

DENMARK

Written comments on Title IV, VII, and II

Title IV, chapter 2 and 3

Denmark wishes to prohibit the export of waste from EU to third countries. That was the ambition of the Green Deal and of the Circular Economy Action Plan, and we still share this ambition. Far too much waste is exported to third countries both in and outside of the OECD where it is not handled in an environmentally sound manner and thus becomes a concern for the environment, the nature and the health of people. Denmark accepts the Commissions impact assessment and that it would not be compatible with the WTO GATT and the OECD agreement to make a general prohibition of export of all waste, however we wish for the regime for exports of green listed waste from the EU to third countries to be as tight and strict as possible.

Article 37 - Prohibition of exports

We strongly support the prohibition of export of non-hazardous waste from the Union to non-OECD countries. Therefore, we support the prohibition on exports of waste which is green listed only in the EU and the OECD, exports of mixtures of green-listed waste and green listed waste which has not yet been adopted unto the relevant annexes of the Basel convention from the Union to third non-OECD countries as set out in paragraph 1, point a.

Furthermore, it is our understanding that in the current regulation mixtures of green listed waste are subject to the procedure of prior written notification and consent, as set out in Article 4, paragraph 2 in the new regulation (Article 3, paragraph 1, point b, number iv) unless listed in Annex III. Therefore, we see the proposed procedure set out in paragraph 2 as a weakening of the control with the waste.

Consequently, we suggest a rewording of Article 37. We suggest that Article 37, paragraph 2, the second part be drafted as follows:

“Such export may only take place on the condition that the waste is destined to a facility licensed under the domestic legislation of the country concerned, to undertake recovery operations for that waste. In addition, such export of waste listed in Part I of Annex III shall 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. Export of waste listed in Part II of Annex III, Annex IIIA and Annex IIIB shall be subject to the procedure of prior written notification and consent as set out in Chapter 1.”

Article 38 - Establishment of a list of countries to which exports of non-hazardous waste from the Union for recovery are authorised

Denmark still wishes a total export ban of waste from the EU. We acknowledge that is not possible currently, and therefore welcome this article, as we see it as a great strengthening of regulation, and a good way to ensure that only capable third countries receive European waste.

In relation to paragraph 2, point b on the specific waste that are authorized for exports from the Union, how will the waste allowed be characterized? We preferred that the sub indents under Basel codes are used so that the waste stream is as specific as possible. If we only use the Basel code the category becomes too wide in our opinion.

Paragraph 2, point c is a somewhat unclear to us, could it be specified that the information from the website that the country makes available should be in English and that each facility is identified clearly by at least name and address?

Article 39 - Requirements for inclusion in the list of countries to which exports are authorised

Could the Commission please elaborate a little on what is entailed in the criteria in paragraph 3 point b in relation to the permitting or licensing systems for waste treatment facilities and transports of waste, as this a little unclear to us (point i and ii).

Article 42 - Monitoring of export and safeguard procedure

Para 1: It is important that it is ensured that the levels of waste exported from the Union to OECD countries do not lead to serious environmental damage in the countries of destination. Therefore, we support the Commission monitoring these levels. We were wondering how the Commission will monitor the levels of waste exported. It is important that the Commission will have up to date data on the levels of waste exported at hand. What data will the Commission have access to?

Paras. 2-4: We find it prudent and a sign of due diligence that the Commission is empowered to intervene by delegated acts in relation to signs of environmentally unsound management of waste in OECD countries. In recent times there has been concerns that some OECD countries might not have the capacity to handle the waste imported to them in an environmentally sound manner in due time also because of the dynamic international waste market. The recent changes in the trade with plastic waste has shown that it is necessary that EU can act and adapt to new situations rapidly as fluctuations in the waste market occur.

Article 43 - Obligations on exporters

Denmark finds it appropriate that facilities located in third countries outside of the OECD should not only be audited by an independent and accredited third party as set out in paragraph 2, but also an audit by the Commission to verify that the audit performed by the third party is correct. In short, we wish that the same control mechanism that is applied in relation to ship recycling facilities in the ship recycling regulation is applied in relation to audits of all waste handling facilities which wishes to receive European waste.

In relation to paragraph 4, regarding re-auditing of facilities, we do not believe that three years is an appropriate frequency for audits, we believe that facilities should be audited every year. Further, we believe that the Commission should conduct a re-inspection at least every other year.

Title VII

Article 56 - Environmentally sound management

We support the narrowing of this article and hope that it would make it easier to apply in practice as the current Article 49 is very broad and difficult to apply in practice.

We are however curious about how the Commission sees that this Article should be used by the Member States?

The new wording of the Article and the fact that all references to competent authorities has been removed, does that mean that the liability of the exporter is increased in relation to exports to third countries?

Article 57 - Inspections

We greatly support that the previous Article 50 regarding Member State enforcement has been divided into several Articles, as it was quite broad.

Article 60 - Penalties

We have a scrutiny reservation in relation to the principle of administrative penalties as this might go against the Danish constitution.

Denmark however in principle supports the harmonization of assessment criteria and penalties.

Article 62 - Enforcement cooperation between Member States

Are there plans to use the future digital system to include risk assessments and requests for enforcement action?

If yes, could Commission clarify if there will be a separate module for inspections in the EDI or how it is envisioned?

Title II

Article 22 - Take-back when a shipment cannot be completed as intended

In relation to paragraph (3): In cases where waste has been irreversibly mixed at the treatment facility, rendering it impossible to prove from which shipment waste that did not match the description originated from, it seems problematic that the treatment facility have little to no responsibility in finding alternative treatment facilities. This results in possibly many notifiers who needs to find a solution for some waste which is possibly not theirs, while the treatment facility who mixed the waste irreversibly does not have any responsibility. We suggest that the treatment facility should have some responsibility in this relation.

In relation to paragraph 10, we are unsure when the competent authority can use the financial guarantee? Could the Commission please elaborate on this?

Article 24 - Take-back when a shipment is illegal

In relation to paragraph (3), and as we also asked in relation to Article 22, paragraph 10, does this mean that the competent authority has request all of the responsible parties before the financial guarantee can be used?

Furthermore, we believe that it would be useful with a time limit for when a notifier fails to fulfil their takeback obligations. We suggest 30 days or such other period as may be agreed between the competent authorities concerned after the competent authority of dispatch becomes aware of or has

been advised by the competent authorities of destination or transit of the illegal shipment and informed of the reasons therefor.

In paragraph 4, it is unclear who makes the assessment as to whether or not the illegal shipment can be imputed to the consignee. Is it the competent authority of destination? Alternatively, jointly between the competent authority of dispatch and competent authority of destination?

In relation to the last sentence of paragraph 4 regarding cooperation between competent authorities, does this mean that both of the competent authorities are responsible for the waste, or is it only the competent authority of destination, who then can seek help from the competent authority of dispatch?

In paragraph 6 we believe that it would be appropriate, if there was a default order in which alternative treatment should take place. Eg. alternative treatment should be found in the country of destination, if this is not possible, alternative treatment should be found elsewhere. This way the procedure would be clearer for the involved authorities. Therefore we suggest a rewording of paragraph 6, as follows: “In cases where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee, the competent authority of destination shall seek that the waste in question is recovered or disposed of in the country of destination. If that is not possible the competent authorities concerned shall cooperate to ensure that the waste in question is recovered or disposed of.

SLOVENIA

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056

Comments

General comments:

In addition to our comments, sent on February 14 and March 21, we would like to express some additional comments /question on **Title II, Chapter 1, Articles 6, 7, 8, 9 and 12**, as follows:

- **Article 6:** in **paragraph 4**, point (b), there is a reference to Article 15(6), point (b); however, there is no point (b) in Article 15(6), hence, the reference should be corrected;
- **Article 7:** in **paragraph 6**, there is a reference to Article 16(4) in relation to the waste that leaves the interim facility; however, Article 16(4) regulates non-interim recovery operation and not interim facilities; hence, the reference should be corrected;
- **Article 8:** in **paragraph 3**, there is a reference to Article 5(3) in relation to the notification that is properly carried out; we are wondering if this should not be corrected to reference to Article 5(4);
- **Article 9:** in **paragraph 4**, there is a reference to Article 16(1), points (a) and (b); however, there is no points (a) and (b) in Article 16(1), hence, the reference should be corrected;
- **Article 12:** in **paragraph 1**, point (d) is not completely clear; it is not clear if the conditions in points (i) to (iii) are cumulative; it is also not clear if the national legislation in point (i) refers to the country of dispatch or to the country of destination;
- **Article 12:** in **paragraph 6**, it is not clear what the expected timing of informing the Commission is; should the **Article 12:** in **paragraph 6**, it is Commission be informed in each particular case of intended objection or when such national legislation is adopted;
- **Article 16:** in **paragraph 1**, from the text it is understood that the start of application of the requirement on the electronically available movement document is on the date of entry into force of the Regulation; to our opinion it should be clearly linked to the date of start of application of electronic exchange system referred to in Article 26.

and on **Title VII, Chapter 2, Articles 65**, as follows:

- **Article 65:** in **paragraph 4**, there are more references (in different points) to '*holders*'; however, to our opinion it should be referred to '*waste holders*' as it is the case in paragraphs 7 or 8; the same goes for carries, for which there is a reference to '*waste carrier*' in paragraphs 7 and 8, but a reference solely to '*carrier*' in case of paragraph 4.

Title II Chapter 4 (Articles 22 to 25),

CHAPTER 4
TAKE-BACK OBLIGATIONS

Article 22

Take-back when a shipment cannot be completed as intended

1. Where any of the competent authorities concerned becomes aware that a shipment of waste, including its recovery or disposal, cannot be completed as intended in accordance with the terms of the notification and movement documents and/or contract referred to Article 6, it shall immediately inform the competent authority of dispatch thereof. Where a recovery or disposal facility rejects a shipment received, it shall immediately inform the competent authority of destination.
2. The competent authority of dispatch shall ensure that, except in cases referred to in paragraph 3, the waste in question is taken back to its area of jurisdiction or elsewhere within the country of dispatch by the notifier. The competent authority of dispatch shall identify the notifier following the order indicated in Article 3, point (6). Where that is not possible, that competent authority itself or a natural or legal person on its behalf shall comply with the provisions of this Article.

The take-back referred to in the first subparagraph shall take place within 90 days, or such other period as may be agreed between the competent authorities concerned, after the competent authority of dispatch becomes aware or has been advised by the competent authorities of destination or transit that the consented shipment of waste or its recovery or disposal cannot be completed as intended and has been informed of the reason(s) therefor. Such advice may result from information submitted to the competent authorities of destination or transit, inter alia, by other competent authorities.
3. The take-back obligation set out in paragraph 2 shall not apply if the competent authorities of dispatch, transit and destination involved are satisfied that the waste can be recovered or disposed of in an alternative way in the country of destination or elsewhere by the notifier or, if that is not possible, by the competent authority of dispatch or by a natural or legal person on its behalf.

The take-back obligation set out in paragraph 2 shall not apply if the waste shipped has, in the course of the operation at the facility concerned, been irreversibly mixed with other waste before a competent authority concerned has become aware of the fact that the notified shipment cannot be completed as referred to in paragraph 1. Such mixture shall be recovered or disposed of in an alternative way in accordance with the first subparagraph of this paragraph.
4. In cases of take-back as referred to in paragraph 2, a new notification shall be submitted, unless the competent authorities concerned agree that a duly motivated request by the initial competent authority of dispatch is sufficient.

A new notification, where appropriate, shall be submitted by the initial notifier or, if that is not possible, by any other natural or legal persons identified in accordance with Article 3, point (6) following the order indicated in that provision, or, if that is also impossible, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

The competent authorities shall not oppose or object to the return of waste from a shipment that cannot be completed or to the related recovery and disposal operation.

5. In cases of alternative arrangements outside the initial country of destination as referred to in paragraph 3, a new notification, where appropriate, shall be submitted by the initial notifier or, if that is not possible, by any other natural or legal persons identified in accordance with Article 3, point (6) following the order indicated in that provision, or, if that is also impossible, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

When such a new notification is submitted by the notifier, it shall also be submitted to the competent authority of the initial country of dispatch.

6. In cases of alternative arrangements in the initial country of destination as referred to in paragraph 3, a new notification shall not be required and a duly motivated request shall suffice. Such a duly motivated request, seeking agreement to the alternative arrangement, shall be submitted to the competent authority of destination and dispatch by the initial notifier or, if that is not possible, to the competent authority of destination by the initial competent authority of dispatch.

7. If no new notification is to be submitted in accordance with paragraphs 4 or 6, a new movement document shall be completed in accordance with Article 15 or Article 16 by the initial notifier or, if that is not possible, by any other natural or legal persons identified in accordance with Article 3, point (6) following the order indicated in that provision or, if that is also not possible, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

Where a new notification is submitted by the initial competent authority of dispatch in accordance with paragraphs 4 or 5, a new financial guarantee or equivalent insurance shall not be required. Subject to the agreement of all competent authorities concerned, the movement document for the initial shipment may be used for the take-back.

8. The obligation of the notifier and the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the facility issues the certificate of non-interim recovery or disposal referred to in Article 16(4), or, where appropriate, in Article 15(5). In the case of interim recovery or disposal referred to in Article 7(6), the subsidiary obligation of the country of dispatch shall end when the facility issues the certificate referred to in Article 15(4).

Where a facility issues a certificate of recovery or disposal in such a way that it results in an illegal shipment, with the consequence that the financial guarantee is released, Article 24(4) and Article 25(2) shall apply.

9. Where waste from a shipment which cannot be completed, including its recovery or disposal, is discovered within a Member State, the competent authority with jurisdiction over the area where the waste was discovered shall be responsible for ensuring that arrangements are made for the safe storage of the waste pending its return or non-interim recovery or disposal in an alternative way.

10. Where a notifier specified in Article 3, point (6)(a)(iv), fails to fulfil any of the take-back obligations set out in this Article and Article 23, the original waste producer, the new waste producer or the collector specified in Article 3, points (6)(a)(i), (ii) or (iii), respectively who authorised the dealer or broker to act on its behalf shall be deemed to be the notifier for the purposes of those take-back obligations.

Article 23

Costs for take-back when a shipment cannot be completed

1. Costs arising from the return of waste from a shipment that cannot be completed, including costs of its transport, recovery or disposal pursuant to Article 22(2) or (3), and, as of the date on which the competent authority of dispatch becomes aware that a shipment of waste or its recovery or disposal cannot be completed, storage costs pursuant to Article 22(9) shall be charged in accordance with the following order:
 - (a) to the notifier following the order of the list in Article 3, point (6); or, if that is not possible to the person referred to in point (b);
 - (b) to other natural or legal persons as appropriate; or, if that is also impossible to the person referred to in point (c);
 - (c) to the competent authority of dispatch; or, if that is also impossible in accordance with point (d);
 - (d) as otherwise agreed between the competent authorities concerned.
2. This Article shall be without prejudice to Union and national provisions concerning liability.

Article 24

Take-back when a shipment is illegal

Please see comments on Art 22(5) and (9)

We would also like some clarifications, for the following cases:

We encountered problems in case of the import from third countries that stopped in country of transit, but the CA of dispatch outside the EU stopped to communicate and the shipment has been stored in the country of transit since it has been stopped.

The CA of destination agreed that the shipment is illegal.

In accordance with Article 48(5) of this Regulation, the country of destination is the one to inform the CA of the country of dispatch; according to this, we assume it is also responsible for communication with CA of dispatch in case there is no reaction.

Who has in such cases obligation to take care of such shipment, if the notifier /CA of dispatch refuse to do so?

1. Where a competent authority discovers a shipment that it considers to be an illegal shipment, it shall immediately inform the other competent authorities concerned.

2. Where the responsibility of an illegal shipment can be imputed to the notifier, the competent authority of dispatch shall ensure that the waste in question is:
- (a) taken back by the notifier de facto, in order to arrange for its disposal or recovery; or, if no notification has been submitted, in accordance with point (b);
 - (b) taken back by the notifier de jure in order to arrange for its disposal or recovery; or, if that is not possible, in accordance with point (c);
 - (c) taken back by the competent authority of dispatch itself or by a natural or legal person on its behalf in order to arrange for its disposal or recovery; or, if that is also impossible, in accordance with point (d);
 - (d) alternatively recovered or disposed of in the country of destination or dispatch by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if that is also impossible, in accordance with point (e);
 - (e) alternatively recovered or disposed of in another country by the competent authority of dispatch itself or by a natural or legal person on its behalf if all the competent authorities concerned agree.

The take-back, recovery or disposal referred to in the first subparagraph shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of dispatch becomes aware of or has been advised by the competent authorities of destination or transit of the illegal shipment and informed of the reasons therefor. Such advice may result from information submitted to the competent authorities of destination or transit, inter alia, by other competent authorities.

In cases of take-back as referred to in the first subparagraph, points (a), (b) and (c), a new notification shall be submitted, unless the competent authorities concerned agree that a duly motivated request by the initial competent authority of dispatch is sufficient.

The new notification shall be submitted by the person or authority listed in the first subparagraph, points (a), (b) or (c), and in accordance with that order.

The competent authorities shall not oppose or object to the return of waste of an illegal shipment. In the case of alternative arrangements as referred to in the first subparagraph, points (d) and (e), by the competent authority of dispatch, a new notification shall be submitted by the initial competent authority of dispatch or by a natural or legal person on its behalf unless the competent authorities concerned agree that a duly motivated request by that authority is sufficient.

3. Where a notifier specified in Article 3, point (6)(a)(iv), fails to fulfil any of the take-back obligations set out in this Article and Article 25, the original waste producer, the new waste producer or the collector specified in Article 3, points (6)(a)(i), (ii) or (iii), respectively who authorised that dealer or broker to act on its behalf shall be deemed to be the notifier for the purposes of those take-back obligations.
4. Where the responsibility of an illegal shipment can be imputed to the consignee, the competent authority of destination shall ensure that the waste in question is recovered or disposed of in an environmentally sound manner:
- (a) by the consignee; or, if that is not possible, in accordance with point (b);
 - (b) by the competent authority itself or by a natural or legal person on its behalf.

The recovery or disposal referred to in the first subparagraph shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of destination becomes aware of or has been advised by the competent authorities of dispatch or transit of the illegal shipment and informed of the reason(s) therefore. Such advice may result from information submitted to the competent authorities of dispatch and transit, inter alia, by other competent authorities.

The competent authorities concerned shall cooperate, as necessary, in the recovery or disposal of the waste in accordance with this paragraph.

5. Where no new notification is to be submitted, a new movement document shall be completed in accordance with Articles 15 or 16 by the person responsible for take-back or, if that is not possible, by the initial competent authority of dispatch.

Where a new notification is submitted by the initial competent authority of dispatch, a new financial guarantee or equivalent insurance shall not be required.

6. In cases where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee, the competent authorities concerned shall cooperate to ensure that the waste in question is recovered or disposed of.
7. In case of interim recovery or disposal referred to in Article 7(6) where an illegal shipment is discovered after completion of the interim recovery operation or interim disposal operation, the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the facility has issued the certificate referred to in Article 15(4).

Where a facility issues a certificate of recovery or disposal in such a way that it results in an illegal shipment, with the consequence that the financial guarantee is released, paragraph 4 of this Article and Article 25(2) shall apply.

8. Where the waste of an illegal shipment is discovered within a Member State, the competent authority with jurisdiction over the area where the waste was discovered shall be responsible for ensuring that arrangements are made for the safe storage of the waste pending its return or non-interim recovery or disposal in an alternative way.
9. Articles 34 and 36 shall not apply in cases where illegal shipments are returned to the country of dispatch and that country of dispatch is a country covered by the prohibitions set out in those Articles.
10. In the case of an illegal shipment referred to in Article 3, point (25)(g), the person who arranges the shipment shall be subject to the same obligations set out in this Article as the notifier.
11. This Article shall be without prejudice to Union and national provisions concerning liability.

Article 25

Costs for take-back when a shipment is illegal

Please see comments on Art 23

1. Costs arising from the take-back of waste of an illegal shipment, including costs of its transport, recovery or disposal pursuant to Article 24(2) and, as of the date on which the competent authority of dispatch becomes aware that a shipment is illegal, storage costs pursuant to Article 24(8), shall be charged to:
 - (a) the notifier de facto, as referred to in Article 24(2), point (a) as identified following the order indicated in Article 3, point (6); or, if no notification has been submitted, in accordance with point (b);
 - (b) the notifier de jure or other natural or legal persons as appropriate; or, if that is not possible, in accordance with point (c);
 - (c) the competent authority of dispatch.
2. Costs arising from recovery or disposal pursuant to Article 24(4), including possible transport and storage costs pursuant to Article 24(7), shall be charged to the consignee; or, if that is not possible, to the competent authority of destination.
3. Costs arising from recovery or disposal pursuant to Article 24(6), including possible transport and storage costs pursuant to Article 24(8), shall be charged to:
 - (a) the notifier, as identified in accordance with the ranking established in Article 3, point (6), and/or the consignee, depending upon the decision by the competent authorities concerned; or, if that is not possible, in accordance with point (b);
 - (b) other natural or legal persons as appropriate; or, if that is also impossible, in accordance with point (c);
 - (c) the competent authorities of dispatch and destination.
4. In the case of an illegal shipment referred to in Article 3, point (25)(g), the person who arranges the shipment shall be subject to the same obligations set out in this Article as the notifier.
5. This Article shall be without prejudice to Union and national provisions concerning liability.

Title IV

Chapter 2, Section 2 (Articles 37 to 40) and Section 3 (Articles 41 to 42),

Chapter 3 (Articles 43 and 44)

TITLE IV

SECTION 2

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

[...]

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 a delegated act in accordance with Article 76 to supplement this Regulation by 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.
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 waste from the Union for recovery is authorised;
 - (b) the specific waste(s) 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 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 (b), (c) and (d), based on a request received from the country concerned and, if that request concerns the addition of new waste, provided that the country concerned has demonstrated compliance with the requirements set out in Article 39 with respect to the new 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, 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.
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 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 referred to in Article 37(1) from the Union for recovery shall submit a request to the Commission indicating their willingness to receive that waste 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.

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 waste 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*

General Comment:

We have concerns considering countries of transit that are not parties to Basle Convention. It is not entirely clear, whether transit through non-party to OECD which is also non-party to the Basle convention, is allowed. Namely:

- Paragraph 5 regulates the provisions regarding the transit through a country that is non-party to OECD;
- Paragraph 5(a) regulates the procedures for cases, where the country of transit is a party of Basel convention;
- Paragraph 5(b) regulates the conditions for the CA of dispatch for taking the decision, which is receipt of tacit or written consent of the country of transit which is non-party to OECD; therefore, a tacit consent from a country, not being a party of OECD, can be assumed – and it is not mentioned, that a country of transit should be a party of Basel Convention. Therefore, to our opinion it is not completely clear, if that country of dispatch (not being a party of OECD) should be a party of Basel Convention, or the transit is possible also through a country, non-party of Basel Convention.

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 operation 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;
 - (c) the export of waste referred to in Article 4(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.
3. As regards exports of waste listed in Annex IV, the adaptations and additional provisions listed in Article 35(2) and Article 35(3), points (a) to (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), (c) 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. 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 country concerned has the ability to recover this waste in an environmentally sound manner as referred to in Article 56, 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. 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, 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 acts in accordance with Article 76 to supplement this Regulation by prohibiting the export of the waste concerned to this country.
- This 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

General Comments:

In general we support the idea that the exported waste can be sent only to the verified facilities. However, we have some concerns considering how this can be done properly.

In accordance with this article, a natural or legal person should demonstrate to the CA of country of dispatch that the facility in the country of destination has environmentally sound management of wastes to be exported. Considering that we have the following questions:

- Who will perform audits/ check that the audits, done all over the EU, will have the equal quality?
- More than one exporter can send the waste to the same facility. It is not completely clear from the text if each exporter should separately make an audit or the audit can be done once and used by all other exporters sending the waste to the same facility?
- What standards will be used for making such an audit? We believe that for all audits the same standards should be used and that using national standards / standards in accordance with national legislation is not acceptable. Namely, that audits (if we understand correctly) could also be used in other countries of dispatch; however, other countries can use different national standards for auditing. To our opinion standards for accreditation and criteria / qualifications should be harmonised at EU level.
- Has the CA of dispatch the right to check the content of an audit? We believe that the CA of dispatch has such right. According to this, different CAs could take different decisions on the same audit (some can accept it, but the others cannot) and the equal implementation is hardly possible to achieve.
- CAs in the countries of dispatch do not have neither the time (short time limits) nor the educated/skilled staff with such wide/specific knowledge to verify, if the

information (requested in annex X) given in an audit, provided by the exporter, are in fact correct. Has the Commission taken into consideration the impact of these provisions on the CAs of small Member States, especially the ones with a lot of notification procedures?

To our opinion, the only possibility for implementation of the provisions on audits would be, that:

- an EU body/institution/group which would carry out/approve such audits would be established;
- the list of all facilities with the approved audit are listed on internet site, where any CA can verify existence of such an appropriate audit for a certain facility,
- other exporters (not only the one who ordered the audit) can get the audits already carried out. Considering the payment - the exporter should pay for a new audit /or for access to the one, already done.

1. A 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 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 verify compliance of the facility concerned with the criteria laid down in Annex X. A legal or natural person shall not export waste to a facility which does not comply with those criteria.
4. A 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 prior to exporting waste to the facility concerned and that the audit is repeated at regular intervals, following a risk-based approach, with a minimum frequency of every three years after the first audit.

A 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.
5. A 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 natural or legal person intending to export waste to the facility in question, under fair commercial conditions.
6. Upon request by a competent authority or an authority involved in inspections, a 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. 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, 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 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.

Title IV

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 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.

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, 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.
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, waste holder or notifier;
 - (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 and/or
 - (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 Council¹.

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.
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 to submit relevant documentary evidence,

¹ 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).

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 paragraph 4 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 2658/87² 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) 2016/1245³ 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, 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. 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;

² 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

³ 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).

- (e) arrangements for cooperation between authorities involved in inspections;
 - (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. 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 to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following 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 cooperation of the natural or legal person held responsible with the competent authority;
 - (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 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

General comments:

We would like to point out the role of the CA for carrying out the notification procedures and their role on illegal shipments. They are normally not the same as the enforcement authorities. However, they are playing important role by solving the problems of take back or alternative treatment of the illegal shipments, discovered by the enforcement authorities.

In the regulation, cooperation of CAs with the enforcement authorities at national or international level on a regular basis is not provided for. There is also no regular participation at the meetings like “enforcement group” envisaged for the CAs. Their participation is possible only “where appropriate”.

At this point we would like to point out the important role of CAs for notifications and their role in uniform implementation of regulation and notification procedures, and other duties imposed to them by the regulation. Also for them no regular exchange of information and good practices is provided. In the past this was achieved through the regular meetings of correspondents that should be envisaged for the future as well.

Article 61

Enforcement cooperation at national level

Member States shall establish, as regards all relevant competent authorities involved in enforcement of this Regulation, 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 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 those members of their permanent staff responsible for the cooperation referred to in paragraph 1 and identify the focal points for the physical checks referred to in Article 58(1). That information shall be sent to the Commission which shall distribute to those members a compiled list.
3. At the request of another Member State, 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 and intelligence on general trends relating to illegal shipments of waste, risk-based assessments carried out by Member States, and enforcement activities, 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 at least once a year. 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.
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BELGIUM

written comments on Title IV	
Article	BE comments and questions
37-40	On several occasions, problems related to the environmentally sound management of European waste in non-OECD (and OECD) countries were cited by Belgium, other EU member states, the media, NGO's. The problem is particularly acute for green-listed waste (about 50% of EU waste shipments to third countries), as this waste can be freely traded and exported for recovery to countries outside the EU. As a result, it is difficult to set up adequate monitoring of these waste streams and the conditions of environmentally sound processing at the facility of destination (as stated in the Waste Shipment Regulation in Articles 18 and 49) cannot be guaranteed. In this sense, the proposed measures by the European Commission are certainly a step forward in dealing with these problems (together with the digitalisation of the Annex VII procedure). We are in favour of the proposed measures because of the following reasons: • for <u>non-OECD countries</u>, more guarantees are built in that green-listed waste will not be exported to those countries, unless the country explicitly indicates its willingness to import the waste. The measure will also raise the bar on environmental standards and working conditions (to EU levels) for waste treatment in 3rd countries. ; • for the <u>EU companies/industry</u>: a level-playing field for EU companies will be created as companies in non-OECD countries will have to work according to standards, equivalent to those of the EU. Losses of valuable resources can be avoided, consistently with the objectives of the EU Circular Economy Action Plan and the EU Green Deal. Not all risks are (sufficiently) addressed. 1. Dishonest companies could choose to use a chain of traders or interim operations to circumvent this measure (stopover in an OECD country and then export to a non-OECD country). Therefore, BE proposes to strengthen art 12, 15 and 18. 2. Waste could be exported as a "so-called" end-of-waste materials in order to evade the Waste Shipment Regulation. We are already noticing this evolution with the tightened rules on plastic waste in the Basel Conventions. Therefore, we welcome to regulate for more waste streams EU – EOW criteria in the context of the Waste Framework Directive. 3. A similar problem arises with the distinction between waste and second-hand goods, we therefore we see the need to clarify this distinction for some problematic waste streams. Lastly, it is important that these measures (art 37-40) are combined with the other suggested measures, such as audits (as foreseen in art 43).

41.2a	Shipments to non-OECD countries are prohibited for disposal. To be in compliance with art. 11 and 37, the word “disposal” should be deleted in the following sentence: <i>“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 operation or disposal operation is to take place in a country to which the OECD Decision does not apply”</i> .
41.2d	This article foresees a tacit consent by the CA of destination. When taking into account that art. 9.1. foresees already the possibility of a tacit consent by the CA’s of dispatch and transit, this provision makes it possible that shipments of waste can take place without any formal consent in the notification procedure for exports of waste out of the Union.
42	Belgium supports the introduction of a monitoring and safeguard mechanism for OECD countries. During the Basel and OECD negotiations on the amendments to the plastic waste legislation, problems repeatedly came to light concerning the irresponsible processing of (plastic) waste in a number of non-EU OECD countries. These countries ran into problems with their own waste treatment due to the large influx of EU waste (which is better sorted and therefore more valuable). The request of the EU Member States to tighten the OECD Decision in this respect was blocked by some OECD countries. Moreover, since 2007, the EU has been moving towards a single European market for waste management and the difference in approach between EU and non-EU OECD countries is widening. It is important to combine this monitoring and safeguard mechanism with the mandatory audits of the facilities in OECD countries (as is foreseen in art. 43). Interim operations to OECD countries (and a chain of traders) should be limited in order to prevent circumvention of the measures of art 37-40.
43	BE welcomes the proposed measures on audits. By auditing the environmentally sound management of waste in the waste treatment facilities in 3rd countries (OECD and non-OECD countries), EU countries will have more guarantees that waste is treated to equivalent standards as to those of the EU. It is important that these audits are mandatory and carried out by an independent 3rd party. Companies can organise themselves to have a joint audit carried out. However, some issues are currently too vaguely formulated and need further clarification. • First and foremost, it must be stated clearly in the WSR what the requirements are for a <u>qualitative and independent</u> audit. Who can qualify as an independent third party to carry out these audits? What requirements must be met in order to fulfill a “qualitative” audit? • The procedure should also be clarified. • Furthermore, how will the outcomes of these audits be made public or at least shared with the competent authorities? Authorities have the responsibility to guarantee correct (final) processing of the waste in the third country, so transparency on the audits of facilities in third countries is paramount (see also art. 44). • BE proposes that the traceability of the waste streams is always checked/investigated in these audits. If errors occur in this respect, the approval should be withdrawn/a negative audit. • A provision should be foreseen in case of misuse of audits.
44	BE supports this provision. However BE is of the opinion that this concerns an enforcement issue and that is therefore better located in title VII (as is the case in the current Regulation). Art. 44 gives the impression that these articles 36 to 40 are more relevant for enforcement, whereas member states should and shall take necessary measures to ensure compliance with all provisions of this Regulation.

Comments Title VII: enforcement	
Art 57.1	BE proposes to keep the word “inter alia” (as in the current Waste Shipment Regulation). In the written BE comments on Title II art 3.26, BE proposed to formulate a more open definition of inspection and enforcement. It is important not to work with an exhaustive list of actors.
58	BE supports the reverse burden of proof in this article. The documentary evidence needs to be submitted in order to prove/ascertain that the substance or object is not waste.
59	Belgium supports the new provision requesting the competent authorities to notify their inspection plans to the Commission and for the Commission to review them. However, we propose to do this through obligatory questions in the reporting provided in Annex XI, without disclosing possible confidential or detailed operational elements. We also agree that the Commission should review the inspection plans and, if appropriate, draw up reports on these inspections plans and formulate non-binding recommendations and best practices, also taking into account the respective waste shipment data of the EDI system. Lessons learned and good practices should strengthen the enforcement and cooperation between EU Member States.
60	Art 60.1: BE supports the principle of installing a dual system of criminal and administrative penalties in all EU member states. The notion of “administrative penalty” (and more broadly the procedures to come to administrative penalties) may vary significantly between the members states (and even between competent authorities within member states). We propose to change the text accordingly: <u>“Member States shall lay down the rules on criminal and administrative penalties ...”</u>. Art 60.2 and 60.3: Belgium recommends arranging this dual system in separate directive(s): one on environmental administrative sanctions and one on criminal environmental sanctions (Environmental Crime Directive), in order to make the application of administrative penalties more consistent across the EU. In the meantime, we propose that the COM publishes these details in a recommendation document.
63	Belgium supports the general idea of more enforcement cooperation between member states. This will certainly be promoted by the obligatory digitalisation of the WSR procedures and the waste tracking information on notified and not notified waste shipments. Belgium supports to strengthen the cooperation between members states and the sharing of best practices. However, we have some reservations on this new Waste Shipment Enforcement Group. It is of utmost importance that already existing structures (such as the European Union Network for the Implementation and Enforcement of Environmental Law - IMPEL) are used as much use as possible and that overlap with existing fora is prevented (e.g. with the correspondents group).
Articles in section 3	BE will develop its position after the meeting with COM and OLAF.

SWEDEN

Written comments Articles 22-25, 34-46, and 56-68, WSR

Title II, Chapter 4, Article 22-25

Take-back when a shipment cannot be completed as intended, Article 22

The proposal states that the take-back requirement laid down in Art 22.2 shall not apply if the waste shipped has been irreversibly mixed with other waste during treatment in the facility concerned. Such mixed waste shall be recovered or otherwise disposed of in accordance with the first subparagraph of this paragraph.

The meaning of “irreversible mixed with other waste” in Art. 22.3. second paragraph needs to be clarified. Sweden would like to point out that subparagraph 2 doesn’t consider “irreversibly mixed” meaning mixture of the same waste types from different waste producers in a storage facility.

It shall be made clear that, for example wood waste of the same quality (AC170; 19 12 07) from different sources does not constitute mixing. In this case, recovery according to Art. 22.1 WSR shall be applied.

Sweden therefore suggests the following changes in Art 22.3:

“The take-back obligation in paragraph 2 shall not apply if the waste shipped has, in the course of the operation at the facility concerned, been irreversibly mixed with other waste so that its composition or nature has changed and can no longer be separated before a competent authority concerned has become aware of the fact that the notified shipment cannot be completed as referred to in paragraph 1 ...”

Take-back when a shipment is illegal, Article 24

Sweden is positive to the clarification in Art 24.2, regarding the requirement for treatment in case of take-back of illegal waste shipments. In the case of take-back, it becomes clearer that the waste is to be taken back and recycled or disposed.

As worded, Article 24 can be understood as referring only to shipments that have left the country of dispatch and have been stopped in another country as suspected illegal shipments. However, even shipments that are stopped before leaving the country of dispatch can be considered illegal shipments of waste under the WSR. The question is whether Article 24 and Article 25 should apply, or whether take-back in these cases should be regulated at national level. If Article 24 is to apply, this could possibly be clarified in Article 24.

Costs for take-back when a shipment is illegal, Article 25

According to Art 25.1, the notifier shall be responsible for the costs of take-back when a shipment is illegal. According to Art 24.3, if the original notifier fails to fulfil the take-back obligations, the responsibility for take-back shall be placed on one of the following actors: the original waste producers...etc. Does this also mean costs for the take-back, i.e. are all operators in Art 24.3 covered by Art 25.1(b)?

Title IV, Article 34-46

Export of non-hazardous waste to countries not covered by the OECD Decision, Article 37 - 40

Sweden believes that limiting the possibilities to export waste from the EU is expected to contribute to building a strong and resilient circular economy in the EU, in line with the ambition of the Commission's Circular Economy Action Plan, as the proposal aims to increase the EU's own market potential for waste recycling.

Sweden welcomes the Commission's proposal for more restrictive measures on exports of waste outside the OECD and welcomes the change in responsibility between the EU and the importing countries. As an exporting country, Sweden has experienced difficulties under current legislation to assess whether recycling facilities in third countries can be considered to meet EU environmental management requirements. The new proposal significantly improves the conditions for this assessment.

However, Sweden believes that the Commission's proposed export rules, which continue to allow the export of waste for recycling to third countries, are not in line with the more ambitious measures outlined in the EU's Circular Economy Action Plan. A stricter export ban is needed to ensure that the EU does not export its waste challenges to third countries. To the extent that capacity exists within the EU or OECD, SE believes that there should be a ban on exporting waste for recycling to third countries. Even with the proposed control systems, there are significant risks that waste will be treated in a way that is not environmentally acceptable. In addition, the possibility of continued exports represents a loss of resources and economic opportunities for the recycling industry in the EU.

Sweden is therefore reluctant to maintain the possibility of exporting waste to countries, other than in exceptional cases, that do not qualify as OECD countries. There is always a risk of environmental crime and fraud when a more vulnerable economic party is the recipient of waste.

Export controls and safeguards, Article 42

Sweden considers that Article 42 offers an appropriate solution and supports that the Commission is tasked to monitor export and safeguard the environmental performance in destination countries. We believe that this arrangement will be more efficient than laying this responsibility on individual Member States.

The proposed Art 42 increases the possibilities for the EU to control and, where necessary, take measures to ensure that waste is managed in an environmentally acceptable manner when exported to OECD countries. Sweden welcomes the proposed role for the Commission to monitor waste streams and have the responsibility for dialogue with the OECD countries concerned when necessary. This is likely to have a stronger impact than if this responsibility were to lie with individual Member States.

Sweden welcomes the new possibilities for the Commission to decide on export bans to certain countries in accordance with Art 42.4.

Obligations of the exporter, Article 43

Sweden supports the proposal to place more responsibility on the exporter and that an audit of recycling facilities outside the EU is to be carried out. At the same time, Sweden questions how the system of auditing recycling facilities will be maintained without the risk of corruption and undue

influence. For example, how is it to be ensured that the auditor is independent and has all necessary qualifications? Furthermore, Sweden considers it necessary to establish criteria in Art 43 to be met by the independent third party.

Sweden sees a need for coordination between Member States in the assessment of recycling facilities in OECD-countries.

Sweden agrees with Member States that “risk-based approach” in Art 43.4 needs to be clarified.

Sweden would also like clarification regarding the implementation of Art 43.5 on how the competent authorities can have access to the audits. Furthermore, “fair commercial conditions” in Art 43.5 and “making information publicly available” in Art 43.7 also needs to be specified.

Sweden would like to request clarification on Art 43.8 in relation to Art 42.4. According to Art 43.8, individual OECD countries, by agreement with the Union, may be exempted from the requirement of independent audit of their recycling facilities. Sweden would like a clarification on how this relates to the Commissions responsibility to monitor and restrict exports to OECD countries where the management is not deemed acceptable, according to Art 42.4. In addition, Sweden seeks an explanation as to how and by whom such an agreement described in Art 43.8 would be concluded.

Obligations of exporting Member States, Article 44

Sweden welcomes the clarification of the obligations of Member States towards exporters.

Parts of Title VII, Article 56-63

Generally, Sweden welcomes the increased level of ambition for control and enforcement presented in the proposal. Among other things, it clarifies that there should be effective mechanisms for authorities to interact nationally.

Environmentally sound management, Article 56

Sweden notices that the provisions on environmentally sound management in the case of imports to the Union have been removed (current Art 49.3). We assume this is because also imports would be covered by the requirements in Art 56.1 but would like to have this confirmed or otherwise explained.

Sweden also notices that the reference to relevant guidance in Annex IX is now only made in Art 40, in relation to the assessment of the countries requesting for inclusion on the list of countries being set up in accordance with Art 39. We wonder whether a reference to Annex IX should be included also in Art 56, as in the current Art 49.

Documentation and evidence, Article 58

Sweden proposes to add to Art 58.1 that those inspections should include inspection of documents and, if necessary, physical checks which should also include verification of the requirements under Art 56.

Sweden would like to see a reference to Art 43 added to Art 58.5. It is important that the requirements for exporters are also mentioned in Art 58.5 to be able to request additional information. Sweden therefore proposes the following addition in writing:

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 and that it fulfills the requirements specified in Article 43, the authorities involved in inspections may require (...)

Sweden notes that as a consequence of splitting the current Art 50.4d into two separate paragraphs under the proposed Articles 58, namely 58.4 and 58.5, requirements for documentary evidence in accordance with Art 58.5, concerning shipments of greenlisted waste (Art 18), are no longer included in Article 58.6. It is of Sweden's understanding, that when inspecting authorities requests additional information in accordance with either Art 58.4 or 58.5, but the information is not sufficient or has not been submitted, the transport should be considered an illegal shipment of waste according to Articles 24 and 25 to the regulation. This should be the case regardless of whether the waste is transported as green listed or as waste covered by the notification procedure and this is what's provided for in the current Art 50.4d. Of this reason Sweden proposes the following writing in the first sentence in Art 58.6:

Where the evidence referred to in paragraph 4 and 5 has not been submitted to the authorities involved in inspections within the period specified by them (...)

However, if this is an intentional change to the current Art 50.4d, SE would like to have the reasons behind this explained.

Inspection plans, Article 59

Sweden supports the proposal that the Member States shall notify their inspection plans and that the Commission shall review them. This can be expected to lead to a more harmonized application of the Regulation within the Union. and could be an efficient tool in the efforts to prevent and detect illegal shipments and ensure environmentally sound management. Recommendations on priorities of inspections and enforcement cooperation could however be more appropriate to set on an EU level than on a national level.

Penalties, Article 60

Sweden notices that Art 60.1 mentions administrative penalties specifically. We would much prefer leaving open the possibility of both administrative and criminal sanctions, and therefore propose a deletion:

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. [...]

Article 60.2 lists the criteria to be considered when determining the type and level of penalty to be imposed for different types of infringements of the Regulation and Article 60.3 lists certain penalties that Member States should at least be able to apply. Sweden considers that several elements of the proposal do not fit into Swedish legal tradition. We consider the proposal too far-reaching and that it should be left to Member States to decide on these issues. Specifically, we suggest to replace “shall” with “may”, as follows:

60.2 When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States may ~~shall~~ give due regard to the following criteria [...]

Enforcement cooperation between member states, Article 62

Sweden is positive to the cooperation between Member States for prevention and detection of illegal waste shipments.

Waste shipment enforcement group, Article 63

Sweden is positive to the proposed Waste enforcement group in Art 63.

SECTION 3, ACTIONS PERFORMED BY THE COMMISSION

Sweden looks forward to discussions on Section 3, but we would like to give a few initial comments on Articles 64 – 68 already now. We are concerned that these Articles give the Commission more far-reaching powers than what is the case in other regulations that have an explicit harmonizing purpose. We see a problem in giving the Commission powers to, on its own initiative, inspect for example a facility in a Member State. One example is Article 116 of Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. However, those provisions mainly give the Commission mandate to control the implementation and application of the national control systems. It also needs to be taken into account that Regulation (EU) 2017/625 has Article 114 of the FTEU as its legal basis, with an explicit harmonizing purpose, while the legal basis of the WSR is Article 192.

Such inspections should rather be conducted in cooperation with the authorities in the Member State concerned and on the request of the Commission. In case the view differs between a MS and the Commission on a particular shipment, how will this be resolved?

We have some questions on the mandate of OLAF, and we therefore in particular look forward to the announced presentation of this in the presence of OLAF. Recital 49 says that the Commissions may consider entrusting certain enforcement actions foreseen by this Regulation to OLAF. Which actions does the Commission have in mind here, and how does this relate to OLAF:s mandate? Sweden is keen not to expand OLAF:s mandate in relation to what is given by the OLAF regulation.

As regards Article 64.7 in particular, we also have concerns relating to a possible conflict with Swedish legal principles. A proposal including provisions on situations where evidence is to be considered as admissible in court, or of a certain probative value, would run contrary to fundamental principles underpinning the judicial procedure of Sweden and have unforeseeable consequences for its structure. That would, in our opinion, not be in line with the legal basis in Article 82.2 of the TEU, which states that rules on i.a. individuals' rights in criminal proceedings shall take into account the differences between the legal traditions and systems of the Member States. Therefore, we propose deletion of the last part of Article 64.7 b):

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 ~~and shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports;~~

It is of great importance that rights established on EU level are effective. However, we have different legal traditions when it comes to how we should make rights effective. In our view a system built on the principle of free submission and assessment of evidence is as effective as any other system when it comes to guaranteeing the effectiveness of procedural rights.

AUSTRIA

Comments: Waste Shipment Regulation (Title II, IV, VII)

In addition to our previous comments, we would like to add the following comments regarding the provisions discussed at the Council Working Groups of 28 and 29 March 2022:

Title II

Article 24

Article 24(2)(b):

It is not clear who the notifier de jure is within the meaning of Article 3(6). The obligation to take back the waste in question should be imposed on one of the persons mentioned in Article 3(6), which would have to be clarified accordingly (see also Article 24(3)). We therefore propose the following wording:

„(b) taken back by one of the notifiers de jure in accordance with Article 3(6) in order to arrange for its disposal or recovery; each person listed in Article 3(6) can be held responsible by the competent authority to arrange the take-back of the waste; or, if that is not possible, in accordance with point (c);“

Title IV

Article 35

Article 35(2)(a),(b),(c) and Article 35(3)(c):

The possibility of transmission by fax no longer seems appropriate and should be deleted. Is it mandatory to provide for a digital signature for notifications from third countries? In any case, as provided for in Article 26 of the current regulation, the phrase “or a comparable electronic authentication system which provides the same level of security” should be added in each case after “email with digital signature”:

“(a) the notifier shall submit in accordance with Article 26 the notification request and the information and documentation in accordance with Article 5(3), and at the same time, provide it by post, ~~fax~~ or email with digital signature or a comparable electronic authentication system which provides the same level of security, 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); [...]”

Art 35(3)(b): Notification of the customs office of export and the customs office of exit should be made via the central system referred to in Article 26(2):

„(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 via the central system referred to in Article 26(2);“

Art 35(3)(f)(ii): The deadline should be reduced to one day:

„(ii) the facility shall, within ~~one 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;“

In general, the possibility of electronic data exchange with non-EU states should also be included in relevant provisions if they are connected to the EU system.

Article 35(5) should be amended as follows:

„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 and has all permits required under national law.“

Article 41

Article 41(2)(a):

The phrase "or disposal operation" has to be deleted, as this Article only regulates exports for recovery in countries to which the OECD Decision applies:

„(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 operation ~~or disposal operation~~ is to take place in a country to which the OECD Decision does not apply; “

Article 41(6) should be amended as follows:

„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 and has all permits required under national law.“

Article 43

A list of facilities has to be created. It should be clarified that accreditation must be carried out in accordance with EU law and that verification must in any case take place on site.

Furthermore, the following sentence should be added to Article 43(2):

„2. In order to fulfil the obligation referred to in paragraph 1, a 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. The Commission shall maintain a list of those facilities that have been found to be environmentally sound recovery facilities in third countries, indicating the waste that can be managed there and the date of the audit.“

The audit documents should also be deposited accordingly (not publicly).

Title VII

Article 56

Article 56(1):

The sentence “In particular, when the shipment takes place in the Community, the requirements of Article 4 of Directive 2006/12/EC and other Community legislation on waste shall be respected” should not be deleted but adapted:

„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. In particular, the requirements of Articles 4 and 13 of Directive 2008/98/EC and other Community legislation on waste shall be respected.“

Article 62

In Article 62, reference should continue to be made to the Correspondents Meeting in addition to the Waste Shipment Enforcement Group.

Article 63

As already mentioned in the previous Council working groups, the Correspondents Meetings must be maintained from Austria's point of view. The purpose of the Correspondents Meetings is to discuss enforcement issues within the framework of the Waste Shipment Regulation, therefore the competence of this instrument is much broader than that of a pure meeting concerning inspections.

An Expert Group for the preparation of delegated acts and a Waste Shipment Enforcement Group with focus on inspections should be established additionally. From our point of view, all these instruments make sense and should be established or maintained accordingly.

Articles 64 to 68

We welcome the new Articles 64 to 68, in particular the plan for the Commission to be authorized to carry out inspections directly itself.

SLOVAKIA

Draft proposal – Waste Shipment Regulation

Written comments as a follow up to WPE on 28/3/2022 and 12/4/2022

- **Art. 43**

Who do we mean by „natural person“? In our opinion, a natural person (citizen) cannot act as a notifier or a person organizing the shipment according to Art. 18. (except in the case of the take-back of waste in an illegal transboundary shipment of waste). In this context, we would propose to reevaluate and further assess the use of the term "natural person" throughout the draft regulation.

- **Art. 43(2)**

What do we mean by the term „accredited third party“? Will there be a list of accredited audit companies? What accreditation will be required? Will a European technical standard or other similar regulation be adopted?

- **Art. 43(5)**

The term „made available under fair commercial conditions“ is unclear and not sufficient. It is necessary to set precise rules, or even mandatory publication of audit results.

Within the business environment, we can expect only a low willingness to make available the results of an audit to other competing companies, especially if the business entity has commissioned an audit at its own expenses (otherwise the business entity would provide the other company an advantage).

- **Art. 43(7)**

What is meant by the term „by electronic means“? We insist on the use of the procedure under Art. 26 - electronic submission via the central system, also with regard to the obligation of the MS set out in Art. 44(1). We would also propose to add the obligation that the information on the audit (together with the results of the audit) must precede the uploading of Annex VII to the system or that the results of the audits must be uploaded and available in the central electronic system under the profile of the exporting company.

The best option could be, in line with AT comment, to create a list of facilities in third countries that have been successfully audited. Accordingly, it would be possible to select only from these establishments and complete them in Annex VII.

- **Art. 44(2)**

MS will not be able to verify the reliability of information and results of audits with the actual situation in facilities in third countries as MS do not have competencies (inspection, control, investigation ...) on the territory of third countries.

In case of a large number of realized exports to third countries, unbearable burden to the MS will occur, mostly related to the verification of compliance with the obligations of exporters in Art. 43.

What does "regular verification" mean?

- **Art. 24**

We believe it might be useful to add a provision on the cooperation of the competent authorities concerned. The reason is that, in practice, it happens that the concerned competent authority of dispatch does not respond to the requests of the competent authority of destination. Also, in

some cases the concerned competent authority of dispatch does not provide /elaborate a duly motivated request in the case of a take-back.

- **Art. 48(2a)**

We would propose deleting the "fax" method throughout the draft regulation. This method is no longer in use. Also, not all the authorities concerned can ensure the conditions for receiving faxes.

- **Art. 48 (3c) (3d)**

We would ask for an explanation on how the provision Art.48(3c) will be applied in practice, (for example, the provision does not specify within which period the carrier should send the document, etc.).

Another question arises, whether it is not sufficient for the carrier to provide a copy of the movement document to the customs office directly at the first border crossing point where the shipment enters EU territory and where the customs office confirms entry into the EU.

The next question is related to the term customs office of entry. By this term, we mean the customs office where the "the goods - waste" will be cleared and released for free circulation? Because it seems to us that the customs offices in the points c) and d) are two different offices and not the same place.

At the same time, we would like to ask who will monitor/check the carrier's compliance with this obligation (to provide a movement document), as the carrier can be based in any country. We would propose to transfer this obligation to the recipient in the EU: "the recipient will ensure that the carrier".

- **Art. 57(2)**

We would like to ask for clarification of inspections of shipments "at least in one of the following points" and a clarification of point d) „during the shipment within the Union“. Every shipment under notification and each shipment under Art. 18 should be checked?

- **Art. 60(3)**

In the Slovak Republic, confiscation is possible only as a criminal sanction. We also do not have a sanction set for public procurement in the Slovak Republic.

At the same time, we would like to ask for clarification of the sanction in Art. 60(3c) „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“. Does this provision also mean the revocation of the waste management authorisation under national law? For example, if we take into consideration the shipment under Art. 18, which does not require the issuance of a consent (and therefore it is not possible to revoke the "permit"), would it be possible to suspend or revoke the waste management authorization of the entity who committed the illegal shipment? Or the sanction in question under letter (c) applies only to shipments which are subject to notification procedure and consent?

- **Art. 82**

Due to necessary legislative processes on the national level, the period of 2 months for application after the entry into force is not sufficient. As expressed by other delegations, the minimum period of 18 months might be sufficient.

FINLAND

Preliminary comments on Titles V, VII, VIII and on articles 24 and 27.

13.4.2022

Article 24

Finland supports the concerns raised by other Member states in the working group (28th March) that the responsibilities in Article 24 must be clear.

Article 27

Finland considers that English should be a language accepted by all competent authorities in all communication related to waste shipments.

Title V (articles 47-53)

Article 48

2. "(a) The following adaptations shall apply: (a) the notifier shall submit the notification request 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..."

How could the notifier be established within the Union (see Article 3 6(b))?

- same comment to point (b) and (c)

4. "(d) environmentally sound management as referred to in Article 33 is ensured."

- wrong reference: should be Article 56

Title VII (articles 56-63)

Article 56

Finland supports the new paragraph 2 on how to apply the requirement that waste should be managed in an environmentally sound manner. However, how is the equivalence assessed, that the requirements applied in the country of destination ensure a similar level of protection than the requirements stemming from Union legislation?

Article 59 (4)

If the member states shall notify the Commission of the inspection plans, is it acceptable to provide the inspection plan in national language?

Article 60

Finland has reservations about proposed sanctions in Article 60. The Article 60 leaves open which provisions of the regulation should be subjected to sanctions and whether sanctions may also be imposed in criminal proceedings. In Finland confiscation of revenues, as an example, can be imposed only as a criminal sanction. Is it fully under national discretion to determine in which proceedings the sanctions are imposed?

Article 60 3(d): we would also like to ask for which period of time the exclusion from public procurement procedures should be imposed.

Article 63

Finland considers it is important to address illegal waste shipments more effectively and to reduce them. Generally, we support more efficient cooperation in law enforcement between the Member states.

However, the proposed waste shipment enforcement group should not overlap with the existing IMPEL group and it should not unreasonably increase the workload of the competent authorities. If the group shall meet at least twice a year, a possibility of on-line participation should be ensured.

Title VIII (Articles 69-82)

Article 69 (2)

We would like to get clarification on what should be reported in Table 5 of Annex XI? Should also minor violations such as use of carrier, which is not accepted in the consent be reported in the table or only those where an investigation has been initiated or where a sanction has been imposed? And when the illegal shipment should be reported? The year when it has happened or when the case is closed or at what point?

Article 76

Article 76 empowers the Commission to adopt delegated acts. According to the Article, the Commission's powers will be significantly expanded. As we haven't had time to examine the article in depth, we have a scrutiny reservation on this article.

- However, we would like to know as many other member states as well, would it be possible to have implementing act instead of delegated act for Article 28(4)?
- Why the delegation of power can't be revoked for article 28(4), as it is the case for other delegated acts?
- Related to Article 42(4) could the Council legal Service give a written opinion on the Commission's delegated legislative powers?

Articles 81-82

The proposed application time (two months after entry into force) is too short and does not allow the necessary legislative measures to be taken. In Finland, the legislation needs to be amended, in particular as regards the penalties and procedures, to the extent that the regulation leaves national discretion. We would suggest the application time to be 18 months.

Other comments:

- We would like to get clarification on what is the role of the expert group and is it the same as the committee referred to in article 77.
 - Once Correspondents meetings are no longer held according to the proposal, it is hoped that the cooperation will continue in some form.
-



Council of the European Union
General Secretariat

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

Brussels, 21 April 2022

WK 5767/2022 INIT

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	WK 4556/2022 WK 4331/2022
Subject:	Waste shipments: Comments from delegations

Following the call for comments on the above set out in WK 4556/2022, delegations will find attached comments from the BE, CZ, DK, EE, IT, LV, HU, AT, SI, SK, FI and SE delegations.

ITALY

Comments

TITLE IV EXPORTS FROM THE UNION TO THIRD COUNTRIES

Chapter 1 Exports of waste for disposal

Article 34 Prohibition of exports

Art.34(3)(b) The right reference should be to art. 11(1).

Art 35 Procedures for exports to EFTA countries

Art. 35 Italy asks for clarifications about the sending of the documentation by email with digital signature. In Italy the digital signature can be used only for documents not for emails.

Art.35(2) Italy suggests to specify that adaptations set out in paragraphs 2 and 3 apply only to shipments authorized with the notification procedure.

Art. 35(2)(a) Italy thinks that the competent authority of dispatch should submit the documentation by post, fax or email with digital signature to the competent authorities concerned in the countries of transit and destination instead of the notifier. That in order to avoid that the documentation submitted according to art.26 could be different from the documentation sent by post, fax, or email with digital signature.

Art.35(2)(b) The reference to article 5(4) is wrong. The right reference should be art. 5(5).

Art. 35(2)(e) After the words “...and not earlier than 61 days after the date of transmission of the acknowledgement of receipt of the notification by the competent authority of transit” Italy suggests to add the words “outside the Union”.

Art.35(4) Italy suggests to specify that paragraph 4 applies only for shipments authorized with the notification procedure.

Art. 35(4)(a) This paragraph seems to be not consistent with the previous paragraph 2(d) which provides also the tacit consent from the competent authority of transit outside the EU.

Chapter 2 Export of waste for recovery

Art. 36 Prohibition of exports

Art. 36(3) Italy asks for clarifications and more specific details about the type of test provided by this article in order to assess the hazardous property of a waste.

Art.38 Establishment of a list of countries to which exports of non-hazardous waste from the Union for recovery are authorised

Art.38(7) What happens to the authorized notifications still in place related to the Country that has been deleted from the list? Shall these notifications be immediately revoked or can they be in force until the provided expiration date?

Art. 41 General regime for exports of waste

Art. 41(4) This article refers to art. 35(4) which no longer provides letters (c) and (d).

Art. 41(5)(b) Italy suggests to add the word “same” in the sentence “...and not earlier than 61 days after the date of transmission of the acknowledgement of receipt of the same competent authority of transit”.

Art. 42 Monitoring of export and safeguard procedure

Art. 42 (2)(3) Italy requires to clarify that the “country concerned” indicated in the article is the

“country concerned of destination” in order to avoid misunderstandings.

Chapter 3 Additional obligations

Art. 43 Obligations on exporters

Art 43(2) Italy asks for clarifications on the audit procedures that the natural or legal person who intends to export waste from the EU shall ensure for the facility of destination. In particular, Italy requires clarifications about by whom the third parties who have to carry out the audit procedures must be accredited and which are the appropriate qualifications that the third party shall have. Furthermore, Italy expresses concerns about the possible impact that this audit obligation may have on small and medium-sized enterprises that export waste outside the EU.

Art. 43(4) Italy requires clarifications on the meaning of risk-based approach and also on who is responsible for assessment of this risk-based approach as well as for the decision on the minimum frequency of the audits.

Italy also requires clarifications on what should be the source of the "plausible information" following which the exporter shall carry out the *ad-hoc* audit. Furthermore, in the event that the *ad-hoc* audit demonstrates that the facility of destination no longer meets the criteria set out in Annex X, what are the effects on the shipments in progress since the *ad-hoc* audit can be carried out at any time following receipt of the "plausible information"?

Art 43(5) This paragraph is not consistent with paragraph 2 which provides that the audits are only entrusted by the natural or legal person that shall export waste from the Union to independent and accredited third parties and not carried out by the natural or legal person itself too.

Furthermore, Italy requires clarifications on what is intended for “fair commercial conditions” in order to assign the audits.

Art. 43(8) Italy requires clarifications on the nature and purpose of the international agreement between the Union and a third country to which the OECD decision applies.

Article 44 Obligations on Member States of export

Art. 44(2) Italy requires clarifications on the meaning of risk-based approach as well as of plausible information.

TITLE VII ENVIRONMENTALLY SOUND MANAGEMENT AND ENFORCEMENT

Art. 56 Environmentally sound management

Although Italy shares the purpose of this article in order to ensure the environmentally sound management in the Country of destination, Italy expresses concerns on the effective applicability of this article.

Art 60 Penalties

This article needs to be clarified. Paragraph 1 refers to administrative penalties applicable to non-compliance with the regulation while paragraph 2 requires the competent authorities of the Member States to give due regard to criteria for the type and levels of penalties. This suggests that there are other types of penalties other than the administrative ones. In fact, paragraph 3 refers to sanctions that the Member State shall impose which seem to be criminal sanctions.

ESTONIA

Comments on the proposal for a regulation of the European Parliament and of the Council on shipments of waste and amending regulations (EU) No 1257/2013 and (EU) No 2020/1056

Title VII - Environmentally sound management and enforcement

- We support the creation of common minimum criteria for the harmonisation of sanctions, but Member States must retain the right to choose the most appropriate sanction system and type. Flexibility to sanction only the most serious infringements should also be guaranteed. We find that distinction should be made between illegal activities and minor, non-intentional errors in performing procedural requirements like completing forms.
- We find that it is not correct to reference the concept of administrative penalties. The concept of administrative penalties has never been defined in EU law. Only criminal and non-criminal sanctions exist in EU law. And the legal basis allows to deal with the non-criminal sanctions in this regulation.

Title II Chapter 4 - Take-back obligations

- In regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products Member States may authorise their market surveillance authorities to reclaim from the relevant economic operator the totality of the costs of their activities with respect to instances of non-compliance. A similar option could be included in the Waste Shipment Regulation.
 - In addition to the possible similar logic of the two Regulations (EU 2019/2020 and waste shipment regulation), there should be clear guidance for Member States on how to control products that meet the end-of-waste criteria at national level. As the end-of-waste compliance with the criteria can be assessed on case-by-case basis, how is the verification of the compliance of such products and their waste status to be carried out so that the Waste Shipment Regulation does not apply.
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CZECH REPUBLIC

Comments on Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM(2021) 709 final, according to the Presidency steering note for the meeting of 28 March 2022 (document No WK 4331/2022)

TITLE II

Chapter 4 – Take-back obligations

The title of Chapter 4 and Articles 22, 23, 24 and 25 could give the impression that the only solution for a shipment that cannot be completed or an illegal shipment is the take-back. Practice shows that the shipments vary and there is no one-size-fits-all solution for shipments that cannot be completed or illegal shipments. The environmental impacts of long-distance transport should also be taken into account. We suggest considering whether the titles of Chapter 4 and Articles 22, 23, 24 and 25 should be more general.

TITLE IV

Article 36 paragraph 1. g)

As already expressed by the Czech Republic in the Correspondents' Group some time ago we see the lack of legal clarity as regards Article 36 paragraph 1. g) „wastes the import of which has been prohibited by the country of destination;“, in particular what kind of prohibition is meant in paragraph g). For example, we refer to the former announcement of restrictions on imports of certain waste by China through the World Trade Organization, effective from 2018. It was not clear whether Article 36 paragraph 1. g) would apply to the import prohibition announced by China through WTO.

Article 42

- According to Article 42 the Commission shall monitor the export of waste to OECD countries and in some cases the Commission is empowered to adopt delegated acts to prohibit the export of the waste to OECD country. Article 42 assumes that the authority of OECD country shall provide information at the request of the Commission. In our view the authority of OECD country is not obliged to reply to the Commission. Thus in our view the fact that the authority of OECD country do not provide information or provides insufficient information cannot make grounds for the Commission to prohibit the export of the waste to OECD country.
- Paragraph (4): According to current WSR the decisions on consents, the decisions on objections and the assessments of illegal shipments of waste fall within the competence of the Member States. The Czech Republic does not support that any of these competencies, such as the decision to prohibit the export of waste as proposed in Article 42(4), be conferred on the Commission. According to the Czech Republic, the proposal contained in paragraph 4 interferes with the competences of the Member States.
- In relation to Article 42, we would like to recall our previous comment on the new proposals for the Commission's involvement in enforcement activities, i.e. that the control powers of the Member States and the powers of the competent authorities should not be jeopardized and the activities of the inspection authorities and the competent authorities in the Member States should not be limited. See our comments on Articles 59 and 64-68.

- In this context, we also refer to the position of the Czech National Parliament's position expressed in relation to the new Regulation that emphasizes the need to preserve the competences of the Member States.

Article 43

In Article 43 an obligation is proposed that the facilities in the third countries should be subject to independent third party audits. Thus it is assumed that the third country facilities are willing to undergo such audits. We would like to ask the Commission whether it has an indication that the third countries are willing to undergo the audits by third party as proposed in Article 43 paragraph 2.

Article 42 and 43

In connection with the export of waste to OECD countries, we were approached by the Steel Union a.s., which raised concerns about the uncontrolled export of strategic raw materials, such as steel scrap, from the EU, which threatens efforts to decarbonise the steel industry in the EU.

Article 44

Bearing in mind new provisions for export of waste from EU proposed in new Regulation the obligations set in Article 44 place a heavy burden on the authorities in the Member States. These obligations should be further discussed and clarified. This also applies for obligations of Member States of import as set in Article 52.

TITLE VII

Chapter 2 - Enforcement

The Czech Republic has always generally supported the effort to strengthen the fight against illegal shipments and to establish a level playing field for the enforcement. Nevertheless, the proposed new provisions do not seem to be the best way on how to make the enforcement more efficient. We are afraid that establishing new bodies or the new inspection competencies of the Commission which will need support from the Member States staff might dilute the enforcement capacities in Member States rather than effectively supplement them.

Article 58

Paragraphs 4 and 5 of Article 58 need to be clarified. Paragraph 4 seems to concern the notification procedure however „the person who arranges the shipment“ is mentioned there. Paragraph 5 seems to concern the procedure according to Article 18. However, unlike paragraph 4, the request to submit relevant documentary evidence is limited to one entity only (the person who arranges the shipment). In paragraph 4 the documentary evidence can be requested also from other entities - the carrier, the consignee etc.

Article 59

- At present, control activities in the field of waste are the sole responsibility of the Member States. The Czech Republic is of the opinion that those control powers should be left to the Member States. Thus the Czech Republic does not support that the Commission shall review the inspection plans notified by the Member States and that the Commission may make recommendations on priorities of inspections and on enforcement cooperation and coordination between the authorities involved in inspections as proposed in paragraph 5 of Article 59. See also our comments on Articles 42 and 64-68.

- The new obligation set in paragraph 4 should be clarified i.e. which part of the inspection plans is to be notified to the Commission and whether the inspection plans can be kept in national languages.

Article 60

List of criteria for the type and level of penalties may be way in the right direction but since the systems of punishment vary considerably among Member States it will need to be further discussed. A clarification will be needed if the criteria concern administrative penalties or also penalties imposed in judicial proceedings of criminal or non-criminal nature, inter alia in relation to the Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC. We have a scrutiny reservation in this point.

Article 63

In Article 63 the establishment of a new body “Waste shipment enforcement group” is proposed. Generally we don’t support establishing new bodies but rather using the existing bodies and tools. It should be borne in mind that already now the capacity of some Member States to be involved in these fora is limited. We see the role of IMPEL and Correspondents’ Group for implementation and enforcement of the WSR vital. The Czech Republic has a very good long-term experience with IMPEL activities. Duplication of activities with IMPEL should be avoided.

Article 64 - 68

- A fundamental change is proposed in Article 64-68 concerning new involvement of the Commission in enforcement activities.
 - The Czech Republic sees a risk here that this proposal will jeopardize the competences of the Member States and limit the activities of both the control authorities and the competent authorities in the Member States. In the opinion of the Czech Republic, it is fully within the competence of the Member States responsible for implementing EU legislation to determine which control bodies may carry out controls. See also our comments on Articles 42 and 59.
 - We also see a great risk that the Commission's involvement in enforcement activities may be an argument for politicians to stop strengthening control capacities at national level. We believe that, on the contrary, the strengthening of control capacities at national level should be stimulated.
 - We are of the opinion that insufficient enforcement capacities in the Member States, which has also been confirmed by IMPEL, do not constitute a reason to extend the European Commission's competences.
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LATVIA

Written comments on document WK 4331/2022 INIT regarding the Proposal for waste shipment regulation

Title IV

Exports from the Union to third countries

Chapter 1

Exports of waste for disposal

Article 34

Prohibition of exports

Para 3 (b) - we would suggest to introduce a direct reference to Article 11 (1) and relevant points.

Article 35

Procedures for exports to EFTA countries

Para 2 - we are cautious regarding the application of EDI system in this process. In accordance with *Regulation 1013/2006* on shipments of waste, the competent authority of dispatch is the single channel of information regarding exports and imports of waste. We are seeking clarification on how the notifier will inform other involved competent authorities in the EU, that competent authorities outside the EU have received exactly the same information as provided in the EDI system?

Para 3 (b), (d), (e)- we would seek clarification if EDI system could be used for activities in points b), d) and e)?

Para 3 (g) and (f) (ii) and (iii) - we note that in Para 3 (f) (ii) (iii) facility shall send signed copies of relevant documents to notifier and competent authorities concerned, while in Para 3 (g) the notifier shall make the information contained in those copies electronically available. We are seeking clarification on this duplication of information.

Chapter 2

Exports of waste for recovery

SECTION 2

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

Article 37

Prohibition of exports

Para 2 – we find the first sentence redundant. According to Article 39 Para 3 (b), in order to be included in the list of countries to which exports are authorised, a country in question has to have permitting system for waste treatment facilities.

Article 38

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

Para 2 (c) - will it be a list of licenced waste recovery facilities? Will types of waste be specified for each facility? We have concerns on how often such list will be updated, given the changes in permits, permitted waste types and volumes, etc.

Para 4 - The Commission should update the list of countries to which exports are authorised at least every year.

Para 5 - this regulation is legally binding to the EU and its Member States, therefore we are concerned about setting requirements for third countries in EU legal acts.

Para 6 - we find the beginning of this para unclear, we would prefer “*evidence*” instead of “*information*”.

Article 39

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

Para 3 (a) - scrutiny reservation. Since there are no estimations on how many countries (outside EU) actually have waste management plans required here, in particular, those countries which have been traditional EU counterparts in waste recycling, we are concerned that the list of countries mentioned in Article 38 will not be populated in due time and it can have an impact on reaching certain recycling and recovery targets.

Para 3 (b) (iv) – we have the same concerns regarding emissions of greenhouse gases from waste management operations.

Article 40

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

Para 1 – what is meant by “*undue delay*”?

SECTION 3

EXPORTS TO COUNTRIES TO WHICH THE OECD DECISION APPLIES

Article 41

General regime for exports of waste

Para 3 (b) and (c) - we note that the facility shall send signed copies of relevant documents to notifier and competent authorities concerned, while in the last sentence of Para 3 we see that the notifier shall make the information contained in those copies available via electronic means. We would like to seek clarification on the duplication of information.

Article 42

Monitoring of export and safeguard procedure

Para 4 – we would like to clarify in more detail, what would be the legal effect of delegated act prohibiting export of waste on already arranged/ permitted exports of waste? When/if such shipment of waste becomes illegal, who shall cover the costs for return of such shipments? Would waste recovered in such country count towards reaching waste recycling and recovery targets of the EU Member state, which was the origin of waste?

Chapter 3

Additional obligations

Article 43

Obligations on exporters

Para 2 - in our opinion, if a country is included in the list of countries to which exports of non-hazardous waste from the Union for recovery are authorised (Article 38), there should not be any additional requirements for natural or legal persons to arrange audit by third party. This requirement creates an unjustified administrative and financial burden.

How often such audits should be carried out? May the outcome of an audit be used by different exporter who exports the same waste?

Para 3 – we question, if his regulation will be legally binding to an auditor in 3rd country.

Para 4 – regular intervals should be more specified.

Para 6 – we are concerned that the requirements to translate all necessary documentary evidence will greatly increase financial and administrative burden. We are also seeking clarification, what will be the outcome, if carried out audits turn out to be unsatisfactory, but the exporting country is already included in the list of countries according to Article 38?

Title VII

Environmentally sound management and enforcement

Chapter 1

Article 56

Environmentally sound management

Para 2 – we seek clarification who has the obligations to demonstrate compliance and to whom?

Chapter 2
Enforcement

SECTION 1

INSPECTIONS BY THE MEMBER STATES AND PENALTIES

Article 59

Inspection plans

Para 4 – we do not find it necessary for Member States to notify the Commission of the inspection plans every three years.

In order for Member States to sufficiently prepare the inspection plans, more detailed guidelines are needed, thereby reducing the administrative procedures that would be necessary for the preparation of the relevant notification to the Commission.

Article 60

Penalties

We cannot agree to provisions that are inconsistent with national Administrative Liability Law. We would seek further guidance from the Council Legal Service

SECTION 2

ENFORCEMENT COOPERATION

Article 61

Enforcement cooperation at national level

We do not find requirements for establishing correspondents. We would seek clarification on why it has been omitted, taking into account that Basel Convention still requires Parties to have a competent authority and a focal point. We find the new provisions unsuitable.

Article 62

Enforcement cooperation between Member States

Para 2 – it should be noted that Member States should designate an institution and not a specific employee or a member of their permanent staff, since employees may change.

Article 63

Waste shipment enforcement group

In general, we are not in favour of establishing *Waste shipment enforcement group* as it requires additional resources. We would prefer the continuation of Waste Shipment Correspondent group, which has provided useful guidance.

HUNGARY

Written comments

Proposal for a regulation on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) 2020/1056

WK 4331 2022

Title IV

Article 38

According to **paragraph (4) of the Article 38** of the proposal:

'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: ...'

We recommend using the following text instead of the highlighted text: The Commission **shall keep the list of those countries up to date** [...].

In our view, the Commission should keep the list of countries to which exports are authorized up to date. Up-to-date management would be the most effective way of assisting the competent authorities of the Member States in assessing the applications.

According to **paragraph (7) of the Article 38** of the proposal:

'Where the country concerned does not provide its views and the requested supporting evidence within the time limit referred to in 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.'

We recommend inserting the following sentence into the end of this paragraph:

The Commission shall immediately notify the competent authorities of the Member States of the cancellation.

If the Commission decides to remove a country from the list without delay, it shall immediately inform the competent authorities of the Member States. On the basis of the information, Member States have the opportunity to review their records in the context of whether a valid consent has been issued for the shipment of waste to the deleted country and to take action in this regard.

Title VII

According to **Article 58 (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.”*

In relation to the above provision, the question is whether this would also apply to substances that have lost their waste status under Article 6 of Directive 2008/98/EC (WFD). In general, it is proposed that the Regulation should specify what kind of documentation is required to prove that the substance concerned is waste or not anymore. The requirements in the proposal are very general, allowing a wide discretionary power to be exercised by the control authorities.
