject to the procedure of prior written notification and consent, the procedures referred to in Article 35 shall apply with the following adaptations;

a) Article 4(4) does not apply;

b) when the removal of a country or the removal of certain wastes or mixtures of wastes from the list referred to in Article 38 has entered into force, the competent authority of dispatch shall withdraw their written consent for any notification related to such country or to such wastes or mixtures of wastes.

#### *Article 38*

*Establishment of a list of countries to which exports of non-hazardous waste from the Union for recovery are authorised*

1. The Commission is empowered to adopt an delegated implementing act in accordance with Article 76 to supplement this Regulation by to establishing a list of countries to which the OECD Decision does not apply and to which exports of non-hazardous waste from the Union for recovery are authorised (“list of countries to which exports are authorised”). This list shall include countries which have submitted a request pursuant to Article 39(1) and have demonstrated compliance with the requirements set out in Article 39(3), based on an assessment carried out by the Commission pursuant to Article 40, and have agreed to comply with Article 39(4).

The implementing act referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 77(2).

2. The list referred to in paragraph 1 shall include the following information:

(a) the name of the countries to which export of non-hazardous wastes and mixtures of non-hazardous wastes from the Union for recovery is authorised;

- (b) the specific **non hazardous** waste(s) **and mixtures of non-hazardous wastes** that are authorised for export from the Union to each country referred to in point (a);
- (c) information, such as an internet address, allowing access to a list of facilities which are licensed under the domestic legislation of each country referred to in point (a) to carry out the recovery of the waste referred to in point (b);
- (d) ~~where available,~~ information on any specific control procedure applying under the domestic legislation of each country referred to in point (a) to the import of the waste(s) referred to in point (b), including an indication of whether such import is subject to the procedure of prior written notification and consent referred to in Article 35.

3. The list referred to in paragraph 1 shall be adopted by [*OP Please insert the date 30 months after the date of entry into force of this Regulation*], unless no country submits a request pursuant to Article 39(1) or no country complies with the requirements set out in Article 39(3) at that time.

By [*OP Please insert the date three months after the date of entry into force of this Regulation*], the Commission shall contact all countries to which the OECD Decision does not apply, to provide them with the necessary information on the possibility for those countries to be included in the list of countries to which exports are authorised.

In order to be included in the list of countries to which exports are authorised adopted by [*OP Please insert the date 30 months after the date of entry into force of this Regulation*], the countries to which the OECD Decision does not apply shall submit their request pursuant to Article 39(1) by [*OP Please insert the date 9 months after the date of entry into force of this Regulation*].

4. The Commission shall regularly, and at least every two years following its establishment, update the list of countries to which exports are authorised, in order to:
  - (a) add a country **that complies with the requirements set out in Art 39** ~~whose inclusion is decided in accordance with paragraph 1;~~
  - (b) remove a country which ceases to comply with the requirements set out in Article 39;
  - (c) update the information referred to in paragraph 2, points **(a)**, (b), (c) and (d), based on a request received from the country concerned and, if that request concerns the addition of new waste **or mixtures of waste**, provided that the country concerned has demonstrated compliance with the requirements set out in Article 39 with respect to the new wastes **or mixtures of waste** in question;
  - (d) include or remove any other element relevant to ensure that the list contains accurate and updated information.

5. ~~In the event of any change to the information provided to the Commission under Article 39(3), the countries included in the list referred to in paragraph 1 shall provide an update of the information specified in the form set out in Annex VIII, together with relevant supporting evidence without delay.~~

~~The countries included in the list referred to in paragraph 1 shall in any case, on the fifth year after their initial inclusion, provide to the Commission an update of the information specified in the form set out in Annex VIII, together with relevant supporting evidence.~~

After receiving information and evidence referred to in ~~the first and second subparagraphs of this paragraph~~ **Article 39(4)**, the Commission may request additional information from the country concerned to demonstrate that it continues to comply with the requirements set out in Article 39**(3)**.

6. Where information becomes available which shows in a plausible manner that the requirements set out in Article 39 are no longer fulfilled for a country which is already included in the list referred to in paragraph 1, the Commission shall invite that country to provide its views on that information, within a maximum period of two months from its invitation to provide comments, together with relevant supporting evidence demonstrating continued compliance with those requirements. That period may be extended by an additional period of two months where the country concerned makes a reasoned request for such extension.
7. Where the country concerned does not provide its views and the requested supporting evidence within the time limit referred to in **paragraph 6** ~~the first subparagraph of this paragraph~~, or where the provided evidence is insufficient to demonstrate continued compliance with the requirements set out in Article 39, the Commission shall remove that country from the list without undue delay.
8. The Commission may at any time contact a country included in the list referred to in paragraph 1 to obtain information which is relevant to ensure that this country continues to comply with the requirements set out in Article 39.

#### *Article 39*

##### *Requirements for inclusion in the list of countries to which exports are authorised*

1. Countries to which the OECD Decision does not apply and which intend to receive certain waste **or mixtures of wastes** referred to in Article 37(1) from the Union for recovery shall submit a request to the Commission indicating their willingness to receive ~~that~~ **these specific wastes or mixtures of wastes** and to be included in the list referred to in Article 38. Such request and all related documentation or other communication shall be provided in English language.
2. The request referred to in paragraph 1 shall be submitted using the form set out in Annex VIII and shall contain all the information specified therein.
3. The country making the request shall demonstrate that it has put in place and implements all necessary measures to ensure that the waste concerned will be managed in an environmentally sound manner as referred to in Article 56.

To this end, the country making the request shall demonstrate that:

- (a) it has a comprehensive waste management strategy or plan that covers its entire territory and shows its ability and readiness to ensure the environmentally sound management of waste. That strategy or plan shall include at least the following elements:
  - (i) amount of total waste generated in the country on a yearly basis, as well as the amount of waste(s) covered by the scope of this request (“waste concerned by the request”), and estimations on how these amounts would develop in the next 10 years;
  - (ii) an estimation of the country’s current treatment capacity for waste in general, as well as an estimation of the country’s treatment capacity for the waste(s) concerned by the request, and an evaluation of how these capacities would develop in the next 10 years;

- (iii) the proportion of domestic waste that is separately collected, as well as any objectives and measures to increase this rate in the future;
  - (iv) an indication of the proportion of the domestic waste concerned by the request which is landfilled, as well as any objectives and measures to decrease that proportion in the future;
  - (v) an indication of the proportion of the domestic waste which is recycled, and possible objectives and measures to increase that proportion in the future;
  - (vi) information on the amount of waste which is littered and on measures taken to prevent and clean up litter;
  - (vii) a strategy on how to ensure the environmentally sound management of waste imported into its territory, including the possible impact of such import on the management of waste generated domestically;
  - (viii) information on the methodology used to calculate the data referred to in points (i) to (vi);
- (b) it has a legal framework for waste management in place, which includes at least the following elements:
- (i) permitting or licensing systems for waste treatment facilities;
  - (ii) permitting or licensing systems for transport of waste;
  - (iii) provisions designed to ensure that the residual waste generated through the recovery operation for the wastes concerned by the request is managed in an environmentally sound manner as referred to in Article 56;
  - (iv) adequate pollution controls applying to waste management operations, including emission limits for the protection of air, soil and water and measures to reduce the emissions of greenhouse gases from those operations;
  - (v) provisions on enforcement, inspection and penalties designed to ensure the implementation of domestic and international requirements on waste management and waste shipment;
- (c) it is a Party to the multilateral environmental agreements referred to in Annex VIII, and has taken the necessary measures to implement its obligations under those agreements;
- (d) it has put in place a strategy for enforcement of domestic legislation on waste management and waste shipment, covering control and monitoring measures, including information on the number of inspections of shipments of waste and of waste management facilities carried out and on penalties imposed in cases of infringements of the relevant domestic rules.

4. **In the event of any change to the information provided to the Commission under paragraph 3, the countries included in the list referred to in Article 38 shall provide an update of the information specified in the form set out in Annex VIII, together with relevant supporting evidence without delay.**

**The countries included in the list referred to in paragraph 1 shall in any case, on the fifth year after their initial inclusion, provide to the Commission an update of the information specified in the form set out in Annex VIII, together with relevant**

**supporting evidence. Article 40**

*Assessment of the request for inclusion in the list of countries to which exports are authorised*

1. The Commission shall assess the requests submitted pursuant to Article 39 without undue delay and, if it is satisfied that the requirements set out in that Article are complied with, it shall include the country making the request in the list of countries to which exports are authorised. The assessment shall be based on the information and supporting evidence provided by the country making the request, as well as other relevant information, and aim to determine if the country making the request has put in place and implements all necessary measures to ensure that the **wastes and mixtures of wastes** concerned will be managed in an environmentally sound manner as referred to in Article 56. In order to perform this assessment, the Commission shall use, as points of reference, the relevant provisions in the legislation and guidance referred to in Annex IX.
2. Where, during the course of its assessment, the Commission considers that the information provided by the country making the request is incomplete or insufficient to demonstrate compliance with the requirements set out in Article 39, it shall give that country an opportunity to provide additional information within a maximum period of three months. That period may be extended by an additional period of three months where the requesting country makes a reasoned request for such extension.
3. Where the country making the request does not provide the additional information within the time limit referred to in paragraph 2 of this Article, or where the provided additional information is still considered to be incomplete or insufficient to demonstrate compliance with the requirements set out in Article 39, the Commission shall inform without undue delay the country making the request that it cannot be included in the list of countries to which exports are authorised and that its request will no longer be processed. In that case, the Commission shall also inform the country making the request of the reasons for that conclusion. This is without prejudice to the possibility of the country making the request to submit a new request pursuant to Article 39.

**SECTION 3**

**EXPORTS TO COUNTRIES TO WHICH THE OECD DECISION APPLIES**

*Article 41*

*General regime for exports of waste*

1. Where waste listed in Annex III, IIIA, IIIB or IV, waste not classified or mixtures of wastes not classified under one entry in either Annex III or Annex IV are exported from the Union and destined for recovery in countries to which the OECD Decision applies, with or without transit through countries to which the OECD Decision applies, the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additional provisions listed in paragraphs 2, 3 and 5.
2. The following adaptations shall apply:
  - (a) mixtures of wastes listed in Annex IIIA destined for an interim operation shall be subject to the procedure of prior written notification and consent if any subsequent interim or non-interim recovery operations or disposal operation is to take place in a country to which the OECD Decision does not apply;

- (b) waste listed in Annex IIIB shall be subject to the procedure of prior written notification and consent;

**(b bis) shipments of waste referred to in Article 4(4) shall be subject to the procedural requirements of Article 18 where the amount of such waste has been determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and does not exceed 25 kg;**

- (c) the export of waste referred to in Article 4(~~2bis~~5) shall be prohibited;
- (d) the consent as required in accordance with Article 9 may be provided in the form of tacit consent from the competent authority of destination outside the Union;
- (e) **the consent to a shipment of certain waste in accordance with Article 9 shall be withdrawn by the competent authority of dispatch when an implementing act in accordance with Art 42.4 has been adopted and entered into force that prohibits the export of such waste to the country concerned.**

3. As regards exports of waste listed in Annex IV, the adaptations and additional provisions listed in Article 35(2), **points (a), (bbis) and (c)** and Article 35(3), points **(b)(a) to (g)(e)**, shall apply.

~~In addition, the contract referred to in Article 6 shall contain the following terms and conditions:~~

- ~~(a) — where a facility issues an incorrect certificate of recovery with the consequence that the financial guarantee is released, the consignee shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and from its recovery or disposal in an alternative and environmentally sound manner;~~
- ~~(b) — the facility shall, within three days of receipt of the waste for recovery, send signed copies of the completed movement document, except for the certificate of recovery referred to in point (c), to the notifier and the competent authorities concerned;~~
- ~~(c) — the facility shall, as soon as possible but no later than 30 days after completion of the recovery, and in any case no later than one calendar year after the receipt of the waste, under its responsibility, certify that the recovery has been completed and shall send signed copies of the movement document containing that certification to the notifier and to the competent authorities concerned.~~

~~The notifier shall, within three working days of receipt of the copies referred to in points (b) and (c), make the information contained in those copies available via electronic means in accordance with Article 26.~~

4. The shipment of waste subject to the prior written notification and consent may take place only if all the following conditions are fulfilled:

- (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit or, the competent authorities of destination and transit outside the Union have provided tacit consent or such tacit consent can be assumed and the conditions laid down in the respective decisions have been met;
- (b) Article 35(4), points (b), ~~(e) and (d)~~, is complied with.

5. Where an export as referred to in paragraph 1 of waste listed in Annex IV is in transit through a country to which the OECD Decision does not apply, the following adaptations shall apply:
- (a) the competent authority of transit of the country to which the OECD Decision does not apply shall have 60 days after the date of transmission of its acknowledgement of receipt of the notification, to provide, where the country concerned has decided not to require prior written consent and has informed the other Parties to the Basel Convention thereof in accordance with Article 6(4) of that Convention, tacit consent or to give a written consent with or without conditions;
  - (b) the competent authority of dispatch in the Union shall take the decision to consent to the shipment as referred to in Article 9 only after having received tacit or written consent from the competent authority of transit of the country to which the OECD Decision does not apply, and not earlier than 61 days after the date of transmission of the acknowledgement of receipt of the competent authority of transit, unless the competent authority of dispatch has received the written consent of the other competent authorities concerned, in which case it may take the decision as referred to in Article 9 before that time limit.
6. Where waste is exported, it shall be destined for recovery operations within a facility which, under applicable national law, is operating or is authorised to operate in the country of destination.
7. **The provisions in Article 35(6) shall apply.** ~~Where a customs office of export or a customs office of exit discovers an illegal shipment, it shall without delay inform the competent authority in the country of that customs office thereof. That competent authority shall:~~
- ~~(a) without delay inform the competent authority of dispatch in the Union of the illegal shipment; and~~
  - ~~(b) ensure detention of the waste until the competent authority of dispatch has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained.~~

#### *Article 42*

##### *Monitoring of export and safeguard procedure*

1. The Commission shall monitor the levels of export of waste from the Union to countries to which the OECD Decision applies, with a view to ensuring that such exports do not lead to serious environmental or human health damages in the country of destination. As part of such monitoring, the Commission shall assess requests from natural or legal persons which are accompanied by relevant information and data showing that export of waste from the Union leads to serious environmental or human health damages in a country to which the OECD Decision applies.
2. In cases where ~~the export of waste from the Union to a country to which the OECD Decision applies has considerably increased within a short period of time, and there is insufficient evidence available demonstrating that the~~ **a country to which the OECD Decision applies** ~~concerned~~ has the ability to recover **certain** this waste in an environmentally sound manner as referred to in Article 56, **including due to a considerable increase of the export of such waste from the Union to the country**

**concerned**, the Commission shall request the competent authorities of the country concerned to provide, within 60 days, information on the conditions under which the waste in question is recovered and the ability of the country concerned to manage the waste in question **in an environmentally sound manner as referred to in Article 56**. The Commission may grant an extension of this time limit if the country concerned makes a reasoned request for an extension thereof.

3. The request referred to in paragraph 2 shall aim to verify that the country concerned has:
  - (a) put in place and implemented an adequate legal framework for the import and management of the waste concerned **in an environmentally sound manner**, as well as adequate measures to ensure the environmentally sound management of the residual waste generated through the recovery of the waste concerned;
  - (b) sufficient capacity in its territory allowing the waste concerned to be managed in an environmentally sound manner, taking into consideration the increased volume of waste imported into its territory;
  - (c) put in place an adequate strategy to address the possible negative impact of an increase in the import of the waste concerned on the collection and management of the waste generated domestically;
  - (d) put in place and implemented adequate enforcement measures to address possible illegal shipments or treatment of the waste concerned.
4. Where, further to the request referred to in paragraph 2, the country concerned does not provide sufficient evidence as referred to in paragraph 3 that the waste is managed in an environmentally sound manner in accordance with Article 56, the Commission is empowered to adopt ~~delegated~~ **implementing** acts ~~in accordance with Article 76 to supplement this Regulation by~~ **to prohibiting** the export of the waste concerned to this country. **That implementing act shall be adopted in accordance with the examination procedure referred to in Article 77(2).**

~~This~~ **A** prohibition shall be lifted by the Commission, when the Commission has sufficient evidence that the waste concerned will be managed in an environmentally sound manner.

## Chapter 3

### Additional obligations

#### *Article 43*

#### *Obligations on exporters*

1. A **notifier or person who arranges a shipment** ~~natural or legal person~~ 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.
2. In order to fulfil the obligation referred to in paragraph 1, a **notifier or person who arranges a shipment** ~~natural or legal person~~ 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 by an independent and accredited third party with appropriate qualifications,



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 Annex X.
- 3 bis. A **notifier or person who arranges a shipment** ~~legal or natural person~~ shall not export waste to a facility which does not comply with these **the criteria laid down in Annex X.**
4. A **notifier or person who arranges a shipment** ~~natural or legal person~~ intending to export waste shall ensure that the facility which will manage the waste in the country of destination has been subject to an audit referred to in paragraph 2 **verifying compliance in accordance with paragraph 3** prior to exporting waste to the facility concerned and that the audit is repeated at regular intervals, **based on** ~~following a risk assessment~~ **risk-based approach**, with a minimum frequency of every three years after the first audit.
- A **notifier or person who arranges a shipment** ~~natural or legal person~~ exporting waste ~~from the Union~~ shall also carry out an ad-hoc audit without delay in case it receives plausible information that a facility no longer complies with the criteria laid down in Annex X. **In case an ad-hoc audit demonstrates that a facility no longer complies with the criteria laid down in 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 **notifier or a person who arranges a shipment** ~~natural or legal person~~ 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 **notifiers or persons who arranges a shipment** ~~natural or legal person~~ intending to export waste to the facility in question, under fair commercial conditions.
- 5 bis. **A notifier or a person who arranges a shipment shall notify the Commission of audits they have commissioned in accordance with paragraph 2 and 4. The notification shall contain the following information;**
- (a) contact details of the facility that has been subject to an audit;**
  - (b) contact details of the natural or legal person that has commissioned the audit;**
  - (c) the third party that has carried out the audit;**
  - (d) the date of the audit.**
- 5 ter. **The Commission shall establish and keep up to date a register with information received in accordance with paragraph 5 bis on facilities that have been subject to an audit in accordance with paragraph 2 verifying compliance in accordance with paragraph 3. The Commission shall make the information in the register publicly available.**
- The fact that a facility is included in the register referred to in the first subparagraph, is not sufficient to demonstrate compliance with this Article or the criteria laid down in Annex X.**
6. Upon request by a competent authority or an authority involved in inspections, a **notifier or a person who arranges a shipment** ~~natural or legal person~~ 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 notifier or a person who arranges a shipment** ~~Natural or legal persons~~ 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, in accordance with the criteria laid down in Annex X, **notifiers or persons who arranges the shipment** ~~natural and legal persons~~ which intend to export waste to that third country shall be exempted from the obligation in paragraph 2.
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.

#### *Article 44*

##### *Obligations on Member States of export*

1. Member States shall take all the measures necessary to ensure that legal and natural persons under their national jurisdiction do not export waste in cases where the conditions laid down in Articles 36 to 43 for such export are not met.
2. Member States shall carry out ~~regular~~ verifications, following a risk-based **assessment approach**, to ensure that natural and legal persons exporting waste from the Union comply with the obligations referred to in Article 43.

~~Where Member States are in possession of plausible information, 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.~~

## **Chapter 4**

### **General provisions**

#### *Article 45*

##### *Exports to the Antarctic*

Exports of waste from the Union to the Antarctic shall be prohibited.

#### *Article 46*

##### *Exports to overseas countries or territories*

1. Exports from the Union to an overseas country or territory of waste destined for disposal in that country or territory shall be prohibited.
2. As regards exports of waste destined for recovery in overseas countries or territories, the prohibition set out in Article 36 shall apply *mutatis mutandis*.
3. As regards exports of waste destined for recovery in overseas countries or territories not covered by the prohibition set out in Article 36, the provisions of Title II shall apply *mutatis mutandis*.

# Title V

## Imports into the Union from third countries

### Chapter 1

#### Imports of waste for disposal

##### *Article 47*

##### *Prohibition of imports **of waste destined for disposal***

1. Imports into the Union of waste destined for disposal shall be prohibited except imports coming from:
  - (a) countries which are Parties to the Basel Convention;
  - (b) other countries with which the Union, or the Union and its Member States, have concluded bilateral or multilateral agreements or arrangements compatible with Union legislation and in accordance with Article 11 of the Basel Convention;
  - (c) other countries with which individual Member States have concluded bilateral agreements or arrangements in accordance with paragraph 2; or
  - (d) other areas in cases where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, no bilateral agreements or arrangements pursuant to points (b) or (c) can be concluded or where a competent authority in the country of dispatch has either not been designated or is unable to act.
2. In exceptional cases, Member States may conclude bilateral agreements and arrangements for the disposal of specific waste in those Member States, where such waste will not be managed in an environmentally sound manner in the country of dispatch.

These agreements and arrangements shall:

  - (a) be compatible with Union legislation and in accordance with Article 11 of the Basel Convention.
  - (b) guarantee that the disposal operations will be carried out in an authorised facility and will comply with the requirements for environmentally sound management as referred to in Article **56(1)**; and **with Article 13 of Directive 2008/98/EC and other Union legislation on waste, in particular the Union legislation referred to in Annex IX part 1;**
  - (c) guarantee that the waste is produced in the country of dispatch and that disposal will be carried out exclusively in the Member State which has concluded the agreement or arrangement.
  - (d) be notified to the Commission prior to their conclusion or, in emergency situations, at the latest up to one month after conclusion.
3. Bilateral or multilateral agreements or arrangements referred to in paragraph 1, points (b) and (c), shall be based on the procedural requirements of Article 48.
4. The countries referred to in paragraph 1, points (a), (b) and (c), shall be required to present a prior duly motivated request to the competent authority of the Member State of destination on the basis that they do not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner as referred to in Article 56.

## Article 48

### *Procedural requirements for imports **of waste destined for disposal***

1. Where waste destined for disposal is imported into the Union from countries that are Parties to the Basel Convention, **or in cases referred to in Article 47(1) point (d),** the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additional provisions set out in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) ~~the notifier shall submit the notification request in accordance with Article 26, unless the a~~ **notifier that** is not established within the Union and has no access to a system referred to in Article 26, **in which case the notification request, and in particular may submit the notification and any requested additional information and documentation referred to in Article 5(3) shall be provided to the competent authorities concerned by post, or if accepted by all parties involved, by** fax or email with digital signature;
  - (b) ~~the notifier shall submit any additional information, and in particular the information and documentation referred to in Article 5(4)5(5) in accordance with Article 26, unless the notifier is not established within the Union and has no access to a system referred to in Article 26, in which case that information shall be provided by post, fax or email with digital signature, to the competent authorities concerned;~~
  - (c) the notifier, or where the notifier is not established within the Union and has no access to a system referred to in Article 26, the competent authority of destination in the Union, shall ensure that all relevant information is included in that system;
  - (d) the competent authorities of transit and destination in the Union shall inform the competent authorities concerned in the countries of transit and dispatch outside the Union of any request for information and documentation from their side and of their decision on the planned shipment, by post, **or if accepted by all parties involved, by** fax or email with digital signature, unless the competent authorities in the countries concerned have access to the central system referred to in Article 26(2);
  - (e) the competent authority of transit outside the Union shall have 60 days after the date of transmission of its acknowledgement of receipt of the notification, to provide, if the country concerned has decided not to require prior written consent and has informed the other Parties to the Basel Convention thereof in accordance with Article 6(4) of that Convention, tacit consent or to give a written consent with or without conditions;
  - (f) in the cases referred to in Article ~~47~~**46**(1), point (d) involving situations of crisis, peacemaking, peacekeeping or war, the consent of the competent authorities of dispatch shall not be required.
3. The following additional provisions shall apply:
  - (a) ~~the a~~ **competent authority of transit in the Union shall provide an acknowledgement of receipt of the notification to the notifier, with copies to the competent authorities concerned in case they have no access to a system referred to in Article 26;**
  - (b) the competent ~~authority~~**ities** of destination and ~~any, where appropriate,~~ **competent authority of** transit in the Union shall ensure that the customs office of entry is informed of their decisions to consent to the shipment;

- (c) a copy of the movement document shall be delivered by the carrier to the customs office of entry either by post **or if accepted by all parties involved, by fax or email with digital signature;** or, where the customs office of entry has access to it, via the central system referred to in Article 26(2); and
  - (d) as soon as the waste has been released for a customs procedure by the customs authorities at entry, the customs office of entry shall inform the competent authorities of destination and transit in the Union that the waste has entered the Union.
4. The shipment may take place only if all the following conditions are fulfilled:
- (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit and the conditions laid down in that consent **or its annexes** have been met;
  - (b) a contract between the notifier and the consignee as referred to in Article 6 has been concluded and is effective;
  - (c) a financial guarantee or equivalent insurance as referred to in Article 7 has been established and is effective; and
  - (d) environmentally sound management as referred to in Article ~~33~~ **56(1)** is ensured.
5. Where a customs office of entry discovers an illegal shipment, it shall without delay inform the competent authority in the country of that customs office. That competent authority shall:
- (a) without delay inform the competent authority of destination in the Union of the illegal shipment, after which that competent authority shall inform the competent authority of dispatch outside the Union; (b) ensure detention of the waste until the competent authority of dispatch outside the Union has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained; **and**
  - (c) **without delay communicate the decision of the competent authority of dispatch referred to in (b) to the customs office of exit that discovered the illegal shipment.**
6. Where waste generated by armed forces or relief organisations in situations of crisis, peacemaking or peacekeeping operations is **imported** ~~shipped~~, by those armed forces or relief organisations or **by a natural or legal person** on their behalf, **those armed forces or relief organisations shall inform** any competent authority of transit and the competent authority of destination in the Union, **or in urgent cases where the disposal or recovery facility is not known at the time of the shipment, the competent authority responsible for the area of the first place of destination** ~~shall be informed~~ in advance concerning the shipment and its destination.
- The information provided according to the first subparagraph shall accompany the shipment, unless it is provided via a system in accordance with Article 26.**

## Chapter 2

### Imports of waste for recovery

#### Article 49

##### *Prohibition of imports of waste destined for recovery*

1. ~~All~~ Imports into the Union of waste destined for recovery shall be prohibited except for imports coming from:
  - (a) countries to which the OECD Decision applies;
  - (b) other countries which are Parties to the Basel Convention;
  - (c) other countries with which the Union, or the Union and its Member States, have concluded bilateral or multilateral agreements or arrangements compatible with Union legislation and in accordance with Article 11 of the Basel Convention;
  - (d) other countries with which individual Member States have concluded bilateral agreements or arrangements in accordance with paragraph 2; or
  - (e) other areas in cases where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, no bilateral agreements or arrangements pursuant to points (c) or (d) can be concluded or where a competent authority in the country of dispatch has either not been designated or is unable to act.
2. In exceptional cases, individual Member States may conclude bilateral agreements and arrangements for the recovery of specific waste in those Member States, where such waste will not be managed in an environmentally sound manner, in the country of dispatch.

In such cases Article 47(2), second subparagraph, shall apply.

3. Bilateral or multilateral agreements or arrangements entered into in accordance with paragraph 1, points (c) and (d), shall be based on the procedural requirements set out in Article 48 in so far as may be relevant.

#### Article 50

##### *Procedural requirements for imports from a country to which the OECD Decision applies or from other areas during situations of crisis or war*

1. Where waste destined for recovery is imported into the Union from countries and through countries to which the OECD Decision applies, **or in cases referred to in Article 49(1) point (e),** the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additional provisions set out in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) the consent as required in accordance with Article 9 may be provided in the form of tacit consent from the competent authority of dispatch outside the Union;
  - (abis) **shipments of waste referred to in Article 4(4) shall be subject to the procedural requirements of Article 18 when the amount of such waste has been determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and does not exceed 25 kg;**

- (b) ~~in the cases referred to in Article 49(1), point(e), involving situations of crisis, peacemaking, peacekeeping or war, the consent of the competent authorities of dispatch shall not be required.~~
3. The following additional provisions shall apply: Article 48(2), points (a) to (e), and Article 48(3), points (b), (c) and (d).
4. The shipment may take place only if all the following conditions are fulfilled:
- (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit or tacit consent from the competent authority of dispatch outside the Union has been provided or can be assumed and the conditions laid down in the **written consent or its annexes or in the** respective decisions have been met;
  - (b) **the conditions specified in Article 48(4), points (b), (c) and (d)** ~~a contract between the notifier and the consignee as referred to in Article 6 has been concluded and is effective;~~
  - (c) ~~a financial guarantee or equivalent insurance as referred to in Article 7 has been established and is effective; and~~
  - (d) ~~environmentally sound management as referred to in Article 56 is ensured.~~
5. **The provisions in Article 48(5) and (6) shall apply.** ~~Where a customs office of entry discovers an illegal shipment, it shall without delay inform the competent authority in the country of that customs office. That competent authority shall:~~
- (a) ~~without delay inform the competent authority of destination in the Union after which that competent authority shall inform the competent authority of dispatch outside the Union of the illegal shipment; and~~
  - (b) ~~ensure detention of the waste until the competent authority of dispatch outside the Union has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained~~

#### *Article 51*

*Procedural requirements for imports from or through a country to which the OECD Decision does not apply*

Where waste destined for recovery is imported into the Union from a country to which the OECD Decision does not apply or through any country to which the OECD Decision does not apply and which is also Party to the Basel Convention, Article 48 shall apply *mutatis mutandis*.

## Chapter 3

### Additional obligations

#### Article 52

Obligations of competent authorities of destination in the Union ~~Member States of import~~

1. In the case of imports into the Union, the competent authority of destination in the Union shall require and take the necessary steps to ensure that any waste shipped into its area of jurisdiction is managed in an environmentally sound manner, without endangering human health and without using processes or methods which could harm the environment, and in accordance with Article 13 of Directive 2008/98/EC and other Union legislation on waste, in particular the Union legislation referred to in Annex IX part 1, throughout the period of shipment, including recovery or disposal in the country of destination.
2. The competent authority referred to in paragraph 1 shall also prohibit imports of waste from third countries where it has reason to believe that the waste will not be managed in accordance with the requirements set out in paragraph 1.

## Chapter 4

### Imports from overseas countries or territories

#### Article 53

*Imports from overseas countries or territories*

1. Where waste is imported into the Union from overseas countries or territories, Title II shall apply *mutatis mutandis*.
2. An overseas country or territory and the Member State to which it is linked may apply national procedures of that Member State to shipments from the overseas country or territory to that Member State in case no other countries are involved in the shipment as ~~transit~~ country of transit.
3. Member States which apply paragraph 2 shall notify the Commission of the national procedures applied.



## Title VI

### Transit through the Union from and to third countries

#### *Article 54*

#### *Transit through the Union of waste destined for disposal*

Where waste destined for disposal is shipped through Member States from and to third countries, Article 48 shall apply *mutatis mutandis*, with the following adaptations and additional provisions:

- (a) the first and last competent authority of transit in the Union shall, where appropriate, ensure that the customs office of entry and the customs office of exit are informed of their respective decisions to consent to the shipment or, if they have provided tacit consent, of the acknowledgement in accordance with Article 48(3), point (a);
- (b) the customs office of exit shall, as soon as the waste has left the Union inform the competent authority(ies) of transit in the Union that the waste has left the Union;
- (c) **the competent authorities of transit in the Union may, if necessary, require an additional financial guarantee or equivalent insurance, after having reviewed the amount covered by the financial guarantee or equivalent insurance established by the notifier and approved by the competent authority of dispatch.**

#### *Article 55*

#### *Transit through the Union of waste destined for recovery*

1. Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision does not apply, Article 54 shall apply *mutatis mutandis*.
2. Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision applies, Article 50 shall apply *mutatis mutandis*, with the following adaptations and additional provisions:
  - (a) the first and last competent authority of transit in the Union shall, where appropriate, ensure that the customs office of entry and the customs office of exit are informed of their respective decisions to consent to the shipment or, if they have provided tacit consent, of the acknowledgement in accordance with Article 48(3), point (a);
  - (b) the customs office of exit shall, as soon as the waste has left the Union, inform the competent authorities of transit in the Union that the waste has left the Union.
3. Where waste destined for recovery is shipped through Member States from a country to which the OECD Decision does not apply to a country to which the OECD Decision applies or vice versa, paragraph 1 shall apply as regards the country to which the

OECD Decision does not apply and paragraph 2 shall apply as regards the country to which the OECD Decision applies;

- 4. Where waste is shipped through Member States from and to a third country the competent authorities of transit in the Union may, if necessary, require an additional financial guarantee or equivalent insurance, after having reviewed the amount covered by the financial guarantee or equivalent insurance established by the notifier and approved by the competent authority of dispatch.**

# Title VII

## Environmentally sound management and enforcement

### Chapter 1

#### *Article 56* *Environmentally sound management*

1. The waste producer, the notifier and any other undertaking involved in a shipment of waste or its recovery or disposal shall take the necessary steps to ensure that any waste shipped is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during the recovery and disposal of the waste.
2. For the purposes of export of waste, the waste shipped shall be deemed to be managed in an environmentally sound manner as regards the recovery or disposal operation concerned, where it can be demonstrated that the waste will be managed in accordance with human health and environmental protection requirements that are broadly equivalent to the human health and environmental protection requirements laid down in Union legislation. When assessing such broad equivalence, full compliance with requirements stemming from Union legislation shall not be required, but it should be demonstrated that the requirements applied in the country of destination ensure a similar level of protection of human health and the environment than the requirements stemming from Union legislation. **In order to perform this assessment in relation to Union legislation, the relevant provisions in the Union legislation and the international guidance referred to in Annex IX shall be used as points of reference.**

### Chapter 2

#### Enforcement

#### SECTION 1

##### INSPECTIONS BY THE MEMBER STATES AND PENALTIES

#### *Article 57* *Inspections*

1. Member States shall, for the purpose of enforcing this Regulation, **ensure that** ~~carry out~~ inspections of establishments, undertakings, brokers and dealers in accordance with Article 34 of Directive 2008/98/EC, and inspections of shipments of waste and of the related recovery or disposal, **are carried out**.
2. Inspections of shipments shall take place at least in one of the following points:
  - (a) at the point of origin, carried out with the waste producer, **collector,** waste **holder,** ~~or~~ notifier **or person who arranges the shipment;**
  - (b) at the point of destination, including interim and non-interim recovery or disposal, carried out with the consignee or the facility;

- (c) at the borders of the Union;
- (d) during the shipment within the Union.

*Article 58*  
*Documentation and evidence*

1. Inspections of shipments shall include at least verification of documents, confirmation of the identity of the actors involved in those shipments and, where appropriate, physical checking of the waste.
2. In order to ascertain that a substance or object being carried by road, rail, air, sea or inland waterway is not waste, the authorities involved in inspections may require the natural or legal person who is in possession of the substance or object concerned, or who arranges the carriage thereof, to submit documentary evidence:
  - (a) as to the origin and destination of the substance or object concerned; and
  - (b) that it is not waste, including, where appropriate, evidence of functionality.

For the purpose of the first subparagraph, the protection of the substance or object concerned against damage during transportation, loading and unloading, such as adequate packaging and appropriate stacking, shall also be ascertained.

The provisions of this paragraph shall be without prejudice to the application of Article 23(2) and Annex VI to Directive 2012/19/EU of the European Parliament and of the Council<sup>1</sup>.

3. The authorities involved in inspections may conclude that the substance or object concerned is waste where:
  - (a) the evidence referred to in paragraph 2 or required under other Union legislation to ascertain that a substance or object is not waste, has not been submitted within the period specified by them; or
  - (b) they consider the evidence and information available to them to be insufficient to reach a conclusion, or they consider the protection provided against damage referred to in the second subparagraph of paragraph 2 to be insufficient.

Where the authorities have concluded that a substance or object is waste in accordance with the first subparagraph, the carriage of the substance or object concerned or the shipment of waste concerned shall be considered as an illegal shipment. Consequently, it shall be dealt with in accordance with Articles 24 and 25 and the authorities involved in inspections shall, without delay, inform the competent authority of the country where the inspection concerned took place accordingly.

4. In order to ascertain whether a shipment of waste complies with this Regulation, the authorities involved in inspections may require the notifier, the person who arranges the shipment, the waste holder, the carrier, the consignee and the facility that receives the waste to submit relevant documentary evidence to them within a period specified by them, **and may detain the goods in a shipment or suspend the execution of the transport until such documentation has been provided.**
5. In order to ascertain whether a shipment of waste subject to the general information requirements set out in Article 18 is destined for recovery operations which are in accordance with Article 56, the authorities involved in inspections may require the person who arranges the shipment **and the consignee** to submit relevant documentary

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<sup>1</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (OJ L 197, 24.7.2012, p. 38).

evidence, provided by the interim and non-interim recovery facility and, if necessary, approved by the competent authority of destination.

6. Where the evidence referred to in paragraphs 4 **and 5** has not been submitted to the authorities involved in inspections within the period specified by them, or they consider the evidence and information available to them to be insufficient to reach a conclusion, the shipment concerned shall be considered as an illegal shipment and shall be dealt with in accordance with Articles 24 and 25. The authorities involved in inspections shall, without delay, inform the competent authority of the country where the inspection concerned took place accordingly.
7. The Commission is empowered to adopt, by means of implementing acts, a correlation table between the codes of the combined nomenclature, provided for in Council Regulation (EEC) No 2658/87<sup>1</sup> and the entries of waste listed in Annex III, Annex IIIA, Annex IIIB, Annex IV, and Annex V to this Regulation. The Commission shall keep this act updated, in order to reflect changes to that nomenclature and to the entries listed in those Annexes, as well as to include any new waste-related codes of the Harmonised System Nomenclature that the World Customs Organisation may adopt. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2). Commission Implementing Regulation (EU) 2016/1245<sup>2</sup> shall remain in force until the empowerment referred to in the present Article is exercised by the Commission.

#### *Article 59* *Inspection plans*

1. Member States shall establish, in respect of their entire geographical territory, one or more plans are established, either separately or as a clearly defined part of other plans, for inspections to be carried out pursuant to Article 57(1) ('inspection plan').

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, **including relevant information related to the management of waste being exported**. 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.
2. Inspection plans shall include, at least, the following elements:
  - (a) the objectives and priorities of the inspections, including a description of how those objectives and priorities have been identified;
  - (b) the geographical area covered by the inspection plan;
  - (c) information on planned inspections, including on physical checks;
  - (d) the tasks assigned to each authority involved in inspections;
  - (e) arrangements for cooperation between authorities involved in inspections;

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<sup>1</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff; OJ L 256, 7.9.1987, p. 1–675

<sup>2</sup> Commission Implementing Regulation (EU) 2016/1245 of 28 July 2016 setting out a preliminary correlation table between codes of the Combined Nomenclature provided for in Council Regulation (EEC) No 2658/87 and entries of waste listed in Annexes III, IV and V to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste (OJ L 204, 29.7.2016, p. 11).

- (f) information on the training of inspectors on matters relating to inspections; and
  - (g) information on the human, financial and other resources for the implementation of the inspection plan.
3. An inspection plan shall be reviewed at least every three years and, where appropriate, updated. That review shall evaluate to which extent the objectives and other elements of that inspection plan have been implemented.
  4. Without prejudice to applicable confidentiality requirements, Member States shall notify the Commission of the inspection plans referred to in paragraph 1 and any substantial revisions thereof every three years, and for the first time one year after the date of entry into force of this Regulation.
  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.

#### *Article 60* *Penalties*

1. **Without prejudice to the obligations of Member States under 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,** 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.
2. When determining the type and level of penalties **established pursuant to this Article** ~~to be imposed in case of infringements, the competent authorities of the Member States~~ shall give due regard at least to the following, **where appropriate** criteria:
  - (a) the nature, gravity and duration of the infringement;
  - (b) ~~where appropriate,~~ the intentional or negligent character of the infringement;
  - (c) the financial strength of the natural or 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;
  - (d) the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as they can be determined;
  - (e) the environmental damage caused by the infringement, ~~insofar as it can be determined;~~
  - (f) any action taken by the natural or legal person held responsible to mitigate or remedy the damage caused;
  - (g) the level of ~~its~~ cooperation of the natural or legal person held responsible with the competent authority, **where in favour of that person;**

- (h) previous infringements by the natural or legal person held responsible;
- ~~(i) any action aiming to circumvent or obstruct administrative controls and~~
- ~~(j) any other aggravating or mitigating factor applicable to the circumstances of the case.~~

**3.** The Member States shall at least be able to impose the following administrative penalties in case of infringements of this Regulation:

- (a) fines;
- (b) ~~confiscation of revenues gained by the natural or legal person from a transaction related to the infringement;~~
- (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;
- (d) exclusion from public procurement procedures.

## SECTION 2 ENFORCEMENT COOPERATION

### *Article 61*

#### *Enforcement cooperation at national level*

Member States shall establish, as regards all relevant ~~competent~~ authorities involved in enforcement of this Regulation **in their territory, including competent authorities and the authorities involved in inspections**, effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of enforcement policies and activities to address illegal shipments of waste, including for the establishment and implementation of the inspection plans.

### *Article 62*

#### *Enforcement cooperation between Member States*

1. Member States shall cooperate, bilaterally and multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. They shall exchange relevant information ~~on shipments of waste, flows of waste, operators and facilities~~ **related to such prevention and detection** and share experience and knowledge on enforcement measures, including the risk assessment carried out pursuant to Article 59(1), within established structures, in particular, through the waste shipment enforcement group established under Article 63.
2. Member States shall identify **the authority or authorities and the** ~~those~~ members of their permanent staff responsible for the cooperation referred to in paragraph 1 and **also identify an authority or authorities and responsible members of their permanent staff as** the focal points for the physical checks referred to in Article 58(1). **The Member States shall send** ~~that information shall be sent~~ to the Commission which shall **compile the information and** make **it** available ~~to distribute to the identified~~ **authorities and their members of their permanent staff.** ~~a compiled list.~~

3. At the request of **an authority in** another Member State, **an authority of a Member State** may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State.

#### *Article 63*

##### *Waste shipment enforcement group*

1. An enforcement group shall be established to facilitate and improve cooperation and coordination between the Member States in order to prevent and detect illegal shipments (the 'waste shipment enforcement group').
2. The waste shipment enforcement group shall consist of the designated permanent staff responsible for the cooperation referred to in Article 62(2) and may also include further representatives of each Member State's relevant authorities with responsibility for enforcement of this Regulation. It shall be chaired by the representative(s) of the Commission.
3. The waste shipment enforcement group shall be a forum for sharing **information relevant for the prevention and detection of illegal shipments, including** information and intelligence on general trends relating to illegal shipments of waste, risk-based assessments carried out by **the authorities of the** Member States, and **experience and knowledge on** enforcement activities **measures**, as well as for exchanging views on best practices and for facilitating cooperation and coordination between relevant authorities. The waste shipment enforcement group may examine any technical question relating to the enforcement of this Regulation raised by the chairperson, either on his or her own initiative or at the request of the members of the group or the committee referred to in Article 77.
4. The waste shipment enforcement group shall meet **regularly**, at least ~~twice~~ **once** a year. **The group shall cooperate with other relevant institutions, bodies, offices, agencies, or networks.** In addition to the members referred to in paragraph 2, the chairperson may invite to the meetings, where appropriate, representatives of other relevant institutions, bodies, offices, agencies or networks.
5. The Commission shall convey the opinions expressed in the waste shipment enforcement group ~~to~~ the committee referred to in Article 77.

### **SECTION 3**

#### **ACTIONS PERFORMED BY THE COMMISSION**

#### *Article 64*

##### *General provisions*

1. ~~In order to fight against infringements of the provisions of this Regulation to support and complement the enforcement activities of the Member States, and to contribute to a uniform application of this Regulation throughout the Union, The Commission shall exercise the powers conferred onto it by Articles 64 to 68~~ **in order to support and complement the enforcement activities of the Member States and to contribute to a uniform implementation of this regulation throughout the union.**
2. ~~These powers are without prejudice to:~~
  - (a) ~~the primary responsibility of the Member States to ensure and enforce compliance with this Regulation; and~~



~~(b) — the powers conferred onto the Commission or the European Anti-Fraud Office (OLAF), respectively, in other legal acts, in particular in Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council<sup>1</sup>, Council Regulation 515/97<sup>2</sup>, or Council Regulation 2185/96<sup>3</sup>.~~

3. The Commission may exercise the powers conferred onto it by this Regulation ~~on its own initiative~~, **with respect to shipments of waste that fall under the scope of application of this Regulation pursuant to Article 2(1), and in particular with respect to shipments of a complex nature having a cross-border dimension involving at least two countries and potentially have serious adverse effects on human health or the environment. The Commission may exercise these powers on its own initiative,** on the request of one or more Member States, or on a complaint if there is sufficient suspicion that the carriage of the substance or object concerned or the shipment of waste concerned constitutes an illegal shipment. **The Commission may also forward such complaints to the competent authorities of the Member States concerned.**

**If the Commission decides not to act, it shall reply to the Member States or the persons who sent the complaint in a reasonable time, stating the reasons why they believe there is no sufficient suspicion, unless there are reasons of public interest, such as protecting the confidentiality of legal proceedings of the inspections, not to do so.**

**The Commission shall also provide the Member States with assistance in organising close and regular cooperation between their competent authorities pursuant to the provisions of Article 68.**

- ~~4. — The Commission may exercise the powers conferred onto it by this Regulation with respect to shipments of waste that fall under the scope of application of this Regulation pursuant to Article 2(1) and in particular with respect to such shipments that affect several countries or that have serious adverse effects on human health and/or the environment.~~
5. In exercising its powers, the Commission shall take into account the inspections **or legal proceedings** in progress or already carried out in respect of the same shipments by **the authorities of** a Member State pursuant to this Regulation **and shall ensure not to unduly interfere with such legal proceedings.**
6. On completion of its actions, the Commission shall draw up a report. If the Commission concludes that the carriage of the substance or object concerned or the shipment of waste concerned constitutes an illegal shipment, it shall inform the competent authorities of the country or countries concerned accordingly and

<sup>1</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1)

<sup>2</sup> Council Regulation 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82 of 22.3.1997, p. 1).

<sup>3</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292 of 15.11.1996, p. 2).

recommend that such an illegal shipment is dealt with in accordance with Articles 24 and 25. ~~Such authorities may apply penalties in accordance with Article 60.~~ The Commission may also recommend certain follow-up to the relevant authorities **of the Member States**, and, where necessary inform the Union institutions, bodies, offices and agencies concerned.

7. Reports drawn up on the basis of paragraph 6, together with all evidence in support and annexed thereto, shall constitute admissible evidence:
  - (a) in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;
  - (b) in criminal proceedings of the Member State in which their use proves necessary in the same way and under the same conditions as administrative reports drawn up by national administrative ~~inspectors~~ **authorities** and shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative ~~inspectors~~ **authorities** and shall have the same evidentiary value as such reports;
  - (c) in judicial proceedings before the Court of Justice of the European Union.

**The power of the CJEU and national courts and competent authorities to freely assess the evidential value of the reports drawn up by the Commission according to paragraph 6 shall not be affected by this Regulation.**

#### *Article 65*

##### *Inspections by the Commission*

1. The Commission may, **in accordance with Article 64**, carry out inspections of shipments pursuant to Article 57(2) of this Regulation.

**1bis. The Commission may only carry out an inspection where there is sufficient suspicion for an illegal shipment of waste.**

2. The Commission shall prepare and conduct inspections in close cooperation with the relevant authorities of the Member State concerned. **Such cooperation shall include the exchange of information and the exchange of views on the planning of the inspections and the steps that will be taken. The Commission shall take into account any inspections or ongoing legal proceedings by administrative or judicial authorities of a Member State.**

The Commission shall give notice in good time of the object, purpose and legal basis of inspections to the focal points referred to in Article 62(2) in the Member State concerned in whose territory the inspection is to be conducted, so that ~~such~~ **relevant** authorities may provide the requisite assistance. To that end, officials of the **relevant authorities of the** Member State concerned ~~may~~ **shall be given opportunity to** participate in the inspections.

In addition, upon request of the Member State concerned, the inspections ~~may~~ **shall** be carried out jointly by the Commission and the relevant authorities of that Member State.

3. The staff and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.
4. The staff of the Commission that conduct an inspection shall be empowered to:

- (a) have access to any premises, land and means of transport of the **notifier, the person who arranges the shipment, the waste producer the waste holder, the carrier, the consignee or the facility that receives the waste;**
  - (b) examine any relevant documents related to the subject-matter and purpose of the inspections, irrespective of the medium on which they are stored, and to take or obtain in any form copies of or extracts from such documents;
  - (c) ask the notifier, the person who arranges the shipment, **the waste producer,** the holder, the carrier, the consignee or the facility that receives the waste for explanations on facts or documents relating to the subject-matter and purpose of the inspections and to record the answers;
  - (d) take and record statements from the notifier, the person who arranges the shipment, **the waste producer,** the **waste** holder, the carrier, the consignee or the facility that receives the waste related to the subject-matter and purpose of the inspections;
  - (e) physically check the waste and take samples of the waste for laboratory tests, where appropriate.
5. The notifier, the person who arranges the shipment, **the waste producer,** the waste holder, the waste carrier, the consignee and the facility that receives the waste shall cooperate with the Commission in the course of its inspections.
6. The authorities of the Member States involved in inspections on the shipments of waste in whose territory the inspection of the Commission is to be conducted shall, at the request of the Commission, provide the necessary assistance to the staff of the Commission.
7. The notifier, the person who arranges the shipment, **the waste producer,** the waste holder, the waste carrier, the consignee and the facility that receives the waste are required to submit **themselves** to inspections of the Commission.
8. Where the Commission finds that the notifier, the person who arranges the shipment, **the waste producer,** the waste holder, the waste carrier, the consignee or the facility that receives the waste opposes an inspection, the **relevant authorities of the** Member State concerned shall, afford the Commission the necessary assistance, requesting where appropriate the assistance of enforcement authorities, so as to enable the Commission to conduct its inspection. If such an assistance requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for.

*Article 66*  
*Requests for information*

1. The Commission may interview any natural or legal person who consents to be interviewed for the purpose of collecting all necessary information relating to the relevant waste shipments.
2. Where such an interview is conducted in the premises of an establishment, undertaking, broker or dealer, the Commission shall inform the focal points referred to in Article 62(2) in the Member State concerned in whose territory the interview takes place. If so requested by the authority of that Member State, its officials may assist the staff of the Commission to conduct the interview.

**The invitation to an interview shall be sent to a person concerned with at least 10 working days notice. That notice period may be shortened with the express**

**consent of the person concerned or on duly reasoned grounds of urgency of the inspection.**

**In the latter case, the notice period shall not be less than 24 hours. The invitation shall include a list of the rights of the person concerned, in particular the right to be assisted by a person of his choice.**

3. The Commission may request legal or natural persons responsible for an establishment or an undertaking, or any broker and dealer to provide all necessary information relating to the relevant waste shipments. The Commission shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided.
4. The Commission shall without delay forward a copy of **make available** the request to the relevant authorities of the Member State in whose territory the seat of the establishment, undertaking, broker or dealer is situated and to the authorities of the Member State whose territory is affected.
5. Where the establishment, undertaking, broker or dealer does not provide the requested information, or the Commission considers the information it received to be insufficient to reach a conclusion, **the second sentence of** Article **58(6)** 58(5) shall apply, *mutatis mutandis*.

#### Article 67

##### Procedural guarantees

1. The Commission shall carry out inspections and request information ~~in full respect~~ **in compliance with** of the procedural guarantees of the **notifier, the** person who arranges the shipment, **the waste producer**, the waste holder, the waste carrier, the consignee or the facility that receives the waste **set out in this Article**.  
~~including:~~
  - 1bis. The notifier, the person who arranges the shipment, the waste producer, the waste holder, the waste carrier, the consignee or the facility that receives the waste shall have:**
    - (a) the right not to make self-incriminating statements;
    - (b) the right to be assisted by a person of choice;
    - (c) the right to use any of the official languages of the Member State where the inspection takes place;
    - (d) the right to comment on facts concerning them;
    - (e) the right to receive a copy of the record of interview and either approve it or add observations.
- The Commission shall seek evidence for and against the **notifier, the** person who arranges the shipment, **the waste producer**, the waste holder, the waste carrier, the consignee or the facility that receives the waste, and carry out inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.
2. The Commission shall ~~ensure the~~ **ensure the** ~~carry out inspections and request information in full respect of applicable~~ confidentiality **of the inspections, of the interview and of**

**te request carried out pursuant to this section. Information transmitted or obtained in the course of the inspections, interview and requests pursuant to this section shall be subject to** and Union data protection rules.

*Article 68*

*Mutual assistance*

1. In order to ensure compliance with the relevant requirements set out in this Regulation, **the relevant authorities of the** Member States and the Commission shall provide each other assistance in accordance with this Article.
2. Within the scope of Article 2(1) and without prejudice to Articles 61 and 62 of this Regulation, provisions of Article 2 paragraph 1, indents 3 to 5, 7 and 8, Articles 3, 4(1) until 'legislation' and (2), 5 to 14, 15(1) and 16 to 18 of Regulation (EC) No 515/97 shall apply *mutatis mutandis* to the cooperation between the competent national **relevant authorities of the Member States** and Union authorities **the Commission** implementing ~~this Regulation~~ **the provisions in this section**; references to 'customs and agricultural legislation' shall be understood to refer to this Regulation.

## ANNEX V

### WASTE LISTS FOR THE PURPOSE OF ARTICLE 36

#### Introductory notes

1. This Annex applies without prejudice to Directive 2008/98/EC.
2. This Annex consists of two parts. Article 36 further refers to the list of waste as referred to in Article 7 of Directive 2008/98/EC. For the purposes of this Regulation and to determine whether a specific waste is listed as referred to in Art. 36 of this Regulation, the list of waste as referred to in Article 7 of Directive 2008/98/EC applies only when Part 1 of this Annex is not applicable. If a waste is not listed in Part 1 of this Annex or in the list of waste as referred to in Article 7 of Directive 2008/98/EC, only then it ~~should~~ **must** be checked if it is listed in Part 2 of this Annex.

Part 1 of this Annex is divided into two sub-sections: List A lists wastes which are classified as hazardous by Article 1(1)(a) of the Basel Convention, and therefore covered by the export prohibition, and List B lists wastes which are not covered by Article 1(1)(a) of the Basel Convention, and therefore not covered by the export prohibition.

Thus, if a waste is listed in Part 1, a check must be made to ascertain whether it is listed in List A or in List B. Only if a waste is not listed in either List A or List B of Part 1, must a check be made to ascertain whether it is listed either among the hazardous waste listed in the list of waste as referred to in Article 7 of Directive 2008/98/EC (i.e. types of waste marked with an asterisk) or in Part 2 of this Annex, and if this is the case, it is covered by the export prohibition.

3. Wastes listed in List B of Part 1 or which are among the non-hazardous waste listed in the list of waste as referred to in Article 7 of Directive 2008/98/EC (i.e. wastes not marked with an asterisk) are covered by the export prohibition if they are contaminated by other materials to an extent which
  - (a) increases the risks associated with the waste sufficiently to render it appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 2008/98/EC; or
  - (a) prevents the recovery of the waste in an environmentally sound manner.

## Part 1<sup>10</sup>

### *List A (Annex VIII to the Basel Convention)*

#### **A1 Metal and metal bearing wastes**

A1010 Metal wastes and waste consisting of alloys of any of the following:

- Antimony
- Arsenic
- Beryllium
- Cadmium
- Lead
- Mercury
- Selenium
- Tellurium
- Thallium

but excluding such wastes specifically listed on list B.

A1020 Waste having as constituents or contaminants, excluding metal waste in massive form, any of the following:

- Antimony; antimony compounds
- Beryllium; beryllium compounds
- Cadmium; cadmium compounds
- Lead; lead compounds
- Selenium; selenium compounds
- Tellurium; tellurium compounds

A1030 Wastes having as constituents or contaminants any of the following:

- Arsenic; arsenic compounds
- Mercury; mercury compounds
- Thallium; thallium compounds

A1040 Wastes having as constituents any of the following:

- Metal carbonyls
- Hexavalent chromium compounds

A1050 Galvanic sludges

A1060 Waste liquors from the pickling of metals

A1070 Leaching residues from zinc processing, dust and sludges such as jarosite, hematite, etc.

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<sup>10</sup> References in Lists A and B to Annexes I, III and IV refer to Annexes of the Basel Convention

- A1080 Waste zinc residues not included on list B, containing lead and cadmium in concentrations sufficient to exhibit Annex III characteristics
- A1090 Ashes from the incineration of insulated copper wire
- A1100 Dusts and residues from gas cleaning systems of copper smelters
- A1110 Spent electrolytic solutions from copper electrorefining and electrowinning operations
- A1120 Waste sludges, excluding anode slimes, from electrolyte purification systems in copper electrorefining and electrowinning operations
- A1130 Spent etching solutions containing dissolved copper
- A1140 Waste cupric chloride and copper cyanide catalysts
- A1150 Precious metal ash from incineration of printed circuit boards not included on list B<sup>11</sup>
- A1160 Waste lead-acid batteries, whole or crushed
- A1170 Unsorted waste batteries excluding mixtures of only list B batteries. Waste batteries not specified on list B containing Annex 1 constituents to an extent to render them hazardous.
- A1180 Waste electrical and electronic assemblies or scrap<sup>12</sup> containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on list B, B1110)<sup>13</sup>
- A1190 Waste metal cables coated or insulated with plastics containing or contaminated with coal tar, PCB<sup>14</sup>, lead, cadmium, other organohalogen compounds or other Annex I constituents, to the extent that they exhibit Annex III characteristics

**A2 Wastes containing principally inorganic constituents, which may contain metals and organic materials**

- A2010 Glass waste from cathode-ray tubes and other activated glasses
- A2020 Waste inorganic fluorine compounds in the form of liquids or sludges but excluding such wastes specified on list B
- A2030 Waste catalysts but excluding such wastes specified on list B
- A2040 Waste gypsum arising from chemical industry processes, when containing Annex I constituents to the extent that it exhibits an Annex III hazardous characteristic (note the related entry on list B, B2080)
- A2050 Waste asbestos (dusts and fibres)
- A2060 Coal-fired power plant fly-ash containing Annex I substances in concentrations sufficient to exhibit Annex III characteristics (note the related entry on list B, B2050)

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<sup>11</sup> Note that mirror entry on list B (B1160) does not specify exceptions.

<sup>12</sup> This entry does not include scrap assemblies from electric power generation.

<sup>13</sup> PCBs are at a concentration level of 50 mg/kg or more.

<sup>14</sup> PCBs are at a concentration level of 50 mg/kg or more.



**A3 Wastes containing principally organic constituents, which may contain metals and inorganic materials**

- A3010 Waste from the production or processing of petroleum coke and bitumen
- A3020 Waste mineral oils unfit for their originally intended use
- A3030 Wastes that contain, consist of or are contaminated with leaded anti-knock compound sludges
- A3040 Waste thermal (heat transfer) fluids
- A3050 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives excluding such wastes specified on list B (note the related entry on list B, B4020)
- A3060 Waste nitrocellulose
- A3070 Waste phenols, phenol compounds including chlorophenol in the form of liquids or sludges
- A3080 Waste ethers not including those specified on list B
- A3090 Waste leather dust, ash, sludges and flours when containing hexavalent chromium compounds or biocides (note the related entry on list B, B3100)
- A3100 Waste paring and other waste of leather or of composition leather not suitable for the manufacture of leather articles containing hexavalent chromium compounds or biocides (note the related entry on list B, B3090)
- A3110 Fellingmongery wastes containing hexavalent chromium compounds or biocides or infectious substances (note the related entry on list B, B3110)
- A3120 Fluff - light fraction from shredding
- A3130 Waste organic phosphorous compounds
- A3140 Waste non-halogenated organic solvents but excluding such wastes specified on list B
- A3150 Waste halogenated organic solvents
- A3160 Waste halogenated or unhalogenated non-aqueous distillation residues arising from organic solvent recovery operations
- A3170 Wastes arising from the production of aliphatic halogenated hydrocarbons (such as chloromethane, dichloro-ethane, vinyl chloride, vinylidene chloride, allyl chloride and epichlorhydrin)
- A3180 Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more<sup>15</sup>

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<sup>15</sup> The 50 mg/kg level is considered to be an internationally practical level for all wastes. However, many individual countries have established lower regulatory levels (e.g. 20 mg/kg) for specific wastes.

- A3190 Waste tarry residues (excluding asphalt cements) arising from refining, distillation and any pyrolytic treatment of organic materials
- A3200 Bituminous material (asphalt waste) from road construction and maintenance, containing tar (note the related entry on list B B2130)
- A3210 Plastic waste, including mixtures of such waste, containing or contaminated with Annex I constituents, to an extent that it exhibits an Annex III characteristic (note the related entry B3011, in list B of this Part, and entry Y48, in list A of Part 2)

#### **A4 Wastes which may contain either inorganic or organic constituents**

- A4010 Wastes from the production, preparation and use of pharmaceutical products but excluding such wastes specified on list B
- A4020 Clinical and related wastes; that is wastes arising from medical, nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or research projects
- A4030 Wastes from the production, formulation and use of biocides and phytopharmaceuticals, including waste pesticides and herbicides that are off-specification, out-dated<sup>16</sup>, or unfit for their originally intended use
- A4040 Wastes from the manufacture, formulation and use of wood-preserving chemicals<sup>17</sup>
- A4050 Wastes that contain, consist of or are contaminated with any of the following:
- Inorganic cyanides, excepting precious-metal-bearing residues in solid form containing traces of inorganic cyanides
  - Organic cyanides
- A4060 Waste oils/water, hydrocarbons/water mixtures, emulsions
- A4070 Wastes from the production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish excluding any such waste specified on list B (note the related entry on list B, B4010)
- A4080 Wastes of an explosive nature (but excluding such wastes specified on list B)
- A4090 Waste acidic or basic solutions, other than those specified in the corresponding entry on list B (note the related entry on list B, B2120)
- A4100 Wastes from industrial pollution control devices for cleaning of industrial off-gases but excluding such wastes specified on list B
- A4110 Wastes that contain, consist of or are contaminated with any of the following:
- any congener of polychlorinated dibenzo-furan
  - any congener of polychlorinated dibenzo-dioxin
- A4120 Wastes that contain, consist of or are contaminated with peroxides

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<sup>16</sup> "Out-dated" means unused within the period recommended by the manufacturer.

<sup>17</sup> This entry does not include wood treated with wood-preserving chemicals.

- A4130 Waste packages and containers containing Annex I substances in concentrations sufficient to exhibit Annex III hazard characteristics
- A4140 Waste consisting of or containing off-specification or out-dated<sup>18</sup> chemicals corresponding to Annex I categories and exhibiting Annex III hazard characteristics
- A4150 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on human health and/or the environment are not known
- A4160 Spent activated carbon not included on list B (note the related entry on list B, B2060)

*List B (Annex IX to the Basel Convention)*

**B1 Metal and metal bearing wastes**

B1010 Metal and metal-alloy wastes in metallic, non-dispersible form:

- Precious metals (gold, silver, the platinum group, but not mercury)
- Iron and steel scrap
- Copper scrap
- Nickel scrap
- Aluminium scrap
- Zinc scrap
- Tin scrap
- Tungsten scrap
- Molybdenum scrap
- Tantalum scrap
- Magnesium scrap
- Cobalt scrap
- Bismuth scrap
- Titanium scrap
- Zirconium scrap
- Manganese scrap
- Germanium scrap
- Vanadium scrap
- Scrap of Hafnium, Indium, Niobium, Rhenium and Gallium
- Thorium scrap
- Rare earths scrap

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<sup>18</sup> “Out-dated” means unused within the period recommended by the manufacturer.

- Chromium scrap
- B1020 Clean, uncontaminated metal scrap, including alloys, in bulk finished form (sheet, plate, beams, rods, etc):
  - Antimony scrap
  - Beryllium scrap
  - Cadmium scrap
  - Lead scrap (but excluding lead-acid batteries)
  - Selenium scrap
  - Tellurium scrap
- B1030 Refractory metals containing residues
- B1031 Molybdenum, tungsten, titanium, tantalum, niobium and rhenium metal and metal alloy wastes in metallic dispersible form (metal powder), excluding such wastes as specified in list A under entry A1050, Galvanic sludges.
- B1040 Scrap assemblies from electrical power generation not contaminated with lubricating oil, PCB or PCT to an extent to render them hazardous
- B1050 Mixed non-ferrous metal, heavy fraction scrap, not containing Annex I materials in concentrations sufficient to exhibit Annex III characteristics<sup>19</sup>
- B1060 Waste of Selenium and Tellurium in metallic elemental form including powder
- B1070 Waste of copper and copper alloys in dispersible form, unless they contain Annex I constituents to an extent that they exhibit Annex III characteristics
- B1080 Zinc ash and residues including zinc alloys residues in dispersible form unless containing Annex I constituents in concentration such as to exhibit Annex III characteristics or exhibiting hazard characteristic H4.3<sup>20</sup>
- B1090 Waste batteries conforming to a specification, excluding those made with lead, cadmium or mercury
- B1100 Metal-bearing wastes arising from melting, smelting and refining of metals:
  - Hard zinc spelter
  - Zinc-containing drosses:
    - Galvanizing slab zinc top dross (>90 % Zn)
    - Galvanizing slab zinc bottom dross (>92 % Zn)
    - Zinc die casting dross (>85 % Zn)
    - Hot dip galvanizers slab zinc dross (batch) (>92 % Zn)
    - Zinc skimmings
  - Aluminium skimmings (or skims) excluding salt slag

<sup>19</sup> Note that even where low level contamination with Annex I materials initially exists, subsequent processes, including recycling processes, may result in separated fractions containing significantly enhanced concentrations of those Annex I materials.

<sup>20</sup> The status of zinc ash is currently under review and there is a recommendation with United Nations Conference on Trade and Development (UNCTAD) that zinc ashes should not be dangerous goods.

- Slags from copper processing for further processing or refining not containing arsenic, lead or cadmium to an extent that they exhibit Annex III hazard characteristics
- Wastes of refractory linings, including crucibles, originating from copper smelting
- Slags from precious metals processing for further refining
- Tantalum bearing tin slags with less than 0.5 % tin

**B1110 Electrical and electronic assemblies:**

- Electronic assemblies consisting only of metals or alloys
- Waste electrical and electronic assemblies or scrap<sup>21</sup> (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or not contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Annex III (note the related entry on list A, A1180)
- Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct re-use<sup>22</sup> and not for recycling or final disposal<sup>23</sup>

**B1115 Waste metal cables coated or insulated with plastics, not included in entry A1190, excluding those destined for Annex IVA operations or any other disposal operations involving, at any stage, uncontrolled thermal processes, such as open-burning**

**B1120 Spent catalysts excluding liquids used as catalysts, containing any of:**

- |  |                                    |            |
|--|------------------------------------|------------|
| – Transition Metals, excluding waste catalysts (spent catalysts, liquid used catalysts or other catalysts) on list A | Scandium                           | Titanium   |
|  | Vanadium                           | Chromium   |
|  | Manganese                          | Iron       |
|  | Cobalt                             | Nickel     |
|  | Copper                             | Zinc       |
|  | Yttrium                            | Zirconium  |
|  | Niobium                            | Molybdenum |
|  | Hafnium                            | Tantalum   |
|  | Tungsten                           | Rhenium    |
|  | – Lanthanides (rare earth metals): | Lanthanum  |
| Praseodymium   |                                    | Neodymium  |
| Samarium   |                                    | Europium   |
| Gadolinium   |                                    | Terbium    |
| Dysprosium   |                                    | Holmium    |
| Erbium   |                                    | Thulium    |
| Ytterbium  |                                    | Lutetium   |

**B1130 Cleaned spent precious-metal-bearing catalysts**

<sup>21</sup> This entry does not include scrap from electrical power generation.

<sup>22</sup> Re-use can include repair, refurbishment or upgrading, but not major reassembly.

<sup>23</sup> In some countries, these materials destined for direct re-use are not considered wastes.

- B1140 Precious-metal-bearing residues in solid form, which contain traces of inorganic cyanides
- B1150 Precious metals and alloy wastes (gold, silver, the platinum group, but not mercury) in a dispersible, non-liquid form with appropriate packaging and labelling
- B1160 Precious-metal ash from the incineration of printed circuit boards (note the related entry on list A, A1150)
- B1170 Precious-metal ash from the incineration of photographic film
- B1180 Waste photographic film containing silver halides and metallic silver
- B1190 Waste photographic paper containing silver halides and metallic silver
- B1200 Granulated slag arising from the manufacture of iron and steel
- B1210 Slag arising from the manufacture of iron and steel including slags as a source of  $\text{TiO}_2$  and Vanadium
- B1220 Slag from zinc production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g. DIN 4301) mainly for construction
- B1230 Mill scaling arising from the manufacture of iron and steel
- B1240 Copper oxide mill-scale
- B1250 Waste end-of-life motor vehicles, containing neither liquids nor other hazardous components

**B2      Wastes containing principally inorganic constituents, which may contain metals and organic materials**

- B2010 Wastes from mining operations in non-dispersible form:
  - Natural graphite waste
  - Slate waste, whether or not roughly trimmed or merely cut, by sawing or otherwise
  - Mica waste
  - Leucite, nepheline and nepheline syenite waste
  - Feldspar waste
  - Fluorspar waste
  - Silica wastes in solid form excluding those used in foundry operations
- B2020 Glass waste in non-dispersible form:
  - Cullet and other waste and scrap of glass except for glass from cathode-ray tubes and other activated glasses
- B2030 Ceramic wastes in non-dispersible form:
  - Cermet wastes and scrap (metal ceramic composites)
  - Ceramic based fibres not elsewhere specified or included
- B2040 Other wastes containing principally inorganic constituents:

- Partially refined calcium sulphate produced from flue-gas desulphurization (FGD)
  - Waste gypsum wallboard or plasterboard arising from the demolition of buildings
  - Slag from copper production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications
  - Sulphur in solid form
  - Limestone from the production of calcium cyanamide (having a pH less than 9)
  - Sodium, potassium, calcium chlorides
  - Carborundum (silicon carbide)
  - Broken concrete
  - Lithium-Tantalum and ~~L~~<sup>Li</sup>thium-Niobium containing glass scraps
- B2050 Coal-fired power plant fly-ash, not included on list A (note the related entry on list A, A2060)
- B2060 Spent activated carbon **not containing any Annex I constituents to the extent that they exhibit Annex III characteristics, for example, carbon** resulting from the treatment of potable water and processes of the food industry and vitamin production (note the related entry on list A, A4160)
- B2070 Calcium fluoride sludge
- B2080 Waste gypsum arising from chemical industry processes not included on list A (note the related entry on list A, A2040)
- B2090 Waste anode butts from steel or aluminium production made of petroleum coke or bitumen and cleaned to normal industry specifications (excluding anode butts from chlor alkali electrolyses and from metallurgical industry)
- B2100 Waste hydrates of aluminium and waste alumina and residues from alumina production excluding such materials used for gas cleaning, flocculation or filtration processes
- B2110 Bauxite residue ("red mud") (pH moderated to less than 11.5)
- B2120 Waste acidic or basic solutions with a pH greater than 2 and less than 11.5, which are not corrosive or otherwise hazardous (note the related entry on list A, A4090)
- B2130 Bituminous material (asphalt waste) from road construction and maintenance, not containing tar<sup>24</sup> (note the related entry on A, A3200)**

**B3 Wastes containing principally organic constituents, which may contain metals and inorganic materials**

- B3011 Plastic waste (note the related entry A3210, in list A of this Part, and entry Y48, in list A of Part 2)

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<sup>24</sup> **The concentration level of Benzol[a]pyrene should not be 50mg/kg or more**

- Plastic waste listed below, provided it is destined for recycling<sup>25</sup> in an environmentally sound manner and almost free from contamination and other types of wastes<sup>26</sup>:
  - Plastic waste almost exclusively<sup>27</sup> consisting of one non-halogenated polymer, including but not limited to the following polymers:
    - Polyethylene (PE)
    - Polypropylene (PP)
    - Polystyrene (PS)
    - Acrylonitrile butadiene styrene (ABS)
    - Polyethylene terephthalate (PET)
    - Polycarbonates (PC)
    - Polyethers
  - Plastic waste almost exclusively<sup>28</sup> consisting of one cured resin or condensation product, including but not limited to the following resins:
    - Urea formaldehyde resins
    - Phenol formaldehyde resins
    - Melamine formaldehyde resins
    - Epoxy resins
    - Alkyd resins
  - Plastic waste almost exclusively<sup>29</sup> consisting of one of the following fluorinated polymers<sup>30</sup>:
    - Perfluoroethylene/propylene (FEP)
    - Perfluoroalkoxy alkanes:
      - Tetrafluoroethylene/perfluoroalkyl vinyl ether (PFA)
      - Tetrafluoroethylene/perfluoromethyl vinyl ether (MFA)
    - Polyvinylfluoride (PVF)
    - Polyvinylidene fluoride (PVDF)
- Mixtures of plastic waste, consisting of polyethylene (PE), polypropylene (PP) and/or polyethylene terephthalate (PET), provided they are destined for separate

<sup>25</sup> Recycling/reclamation of organic substances that are not used as solvents (R3 in Annex IV, sect. B) or, if needed, temporary storage limited to one instance, provided that it is followed by operation R3 and evidenced by contractual or relevant official documentation.

<sup>26</sup> In relation to ‘almost free from contamination and other types of wastes’, international and national specifications may offer a point of reference.

<sup>27</sup> In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.

<sup>28</sup> **In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.**

<sup>29</sup> **In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.**

<sup>30</sup> Post-consumer wastes are excluded.



recycling<sup>31</sup> of each material and in an environmentally sound manner, and almost free from contamination and other types of wastes<sup>32</sup>.

B3020 Paper, paperboard and paper product wastes

The following materials, provided they are not mixed with hazardous wastes:

Waste and scrap of paper or paperboard of:

- unbleached paper or paperboard or of corrugated paper or paperboard
- other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass
- paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)
- other, including but not limited to
  - 1) laminated paperboard;
  - 2) unsorted scrap

B3026 The following waste from the pre-treatment of composite packaging for liquids, not containing Annex I materials in concentrations sufficient to exhibit Annex III characteristics:

- Non-separable plastic fraction
- Non-separable plastic-aluminium fraction

B3027 Self-adhesive label laminate waste containing raw materials used in label material production

B3030 Textile wastes

The following materials, provided they are not mixed with other wastes and are prepared to a specification:

- Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)
  - not carded or combed
  - other
- Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock
  - noils of wool or of fine animal hair
  - other waste of wool or of fine animal hair

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<sup>31</sup> Recycling/reclamation of organic substances that are not used as solvents (R3 in Annex IV, sect. B), with prior sorting and, if needed, temporary storage limited to one instance, provided that it is followed by operation R3 and evidenced by contractual or relevant official documentation.

<sup>32</sup> **In relation to 'almost exclusively', international and national specifications may offer a point of reference.**

- waste of coarse animal hair
- Cotton waste (including yarn waste and garnetted stock)
  - yarn waste (including thread waste)
  - garnetted stock
  - other
- Flax tow and waste
- Tow and waste (including yarn waste and garnetted stock) of true hemp (*Cannabis sativa* L.)
- Tow and waste (including yarn waste and garnetted stock) of jute and other textile bast fibres (excluding flax, true hemp and ramie)
- Tow and waste (including yarn waste and garnetted stock) of sisal and other textile fibres of the genus *Agave*
- Tow, noils and waste (including yarn waste and garnetted stock) of coconut
- Tow, noils and waste (including yarn waste and garnetted stock) of abaca (*Manila hemp* or *Musa textilis* Nee)
- Tow, noils and waste (including yarn waste and garnetted stock) of ramie and other vegetable textile fibres, not elsewhere specified or included
- Waste (including noils, yarn waste and garnetted stock) of man-made fibres
  - of synthetic fibres
  - of artificial fibres
- Worn clothing and other worn textile articles
- Used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile
  - sorted
  - other

B3035 Waste textile floor coverings, carpets

B3040 Rubber wastes

The following materials, provided they are not mixed with other wastes:

- Waste and scrap of hard rubber (e.g. ebonite)
- Other rubber wastes (excluding such wastes specified elsewhere)

B3050 Untreated cork and wood waste:

- Wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- Cork waste: crushed, granulated or ground cork

B3060 Wastes arising from agro-food industries provided it is not infectious:

- Wine lees

- Dried and sterilized vegetable waste, residues and byproducts, whether or not in the form of pellets, or a kind used in animal feeding, not elsewhere specified or included
- Degras; residues resulting from the treatment of fatty substances or animal or vegetable waxes
- Waste of bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinised
- Fish waste
- Cocoa shells, husks, skins and other cocoa waste
- Other wastes from the agro-food industry excluding by-products which meet national and international requirements and standards for human or animal consumption

B3065 Waste edible fats and oils of animal or vegetable origin (e.g. frying oils), provided they do not exhibit an Annex III characteristic

B3070 The following wastes:

- Waste of human hair
- Waste straw
- Deactivated fungus mycelium from penicillin production to be used as animal feed

B3080 Waste parings and scrap of rubber

B3090 Paring and other wastes of leather or of composition leather not suitable for the manufacture of leather articles, excluding leather sludges, not containing hexavalent chromium compounds and biocides (note the related entry on list A, A3100)

B3100 Leather dust, ash, sludges or flours not containing hexavalent chromium compounds or biocides (note the related entry on list A, A3090)

B3110 Fellmongery wastes not containing hexavalent chromium compounds or biocides or infectious substances (note the related entry on list A, A3110)

B3120 Wastes consisting of food dyes

B3130 Waste polymer ethers and waste non-hazardous monomer ethers incapable of forming peroxides

B3140 Waste pneumatic tyres, excluding those destined for Annex IVA operations

#### **B4 Wastes which may contain either inorganic or organic constituents**

B4010 Wastes consisting mainly of water-based/latex paints, inks and hardened varnishes not containing organic solvents, heavy metals or biocides to an extent to render them hazardous (note the related entry on list A, A4070)

B4020 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives, not listed on list A, free of solvents and other contaminants to an extent that they do not exhibit Annex III characteristics, e.g. water based, or glues based on casein starch, dextrin, cellulose ethers, polyvinyl alcohols (note the related entry on list A, A3050)

B4030 Used single use cameras, with batteries not included on list A

## Part 2

### *List A (Annex II to the Basel Convention)*

**Y46** Waste collected from households<sup>33</sup>

**Y47** Residues arising from the incineration of household wastes

**Y48** Plastic waste, including mixtures of such waste, with the exception of the following:

- Plastic waste that is hazardous waste (see entry A3210 in list A of part 1 in Annex V)
- Plastic waste listed below, provided it is destined for recycling<sup>34</sup> in an environmentally sound manner and almost free from contamination and other types of wastes<sup>35</sup>:
  - Plastic waste almost exclusively<sup>36</sup> consisting of one non-halogenated polymer, including but not limited to the following polymers:
    - Polyethylene (PE)
    - Polypropylene (PP)
    - Polystyrene (PS)
    - Acrylonitrile butadiene styrene (ABS)
    - Polyethylene terephthalate (PET)
    - Polycarbonates (PC)
    - Polyethers
  - Plastic waste almost exclusively<sup>37</sup> consisting of one cured resin or condensation product, including but not limited to the following resins:
    - Urea formaldehyde resins
    - Phenol formaldehyde resins
    - Melamine formaldehyde resins
    - Epoxy resins
    - Alkyd resins

<sup>33</sup> Unless appropriately classified under a single entry in Annex III.

<sup>34</sup> Recycling/reclamation of organic substances that are not used as solvents (R3 in Annex IV, sect. B) or, if needed, temporary storage limited to one instance, provided that it is followed by operation R3 and evidenced by contractual or relevant official documentation

<sup>35</sup> In relation to ‘almost free from contamination and other types of wastes’, international and national specifications may offer a point of reference.

<sup>36</sup> In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.

<sup>37</sup> In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.

- Plastic waste almost exclusively<sup>38</sup> consisting of one of the following fluorinated polymers<sup>39</sup>:
  - Perfluoroethylene/propylene (FEP)
  - Perfluoroalkoxy alkanes:
  - Tetrafluoroethylene/perfluoroalkyl vinyl ether (PFA)
  - Tetrafluoroethylene/perfluoromethyl vinyl ether (MFA)
  - Polyvinylfluoride (PVF)
  - Polyvinylidene fluoride (PVDF)
- Mixtures of plastic waste, consisting of polyethylene (PE), polypropylene (PP) and/or polyethylene terephthalate (PET), provided they are destined for separate recycling<sup>40</sup> of each material and in an environmentally sound manner and almost free from contamination and other types of wastes<sup>41</sup>.

*List B (Waste from Appendix 4, Part II of the OECD Decision)<sup>42</sup>*

*Metal bearing wastes*

AA 010	261900	Dross, scalings and other wastes from the manufacture of iron and steel <sup>43</sup>
AA 060	262099	Vanadium ashes and residues
AA 190	810420 ex 810430	Magnesium waste and scrap that is flammable, pyrophoric or emits, upon contact with water, flammable gases in dangerous quantities

*Wastes containing principally inorganic constituents, which may contain metals and organic materials*

<sup>38</sup> **In relation to ‘almost exclusively’, international and national specifications may offer a point of reference.**

<sup>39</sup> Post-consumer wastes are excluded.

<sup>40</sup> Recycling/reclamation of organic substances that are not used as solvents (R3 in Annex IV, sect. B), with prior sorting and, if needed, temporary storage limited to one instance, provided that it is followed by operation R3 and evidenced by contractual or relevant official documentation.

<sup>41</sup> In relation to ‘almost free from contamination and other types of wastes’, international and national specifications may offer a point of reference.

<sup>42</sup> The wastes numbered AB130, AC250, AC260 and AC270 have been deleted since they have been considered, in accordance with the procedure laid down in Article 18 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9, as repealed by Directive 2008/98/EC), to be non-hazardous and therefore not subject to the export prohibition in Article 36 of this Regulation. The waste numbered AC300 has been deleted since the waste in question is covered by entry A3210 in List A of part 1.

<sup>43</sup> This listing includes wastes in the form of ash, residue, slag, dross, skimming, scaling, dust, powder, sludge and cake, unless a material is expressly listed elsewhere.

<b>AB 030</b>		Wastes from non-cyanide based systems which arise from surface treatment of metals
<b>AB 070</b>		Sands used in foundry operations
<b>AB 120</b>	ex 281290 ex 3824	Inorganic halide compounds, not elsewhere specified or included
<b>AB 150</b>	ex 382499	Unrefined calcium sulphite and calcium sulphate from flue gas desulphurisation (FGD)

*Wastes containing principally organic constituents, which may contain metals and inorganic materials*

<b>AC 060</b>	ex 381900	Hydraulic fluids
<b>AC 070</b>	ex 381900	Brake fluids
<b>AC 080</b>	ex 382000	Antifreeze fluids
<b>AC 150</b>		Chlorofluorocarbons
<b>AC 160</b>		Halons
<b>AC 170</b>	ex 440310+ <del>ex 440312</del>	Treated cork and wood wastes

*Wastes which may contain either inorganic or organic constituents*

<b>AD 090</b>	ex 382490 <del>09</del>	Wastes from production, formulation and use of reprographic and photographic chemicals and materials not elsewhere specified or included
<b>AD 100</b>		Wastes from non-cyanide based systems which arise from surface treatment of plastics
<b>AD 120</b>	ex 391400 ex 3915	Ion exchange resins
<b>AD 150</b>		Naturally occurring organic material used as a filter medium (such as bio-filters)

*Wastes containing principally inorganic constituents, which may contain metals and organic materials*

<b>RB 020</b>	ex 6815	Ceramic based fibres of physico-chemical characteristics similar to those of asbestos
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## ANNEX VIII

REQUEST FOR INCLUSION IN THE LIST OF COUNTRIES TO WHICH THE EXPORT  
FROM THE EUROPEAN UNION OF NON-HAZARDOUS WASTES AND MIXTURES  
OF NON-HAZARDOUS WASTES DESTINED FOR RECOVERY FROM THE  
EUROPEAN UNION ARE IS AUTHORISED

### Part 1

Request to receive non-hazardous waste(s) and mixtures of non-hazardous wastes from  
the European Union

*Hereby, (name and contact details of competent authority) ....., on behalf  
of (country) ..... (hereafter 'the country') declares  
that the country wishes to receive the non-hazardous wastes(s) and mixtures of  
non-hazardous wastes specified in Part 2, point 1, of this request from the  
European Union and declares that the country has an adequate waste management  
regulatory framework and strategy in place, and is taking adequate enforcement  
measures to manage the waste(s) concerned in an environmentally sound manner.*

Place.....Date:.....Signature:.....

### Part 2

#### Information and supporting evidence

#### 1. List of wastes covered by the request

Description of the <u>non-hazardous</u> wastes <u>or</u> <u>mixtures of non-hazardous wastes</u>	Relevant <u>classification</u> <u>identification code</u> <sup>44</sup>	<u>Waste</u>
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<sup>44</sup>

Codes used in Annex IX of the Basel Convention or, if the waste is not listed in that Annex, waste identification codes or descriptions referred to in Annexes III Part II, Annex IIIA or Annex IIIB of this Regulation, or in part 2 of Annex V or, if the waste is not listed in these Annexes, waste identification codes for non-hazardous waste in the list of waste referred to in Article 7 of Directive 2008/98/EC; when not already listed in Annex III, Annex IIIA or Annex IIIB.


2. Please provide, in annex to this request, a detailed description of the national waste management strategy or plan of the country, including the following elements:

- The **annual** amount of total waste generated in the country ~~on a yearly basis~~, as well as the **annual** amount of waste(s) covered by the scope of this request (“waste concerned by the request”), and ~~estimations on~~ how these amounts ~~would~~ **are estimated to** develop in the next 10 years;
- an estimation of the country’s current treatment capacity for waste in general, as well as an estimation of the country’s treatment capacity for the waste(s) concerned by the request, and ~~an evaluation~~ of how these capacities ~~would~~ **are estimated to** develop in the next 10 years;
- the proportion of domestically generated waste that is separately collected, as well as possible objectives and measures to increase this rate in the future. Please provide this information for each of the most important types of domestic waste;
- the proportion of domestic waste(s) concerned by the request that is landfilled, as well as possible objectives and measures to decrease this rate in the future;
- the proportion of domestic waste(s) concerned by the request that is recycled, and any objectives and measures to increase this rate in the future;
- information on the amount of waste that is littered and on measures taken to prevent and clean up litter;
- a strategy on how to ensure the environmentally sound management of waste imported into its territory, including the possible impact of the management of imported waste on the management of waste generated domestically;
- information on the methodology used to calculate the data referred to in points (a) to (f).

3. Please provide, in annex to this request, a description of domestic legal framework for waste management in place, including at least the following elements:

- permitting or licensing system(s) for waste treatment facilities;
- permitting, ~~or~~ licensing **or registration** system(s) for transport of waste;
- provisions designed to ensure that the residual waste generated through the recovery operation for the waste(s) concerned is managed in an environmentally sound manner;
- pollution controls applying to waste treatment operations, including in particular emission limits for the protection of air, soil and water and measures to reduce the emissions of greenhouse gases from these operations;
- provisions on enforcement, inspection and penalties designed to ensure the implementation of domestic and international requirements on waste management and waste shipment.

4. Please provide, in annex to this request, a description of any other related legislation on the protection of the environment and public health applicable to waste management operations.



5. Please provide, in annex to this request, a description of the domestic legislation on the import and export of the waste concerned by the request, and in particular on any specific control procedure applying to such import or export, such as prior written notification and consent as referred to in Article 6 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

6. Please provide a list of facilities authorised under the domestic legislation of the country to recover the waste(s) **concerned** covered by ~~the~~is request (including at least the name and address of these facilities, their permit number, the types of **non-hazardous wastes or mixtures of non-hazardous** waste(s) that they are authorised to recover and their authorised treatment capacity). This should preferably be provided through a website link where information on the concerned facilities is publicly and electronically accessible (e.g. website link of the competent authority).

7. Please provide information on the status of the country with regard to its ~~membership~~ **status of ratification of** to the following multilateral environmental agreements:

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>
Stockholm Convention on Persistent Organic Pollutants	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>
Minamata Convention on Mercury	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>
UN Framework Convention on Climate Change	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>
Paris Agreement	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>
Montreal Protocol on substances that deplete the ozone layer	Signed: yes <input type="checkbox"/> no <input type="checkbox"/> Ratified: yes <input type="checkbox"/> no <input type="checkbox"/>

8. Please provide, in annex to this request, a description of how the country complies with its obligations under the multilateral environmental agreements listed in point 7, in particular as regards the relevant reporting obligations thereof.

9. Please provide, in annex to this request, a description of how the Framework for the environmentally sound management (ESM) of hazardous wastes and other wastes, technical guidelines and other guidance on the environmentally sound management of waste adopted under the Basel Convention are taken into consideration in the regime for the management of the waste concerned by the request.

10. Please provide, in annex to this request, a detailed description of the country's strategy for enforcement of domestic legislation on waste management and waste shipment, covering in particular control and monitoring measures, including information on the number of inspections of shipments of waste and of waste management facilities carried out and on penalties imposed in cases of infringements to the relevant domestic rules.

## **ANNEX IX**

### **POINTS OF REFERENCE FOR THE ASSESSMENT PERFORMED BY THE COMMISSION PURSUANT TO ARTICLE 40(1)**

#### **Part 1**

##### **EU legislation designed to ensure the environmentally sound management of waste**

1. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Waste Framework Directive).
2. In addition to the EU Waste Framework Directive, the following pieces of EU legislation, which set out requirements for waste treatment operations, are relevant for the purpose of ensuring environmentally sound management of waste:
  - (a) Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste<sup>45</sup>,
  - (b) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions.
3. The following pieces of EU legislation, which set out requirements for specific waste streams, are also relevant for the purpose of ensuring environmentally sound management of waste:
  - (a) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste;
  - (b) Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls;
  - (c) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles;
  - (d) Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC;
  - (e) Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE);
  - (f) Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants.

#### **Part 2**

##### **International guidance on environmentally sound management of waste**

1. Guidelines and guidance documents adopted under the Basel Convention:
  - (a) Technical guidelines for the environmentally sound **disposal of hazardous wastes and other wastes in specially engineered landfill (D5)**<sup>46</sup>

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<sup>45</sup> Relevant for the treatment of residual waste that is generated during a recovery operation

<sup>46</sup> **Adopted by the fifteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, June 2022**

- (b) **Technical guidelines on the environmentally sound incineration of hazardous wastes and other wastes as covered by disposal operations D10 and R1**<sup>47</sup>
- (c) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)<sup>48</sup>
- (d) General technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants<sup>49</sup>
- (e) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with hexabromocyclododecane (HBCD)<sup>50</sup>
- (f) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF)<sup>51</sup>
- (g) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with pentachlorophenol and its salts and esters (PCP)<sup>52</sup>
- (h) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with hexabromodiphenyl ether and heptabromodiphenyl ether, or tetrabromodiphenyl ether and pentabromodiphenyl ether or decabromodiphenyl ether (POP-BDEs)<sup>53</sup>
- (i) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with hexachlorobutadiene<sup>3</sup>
- (j) Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with short-chain chlorinated paraffins<sup>54</sup>
- (k) Technical guidelines for the environmentally sound management of used and waste pneumatic tyres<sup>55</sup>

<sup>47</sup> Adopted by the ~~fifteenth~~<sup>third</sup> meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, ~~June 2022~~<sup>September 1995</sup>.

<sup>48</sup> Adopted by the seventh meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, October 2004.

<sup>49</sup> Adopted by the fourteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 2019.

<sup>50</sup> Adopted by the twelfth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 2015.

<sup>51</sup> Adopted by the eighth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, December 2006.

<sup>52</sup> Adopted by the thirteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 2017.

<sup>53</sup> Adopted by the twelfth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 2015.

<sup>54</sup> Adopted by the seventh meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, October 2004.

<sup>55</sup> Adopted by the tenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, October 2011.

- (l) Guidance document on the environmentally sound management of used and end-of-life computing equipment<sup>56</sup>
- (m) Guidance document on environmentally sound management of used and end-of-life mobile phones<sup>3</sup>
- (n) Framework for the environmentally sound management of hazardous wastes and other wastes<sup>57</sup>
- (o) Practical manuals for the promotion of the environmentally sound management of wastes<sup>3</sup>

2. Guidelines adopted by the OECD:

- (a) Technical guidance for the environmentally sound management of specific waste streams: Used and scrap personal computers<sup>58</sup>

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<sup>56</sup> Adopted by the thirteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, May 2017.

<sup>57</sup> Adopted by the eleventh meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, October 2013

<sup>58</sup> Adopted by the Environment Policy Committee of the OECD in February 2003 (document ENV/EPOC/WGWPR(2001)3/FINAL).

## ANNEX X

### **CRITERIA DESIGNED TO DEMONSTRATE THAT A FACILITY MANAGES WASTE EXPORTED FROM THE UNION IN AN ENVIRONMENTALLY SOUND MANNER**

1. The audit referred in Article 43(2) shall ~~verifies~~ that the facility managing the waste in the country of destination complies with the following conditions:
  - (a) it is authorised by its competent authorities to import and treat this waste (evidence to be provided notably through production of corresponding permits or licences) and is carrying out its activities in accordance with relevant applicable domestic legislation on environmental protection;
  - (b) it is designed, constructed and operated in a safe and environmentally sound manner and, in particular, it has the required processes, organisation and infrastructure in place to treat the waste in question, and insurances covering potential risks and liabilities. To this end, as a minimum, information on the waste treatment methods, including how ~~they deal with~~ residual waste is managed, notably through downstream traceability, must be checked;
  - (c) it establishes management and monitoring systems, procedures and techniques that have the purpose of preventing, reducing, minimising and to the extent practicable eliminating:
    - (2) (i) health and safety risks to workers concerned and to the population in the vicinity of the facility, and
    - (3) (ii) adverse effects on the environment caused by its activities (in particular through adequate measures taken to monitor and address soil, water and air pollution, and other nuisances (odour, noise));
  - (a) it ensures the traceability of all waste received and treated at the facility, including ensuring that all residual waste generated from their activities are documented and are only transferred to waste management facilities that are authorised to ~~deal with their further treatment~~ treat such residual waste. To this end, as a minimum, information shall ~~should~~ be checked on:
    - the amount of waste that the facility is entitled to treat according to its permit/licences,
    - the amount of waste that ~~they~~ **facility** receives and recovers annually,
    - the amount of residual waste generated ~~by~~ from their activities, as well as evidence that this residual waste is ~~shipped to and~~ treated in an authorised waste treatment facility, including in the case of export;
  - (b) it has taken measures designed to save energy and limit the emissions of greenhouse gases linked to its activities;
  - (c) it establishes and is able to provide records of its waste management activities and import and export of waste ~~shipment activities~~ for the last five years;
  - (d) it has not been convicted of illegal activities linked to waste shipment or waste management in the last five years.

2. Upon verifying compliance of a facility against the above criteria, the independent third party performing the audit must in particular take into account, as a point of reference and where relevant:
  - (a) specific requirements for the treatment of certain waste and on the calculation of the amount of waste treated, which are mandatory under EU legislation;
  - (b) the Best Available Techniques conclusions adopted for certain activities under the regime of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions<sup>59</sup>.
3. In addition, the guidelines referred to in Part 2 of Annex IX may also be taken into consideration as guidance.

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<sup>59</sup>

OJ L 334, 17.12.2010, p. 17.

PUBLIC