

European Commission, Brussels



Assessment and guidance for the implementation of EU waste legislation in Member States

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REPORT ON THE EXPERIENCE GAINED WITH THE HELPDESK FOR QUESTIONS RELATED TO THE WSR

(D 2.2.3)

PREPARED BY BIOIS WITH SUPPORT FROM BIPRO

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Involved organisations:

BIPRO

Beratungsgesellschaft für integrierte Problemlösungen

umweltbundesamt[®]



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1 Set-up, management and monitoring of Helpdesk Services for the implementation of the Waste Shipment Regulation

1.1 Setting up the Helpdesk Services

1.1.1 Implemented option

As explained in the Inception Report, several options for setting up the Helpdesk Services were proposed:

- Option 1. A Forum, consisting of an electronic platform for information sharing;
- Option 2. A Forum, plus a FAQ section;
- Option 3. A Forum, plus a FAQ section, and a traditional “Helpdesk” to answer enquiries regarding the EU Waste Shipment Regulation.

The third option was chosen with the EC at the Kick-off Meeting, 17 December 2009, as it best fulfils the functions expected from the Helpdesk Services.

- The Forum will enable national authorities to rapidly exchange information/best practices and discuss questions concerning the day-to-day application of the EU Waste Shipment Regulation, including matters relating to the prevention of illegal shipments. It is also open to other stakeholders such as environmental groups, waste collectors, dealers, brokers, traders, academics and the general public.
- The Helpdesk will respond to more complex enquiries regarding the Waste Shipment Regulation, in close cooperation with the European Commission.
- The FAQ section will provide accurate and timely information concerning the Regulation and its implementation and will be based on answers provided by the Helpdesk. Initial FAQs and their answers come from the Helpdesk Service managed by the ESWI Consortium (BiPRO and UBA Vienna)¹.

1.1.2 Technical implementation

Taken together, these three tailored services offer a comprehensive and coherent electronic platform² with the Forum (editable subfora) and the FAQ section (non-editable subfora) organised around the same categories:

¹ This Helpdesk related to the Waste Shipment Regulation was operated from January 2009 to February 2010.

² available at <http://forums.ec.europa.eu/waste-shipment/>

- Classification issues (including single waste streams);
- Procedural issues (including take-back);
- Treatment operations;
- Basic definitions; and
- Other topics.

The electronic platform is hosted on the EU Europa website. Europa Update Services (DG Communication) was solicited by BIO IS 21 April 2010 and DIGIT FPFIS services (DG for Informatics - Flexible Platform for Internet Services) created the requested platform 11 May 2010.

As the platform's administration and moderation control panels are strictly accessible from the EC computer network, BIO IS was originally unable to administrate the platform. To resolve this problem, BIO IS, DG ENV and DS (Security Directorate) established a security convention to allow BIO IS access to the platform's control panels through a secured VPN (Virtual Private Network) connection. Two documents were necessary in establishing this security convention, the first attesting to the physical and network security of workstations with access to EC resources, and the second specifying access parameters (reference to service contract, ports, duration, etc.). The documents were submitted by BIO IS to DS 21 July 2010, and modified by both parties before the security convention's validation 26 August 2010. The security convention was then signed by all parties (DS, DG ENV and BIO IS). DIGIT then implemented the agreed-upon security convention on the EC computer network and sent the security elements for the VPN connection to BIO IS 8 October 2010. Since that time, BIO IS has administrated the electronic platform (Forum moderation, updating FAQ, etc.).

While the security convention was being finalised, platform configuration (creation of fora/subfora, etc.) and troubleshooting were performed by DIGIT FPFIS Services.

The electronic platform was intended to be operational by the end of May, but procedural and security requirements for using the Europa website delayed launch to 15 October 2010, when stakeholders were made aware of the Helpdesk Services, its purpose and functioning. The launch was made through the following e-mail by Mr Kiayias, representative of DG ENV for WP 6, based on a proposition from BIO IS.

Dear Correspondents, dear Stakeholders

It is our pleasure to announce to you that tomorrow, 15 October 2010; a set of e-services will be launched to support the implementation and application of the EU Waste Shipment Regulation at Member States' level.

The services include three tools:

- a Forum,
- a Helpdesk, and
- a Frequently Asked Questions (FAQ) section

Providing clarifications on a number of issues, including classification and procedural matters, treatment

operations, basic definitions, etc.

The **Forum** enables national authorities to rapidly exchange information/best practices and discuss questions concerning the day-to-day application of the EU Waste Shipment Regulation, including matters relating to the prevention of illegal shipments. The Forum, which requires registration of its users, is also open to other stakeholders such as environmental groups, waste collectors, dealers, brokers, traders, academics and the general public, through the following link: <http://forums.ec.europa.eu/waste-shipment/>.

More complex enquiries will be dealt with by experts through a designated Waste Shipment **Helpdesk**. A set of **Frequently Asked Questions** will be posted on the Forum's website, based on the answers provided by the Helpdesk in close cooperation with the European Commission's services.

- Inquiries, comments and input is welcome through the following channels:
- E-mail: helpdesk@waste-shipment.eu
- Forum: by sending a message to the Helpdesk directly through the Forum
- Telephone: +33 1 53 90 11 75
- Letter: Waste Shipment Regulation Implementation Helpdesk - c/o BIO Intelligence Service - 20-22 Villa Deshayes - 75014 Paris, France

We would like to encourage you to make use of this opportunity and disseminate this information further to other relevant parties who might be interested in the use of the aforementioned services, which we hope you will find useful.

Kind regards,

George Kiayias

European Commission - DG Environment

1.2 Operating the Helpdesk

1.2.1 Operating principles for enquiries

(1) Definition of standard and non-standard enquiries

Written and oral enquiries are first classified as standard or non-standard, according to the following definitions:

- standard enquiries are those including, but not limited to, requests for statistical data and existing Commission reports, and those for which replies have previously been agreed upon (second receipt of a non-standard enquiry becomes a standard enquiry). In particular, any enquiry that has already been answered by the Helpdesk Service managed by the ESWI Consortium (BiPRO and UBA Vienna) is automatically considered a standard enquiry.

- Non-standard enquiries are any enquiry from the Press, a Member State or NGO relating to the interpretation of certain legal provisions or to any potentially sensitive political issue.

(2) Available channels

The following channels are available for stakeholder enquiries:

- Email: helpdesk@waste-shipment.eu;
- Private message: in case of inability to access their email account, already-registered Forum members can post a private message to the Helpdesk via a link available on the Forum's homepage;
- Telephone: +33 1 53 90 11 75; and
- By post: Waste Shipment Regulation Implementation Helpdesk - c/o BIO Intelligence Service - 20-22 Villa Deshayes - 75014 Paris, France.

The Helpdesk team also intervenes in the Forum to respond to questions that receive no answer from other stakeholders. Member States expecting an answer from the Helpdesk are advised to directly address their question to the Helpdesk, through one of the channels described above.

A table listing all the enquiries received enables the partners of the ETAGIW Consortium to manage and coordinate replies, by specifying the enquirer, the channel, the topic, the type of question (standard/non-standard), the different partners in charge of the tasks and the associated deadlines.

(3) Standard enquiries by email or forum private message

Upon receipt of a standard enquiry, the Helpdesk service responds within one working day, by adapting former answers if necessary. A blind carbon copy of all correspondence is sent to the EC.

(4) Non-standard enquiries by email or forum private message

Non-standard enquiries are replied to within 10 working days. Upon receipt, a "holding reply" is sent to the enquirer, informing him/her of receipt and time needed to reply. The Helpdesk Service and its partners prepare and cross-read a draft reply. It was agreed with the EC at the beginning of the project that non-standard questions should be brought up for discussion on the forum (on both the restricted and the general one) and that an answer should be provided by ETAGIW, according to ETAGIW's opinion, if none of the users answers the question. The answer should further trigger the discussion among the forum users.

(5) Standard/non-standard enquiries by other channels

Standard and non-standard enquiries received by phone are either answered orally (directly when possible for standard enquiries, otherwise after research and via a return phone call) or by email.

Standard/non-standard enquiries received by post are emailed to the ETAGIW Consortium and the EC and replied to by post.

1.3 Results

(1) Forum registrations

Since launching the Helpdesk Services 15 October 2010, 82 members (outside of the project and as of 10 November 2011) have registered on the Forum. 29 of them are Member States' representatives and have therefore access to the Restricted Forum. Figure 1-1 shows the evolution of the number of registered members. A list of all registered members can be found in Annex 1.

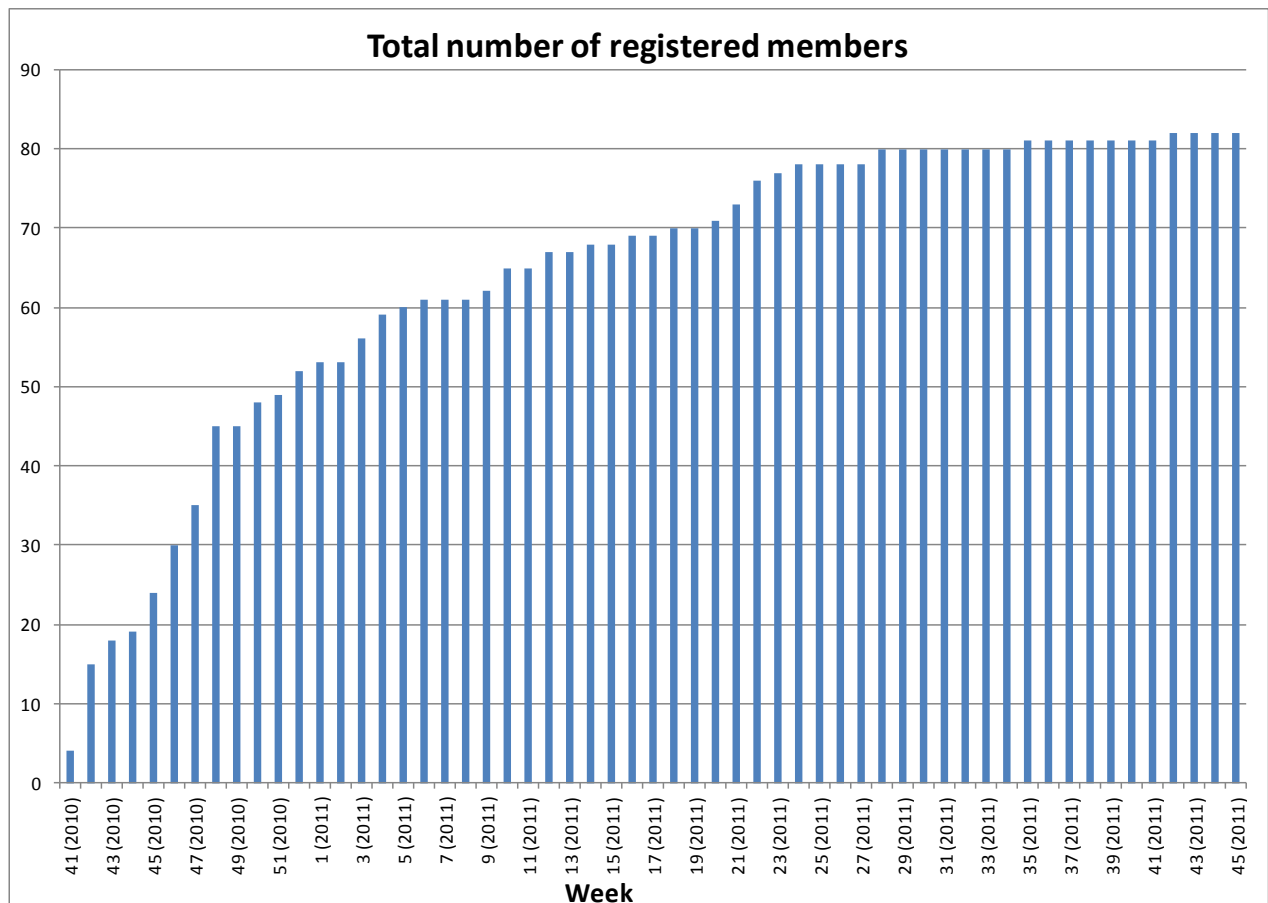


Figure 1-1: Forum Registrations

(2) Number and nature of enquiries treated

As of 10 November 2011, 74 messages have been posted, in 32 different topics, in total (Open Forum and Restricted Forum).

All discussions and answers related to the different questions posted in the Forum can be directly consulted in the Forum, a compilation of all of them can be found in Annex 2. Table 2-1 provides an overview of the questions which were answered by ETAGIW (incl. the channel via which the question was received and which partner was in charge of the question).

1) Open Forum

40 messages have been posted, in 10 topics, within the category “Procedural Issues (including take-back)”.

- “Late arriving trucks” posted 19 October 2010 (13 messages)

Initially, this topic dealt with notification validity, particularly the movement documents in the case of a general notification, when the actual date of shipment differs from the announced date following an unforeseen technical or logistical problem. As there were very few registered users, a reply was prepared by the Helpdesk and sent to the enquirer.

The topic was enlarged by another user to the validity of a general notification, and the possibility for a notifier to request new transfer shipments from the competent authorities when the agreed upon number of shipments have been exhausted but not the quantity of waste.

- “Art 22 – Take-back shipment” posted 18 October 2010 (2 messages)

This topic deals with a specific case in which a shipment could not be completed as intended but the recovery facility nevertheless received the waste and signed the movement document.

- “How many movement forms?” posted 27 October 2010 (2 messages)

This topic deals with the number of movement documents that must be submitted by the notifier and the procedure for attributing serial numbers when shipments change mode of transport en route.

- “Duration of SRF notifications from UK” posted 1 November 2010 (4 messages)

This topic deals with general notifications for the shipment of SFR (solid recovered fuel) from the UK to other EU countries with intended period of time for shipments exceeding 1 year.

- “Show forwarder?-Annex VII field 5-Green listed waste-Export” posted 8 November 2010 (2 messages)

This topic deals with completing Annex VII of the WSR (information accompanying shipments of green-listed waste), specifically whether a forwarder should be mentioned as a carrier.

- “3 days prior the shipment” posted 9 November 2010 (3 messages)

This topic deals with the 3-day period a notifier has to respect between when he/she sends the movement document to the competent authorities concerned and the start of the shipment.

- “Countries involved in notification and approval procedure” posted 11 November 2010 (7 messages)

This topic deals with the determination of the competent authorities concerned by a specific case and the appropriate procedure.

- “Confirmation of disposal/recovery; financial guarantee” posted 23 November 2010 (2 messages)

This topic deals with the way the confirmation of final disposal/recovery shall be certified on the movement document by the facility carrying out the operation and sent to the competent authorities, and the period of time some competent authorities need before giving back the financial guarantee to the notifier.

- “Procedural issues” posted 22 November 2010 (2 messages)

This topic deals with disposal of the non-recoverable fraction after recovery (as cited in Annex II, Part 1, point 20), in case the country of destination does not allow import of waste for disposal.

- “Time frame evaluation for CA” posted 10 December 2010 (3 messages)

This topic deals with the period of time competent authorities have to respect between reception of notification and movement documents and reaction.

3 messages have been posted, in one topic, within the category “Other topics”.

- “French authorities” posted 10 November 2010 (3 messages)

This topic deals with the contact information for the French competent authority.

5 messages have been posted, in one topic, within the category “Basic definitions and fundamental questions”.

- “M&A and notifications” posted 23 November 2010 (5 messages)

This topic deals with the validity of notifications and the procedural requirements in case a recycling company of destination is subject to Mergers and Acquisitions.

1 message has been posted, in one topic, within the category “Treatment operations”

- “Article 15 point (e)” posted 17 November 2010

This topic deals with the possible duration of interim disposal operations.

4 messages have been posted, in 3 topics, within the category “Classification issues”.

- “Importing wet blue leather scraps from Italy” posted 5 January 2011 (1 message)

This topic deals with the applicable procedure for shipments of leather waste within the Community.

- “PET waste to Malaysia” posted 11 January 2011 (2 messages)

This topic deals with the possibility to export PET bottles scrap to Malaysia.

- “MS guidelines for the classification of green-listed waste” posted 11 January 2011 (1 message)

This topic deals with the possibility (or impossibility) for Member States’ competent authorities to adopt legally binding guidelines on the classification of green listed waste.

2) Restricted Forum

Please note that for reasons of completeness, the answers to the questions in the Open Forum were also posted in the Restricted Forum.

10 messages have been posted, in 8 topics, within the category “Classification issues”.

- “B3020: paper waste to Argentina” posted on 21 January 2011 (1 message)

This topic deals with the possibility to export paper waste to Argentina, and a potential mistake between Argentina’s reply to the “questionnaire on non-hazardous waste” and Regulation 1418/2007.

- “MS guidelines for the classification of green-listed waste” posted on 11 January 2011 (1 message)

This topic deals with the possibility (or impossibility) for Member States’ competent authorities to adopt legally binding guidelines on the classification of green listed waste.

- “PET waste to Malaysia” posted on 11 January 2011 (1 message)

This topic deals with the possibility to export PET bottles scrap to Malaysia.

- “Importing wet blue leather scraps from Italy” posted on 4 January 2011 (1 message)

This topic deals with the applicable procedure for shipments of leather waste within the Community.

- “Animal by-product vs waste regulations” posted on 29 August 2011 (2 messages)

This topic deals with the question how the WFD and WSR are to be interpreted in relation to the EU Animal By-Products Regulation 1069/2009.

- “Operation code on notification document for municipal waste” posted on 07 September 2011 (2 messages)

The topic deals with the question if a notification for the shipment of mixed municipal waste to an R1 incineration plant for municipal solid waste can be done under the operation R1.

- “Municipal waste” posted on 07 September 2011 (1 message)

This topic deals with Recital 33 of the WFD, municipal waste treated in waste management facilities and the use of code Y46 for the export of municipal waste to non-OECD countries.

- “GC020 - Non-hazardous waste electrical items” posted on 07 September 2011 (1 message)

This topic deals with the question if GC020 (‘Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc) and reclaimed electronic components suitable for base and precious metal recovery’) can be used for whole and crushed whole non-hazardous waste electrical items.

8 messages have been posted, in 6 topics, within the Category “Procedural issues”.

- “Time frame evaluation for CA”, posted on 12 January 2011

This topic deals with the period of time competent authorities have to respect between reception of notification and movement documents and reaction.

- “Countries involved in notification and approval procedure”, posted on 5 January 2011

This topic deals with the determination of the competent authorities concerned by a specific case and the appropriate procedure.

- “Show forwarder?-Annex VII field 5-Green listed waste-Export”, posted on 9 December 2010

This topic deals with completing Annex VII of the WSR (information accompanying shipments of green-listed waste), specifically whether a forwarder should be mentioned as a carrier.

- “How many movement forms?”, posted on 9 December 2010

This topic deals with the number of movement documents that must be submitted by the notifier and the procedure for attributing serial numbers when shipments change mode of transport en route.

- “Confirmation of disposal/recovery; financial guarantee”, posted on 9 December 2010

This topic deals with the way the confirmation of final disposal/recovery shall be certified on the movement document by the facility carrying out the operation and sent to the competent authorities, and the period of time some competent authorities need before giving back the financial guarantee to the notifier.

- “Late arriving trucks”, posted on 17 November 2010

This topic deals with notification validity, particularly the movement documents in the case of a general notification, when the actual date of shipment differs from the announced date following an unforeseen technical or logistical problem.

1 message has been posted, in 1 topic, within the Category “Treatment operations”.

- “Article 15 point (e)”, posted on 17 January 2011

This topic deals with the possible duration of interim disposal operations.

2 messages have been posted, in 1 topic, within the category “Other topics”.

- “Article 27 the choice of language”, posted on 25 January 2011

This topic deals with the language used in the documents submitted by the notifier to the competent authorities. The Dutch position is that the competent authorities must accept at least one of the regularly used languages English, German or French, and that the Regulation should be amended in that sense.

(2) Helpdesk

Since launching the Helpdesk Services, 8 enquiries were directed to the Helpdesk (please see below). The descriptions of the first 6 questions are available above in the section dedicated to the Forum (as these questions were also posted in the Forum).

- “Article 15 point (e)”, received on 4 November 2011
- “Importing wet blue leather scraps from Italy”, received on 16 December 2010
- “PET waste to Malaysia”, received on 23 December 2010
- “MS guidelines for the classification of green-listed waste”, received on 16 November 2010
- “Municipal waste” posted on 07 September 2011, received on 4 July 2011
- “GC020 - Non-hazardous waste electrical items”, received on 4 July 2011
- “Questions regarding Annex VII”, received on 18 May 2011, a second question received on 27 June 2011

The topic deals with the information to be provided in Annex VII (information accompanying shipments of waste as referred to in article 3(2) and (4)).

- “Moving waste – waste license”, received on 26 September 2011

This topic deals with the question from which country a transport company needs a waste license when shipping waste.

(3) Helpdesk

In September 2010, DG ENV has published on its website document containing the discussion of FAQ (<http://ec.europa.eu/environment/waste/shipments/pdf/faq.pdf>), stemming from a previous project conducted by ESWI Consortium. The project team assessed whether the questions and answers arisen during the work of Helpdesk (the “current Q&A”) justify to revise the existing FAQ document, by checking the categories used in the previous document

Table 1-1: Assessment of impact of ETAGIW helpdesk to FAQ stemming from previous helpdesk project

Category	Questions of this Helpdesk (numbering according to Table 2-1)	Questions of previous Helpdesk (numbers)	Conclusion / Justification
1. Classification issues related to single waste streams	PET bottles (N) Paper (T) Leather (M) ABP (P) Mixed MSW (R, Q)	1.1. to 1.17	The questions of previous project have matches in terms of waste streams (plastics, EEE), but none of the current

	Non-hazardous electrical items (S)		Q&A has a direct impact for existing FAQ
2. General classification and procedural issues	Late arriving trucks (A) Confirmation of D/R / financial guarantee (G) Completing Annex VII Number of movement forms (C) Classification of green listed waste (O) Determination of CA (F) Time frame for evaluation for CA (I)	2.2 to 2.9	None of the current questions has a direct impact for existing FAQ
3. Take-back procedure	None	3.1 to 3.10	No impact on Q&A of previous for existing FAQ
4. General procedural issues - treatment operations	Article 15 point (e) - possible duration of interim disposal operations (L) Information to be provided in Annex VII (V)	4.1 to 4.22	Interim treatment was addressed in several questions of existing FAQ (4.1 to 4.4), but none of the current Q&A has a direct impact for existing FAQ. Neither does have the question on information of Annex VII.
5. Basic definitions, miscellaneous	Waste license from different EU MS necessary for transport? (W) Choice of language (U)	5.1 to 5.5	No impact on Q&A of previous for existing FAQ

It would be possible to amend the existing document with some of the questions which were of general interest. This could namely be the case for questions C, G, I, N, P, Q, R, S, and U. However, for the major part, this is not recommended due to the specific character of the questions.

1.4 Conclusions and recommendations

1.4.1 Conclusions

- As already experienced within the framework of the previous Helpdesk service (managed by the ESWI Consortium), the operating mode of a Helpdesk not simply providing enquirers with answers but also enabling users to exchange information and to discuss questions has in general proven useful to help interpret the wording of the Waste Shipment Regulation and to support its application throughout Europe.³
- However, while a certain dynamic in the Forum could be noticed after the launch of the Helpdesk, a rather low level of the use of the Helpdesk services and the Forum could be observed subsequently. The users also made use of the previously mentioned possibility to discuss and exchange on questions only to a limited extent.

When determining the relevance of a Helpdesk, the analysis can very generally be based on the number of enquiries (the more enquiries, the more a Helpdesk is obviously needed and visible as a contact point). The number of enquiries as a performance indicator is however only true when additional tools (such as FAQs) are not yet in place (which is traditionally the case at the beginning of a Helpdesk set-up). The Waste Shipment Helpdesk provided an extended FAQ section already shortly after its launch, as part of the Forum. It is possible that this available information already answers the main questions from the different stakeholders. This might therefore be one reason for the low uptake of the Helpdesk.

- Another reason for the rather low use of the Helpdesk could result from the fact that it is not the only medium where this kind of questions can be asked or treated, i.e. IMPEL (the European Union Network for the Implementation and Enforcement of Environmental Law) provides a dedicated section on its website on their Transfrontier Shipment of Waste (TFS) Cluster which also includes a forum.

³ It has however to be noted that not all enquirers were necessarily satisfied with the fact that the answers provided by the Consortium are not legally binding.

1.4.2 Recommendations

- Collaboration with IMPEL:

Despite the concerns raised above which would rather speak against the continuation of a Helpdesk service under its current form, ETAGIW still thinks that it might be useful to have some kind of service in the future which would assist stakeholders in the application of the WSR. In any case, ETAGIW already recommended that a Helpdesk service should collaborate with experts and exchange platforms dealing with Waste Shipment, in particular IMPEL as there is an overlap of topics treated in the Helpdesk and the IMPEL forum ('basecamp'). It has however to be noted that currently the IMPEL basecamp only enables a closed informal discussion and the access is restricted to competent authorities involved in control and enforcement of transboundary shipments of waste.

Preliminary contacts have already been established with IMPEL and several options for cooperation have been identified, such as a regular exchange of discussion results for inclusion in FAQs or a reading access to basecamp for Helpdesk or EC experts and vice versa, for further details see Annex 3⁴. The IMPEL Secretariat validated suggestions 1 to 4 and 6⁵. Regarding suggestion 5⁶, the proposition was made by the Secretariat to give a reading access to the involved persons at DG Environment to the basecamp discussions.

Under the current project, ETAGIW already established a link to the IMPEL basecamp on the Helpdesk forum website with a short explanatory text.

- Existing FAQ document

The project team is of the opinion that the existing FAQ document (<http://ec.europa.eu/environment/waste/shipments/pdf/faq.pdf>) does not need to be updated, since no direct impact for the FAQ contained in that document has been identified in the questions and answers during this project. Further, since the questions which were sent to the Helpdesk or posted on the forum were not really frequently asked or asked several times, but rather specific and regularly focusing on a very particular context, ETAGIW does not deem it useful to integrate the major part of the questions in the existing FAQ document. However, the

⁴ The ideas were supposed to be presented at a TFS Cluster Steering Committee meeting which took place at the end of September 2011. The issue could finally not be addressed during the meeting due to time constraints. The IMPEL Secretariat replied therefore on behalf of the Steering Committee to the different suggestions.

⁵ 1: Establish a link to Basecamp on the Helpdesk forum website

2: Establish a link to the EC helpdesk/discussion forum on the TFS basecamp site

3: Active email alert and encouragement of users to register in the corresponding forum

4: Regular exchange of discussion results for inclusion in FAQs

6: Mutual notification about incoming questions

⁶ Reading access to basecamp for helpdesk experts and vice versa

project team recommends to consider for some of the questions whether the Commission deems it useful to integrate them in the existing FAQ document; this could namely be the case for questions C, G, I, N, P, Q, R, S, and U (numbering according to Table 2-1).

2 Annex

2.1 Annex 1: List of registered users

Username	Posts	E-mail	Restricted Forum	MS
admin	0	ec-fp-internet-services-do-not-reply@ec.europa.eu		
forum.admin	0	helpdesk@waste-shipment.eu		
forum.moderator	0	helpdesk@waste-shipment.eu		
digit.fpfis	0	digit.fpfis@gmail.com		
Test member	0	francois.privat@biois.com		
ETAGIW	24	helpdesk@waste-shipment.eu	x	
DG Environment	68	helpdesk@waste-shipment.eu	x	
john.mackens	5	john.mackens@kuehne-nagel.com		
madalina	7	madalina.lobda@yahoo.com	x	RO
eric	0	eurometrec@eurometrec.org		
allison	0	allison.townley@doeni.gov.uk	x	UK
Jaap Koreman	7	jaap.koreman@agentschapnl.nl	x	NL
Marese	0	marese.feeney@dublincity.ie	x	IE
mst	0	annsc@mst.dk	x	DK
ewaeyen	0	eric.waeyenbergh@holcim.com		
schalke04	18	ludwig.ramacher@remondis.de		
anneke	0	anneke.sewandonon@minvrom.nl	x	NL
CEWEP	0	info@cewep.eu		
annakassay	0	kassay@niagarapoggio.it		
UOGA	0	esperto.coordinatore.uoga@pa.sm		
sadknax	0	klaus.leifhold@remondis.de		
Hilgers Sylvie	0	sylvie.hilgers@spw.wallonie.be	x	BE
vickicooper	0	vicki.cooper@360environmental.co.uk		
Kaija Rainio	0	kaija.rainio@ymparisto.fi	x	FI
fawcett	0	asa.fawcett@stenametall.se		
will	1	will.spurr@wrg.co.uk		
Wilfried Baumann	0	wilfried.baumann@freiburg.ihk.de		
Pivaz	2	export@vidori.it		
pincvision	1	environmental@pincvision.com		
Tuga	0	nancy.isarin@ambiendura.com		
ddemetriou	1	ddemetriou@environment.moa.gov.cy	x	CY
pmccartney	0	patrick.mccartney@dublincity.ie	x	IE
hag	0	ulrika.hagelin@naturvardsverket.se	x	SE
joke teeninga	0	joke.teeninga@agentschapnl.nl	x	NL

Username	Posts	E-mail	Restricted Forum	MS
arkhoorn	0	rbruijne@xs4all.nl		
absquare	0	abgriesbach@yahoo.de		
Jeroen	0	wies@afvalenergiebedrijf.nl		
Arie	0	ahoen@oxigen.ie		
paolo	3	paolorossi1@email.it		
mari-liis.ummik	0	mari-liis.ummik@envir.ee		
flavius	0	flavius.ardelean@mmediu.ro	x	RO
Helge Ziolkowski	0	helge.ziolkowski@naturvardsverket.se	x	SE
nhomer	0	nigel.homer@environment-agency.gov.uk	x	UK
ita2010	0	sorci.valeria@minambiente.it	x	IT
Charlotta Doubková	0	doubkova@dtihk.cz		
Maheshwari	0	robertsantillian@hotmail.com		
Katharina Aiblinger	0	katharina.aiblinger-madersbacher@reg-nb.bayern.de	x	DE
franck.lauwers	0	franck.lauwers@mepa.org.mt	x	MT
nikolaus geilich	0	nikolaus.geilich@schott.com		
RIZZARDO	0	giuseppe.rizzardo@provincia.pordenone.it	x	IT
Maluch	0	robertsantillian@hotmail.com		
Michelangelo	1	m.vaccaro@maildip.regione.campania.it	x	IT
Jacques Hoffenberg	0	jh@wastedenmark.dk		
Provincia FC	0	valentina.calo@provincia.fc.it	x	IT
AVG-Hamburg	0	behr@avg-hamburg.de		
Recker	0	irecker@buhck.de		
basko	0	guenter.nerlich@mu.niedersachsen.de	x	DE
Sharples	0	alfred.sharples@mepa.org.mt	x	MT
nadagjura	0	nada.suhadolnik-gjura@gov.si	x	SI
arsosi	0	nada.suhadolnik-gjura@gov.si	x	SI
MONICAJULIO	0	monicaj-11530l@adv.ao.pt		
VisitSongs8	0	dt@dentisttooth.com		
vorschneider	0	christine.vorschneider@hmuelv.hessen.de	x	DE
grossberndta	0	angelika.grossberndt@rpk.hessen.de	x	DE
Glenda Vonk	0	g.vonk@lzp.nl		
asafaw	0	asa.fawcett@stenametall.se		
rsm	0	santinhorita@hotmail.com		
Glen Tobiason	0	glen.tobiason@zak-ringsheim.de		
Voboffert	0	mir.ella.anklus@gmail.com		
harenzan	0	h-arenzana@ej-gv.es	x	ES
Ambullyannuah	0	ewanowickowska+aopuj@gmail.com		
henriv	0	virtanenhenri@hotmail.com		
danilo	0	danilo.pungartnik@rm-mpi.si		
bitaopith	0	jrsmitjsmi@aol.com		
Inga L-Macerniene	0	i.macerniene@aaa.am.lt		

European Commission

Report on the Experiences gained with the Helpdesk Service related to the Waste Shipment Regulation
Assessment and guidance for the implementation of EU waste legislation in Member States

ETAGIW

Username	Posts	E-mail	Restricted Forum	MS
carlosartori	0	carlo.sartori@ecoenergy.it		
U.O.G.A	0	esperto.coordinatore.uoga@pa.sm		
anenceVab	0	mailer@nolimitswebhost.com		
grealiaclense	0	alisha.bu.d.g.ko.d@gmail.com		
clailmdaduast	0	mailer@nolimitswebhost.com		
sigFasioxyFap	0	mailer@nolimitswebhost.com		
pamgalia	0	p.dimiev@ocvbg.com		
AnneL	0	annelaffan@gmail.com		
eposadar	0	eposadar@yahoo.com		
Notifizierung	0	notifizierung@sbb-mbh.de	x	DE
willspurr	0	will.spurr@wrg.co.uk		
greg.smith	0	greg.smith@wrg.co.uk		
Sambesi	0	b.siegert@tsr.eu		
futtjerie	0	nicolalopasart@yahoo.co.uk		

2.2 Annex 2: Compilation of questions and answers⁷

The following table gives an overview of the questions which were answered by ETAGIW (incl. the contact information for the enquirer, the channel through which the question was received and which partner was in charge of the question)⁸. A short description of each question can be found in the chapter discussing results above.

Table 2-1: Overview of questions treated by ETAGIW (incl. contact data of the enquirer)

Order ⁹	Ref. of question	Topic	Title	Enquirer	Channel	Standard Partner in charge	Non-standard Partner in charge
1	A	Procedural issues	Late arriving trucks	schalke04 - Ludwig Ramacher, Remondis (ludwig.ramacher@remondis.de)	Forum (unanswered post)		BIO IS
2	L	Treatment operations	Procedural issues Article 15 point (e)	Paul Zubiena, Van Gansewinkel (Paul.Zubiena@vangansewinkel.com)	Email		BIO IS
3	G	Procedural issues	Confirmation of disposal/recovery; financial guarantee	schalke04 - Ludwig Ramacher, Remondis (ludwig.ramacher@remondis.de)	Forum (unanswered post)		BiPRO
4	D	Procedural issues	Show forwarder?- Annex VII field 5- Green listed waste-Export	John Mackens, Kühne + Nagel (john.mackens@kuehne-nagel.com)	Forum (unanswered post)		BIO IS
5	C	Procedural issues	How many movement forms?	schalke04 - Ludwig Ramacher, Remondis (ludwig.ramacher@remondis.de)	Forum (unanswered post)		BIO IS
6	X		Not legally binding answers	schalke04 - Ludwig Ramacher, Remondis (ludwig.ramacher@remondis.de)	Email	BIO IS	

⁷ The questions asked by users as well as the answers provided by users have undergone a linguistic correction whenever necessary.

⁸ Questions to which the answers were provided by a forum member and not by ETAGIW, are not included in this table.

⁹ Please note that the numbers in this column are based on the order in which the enquiries were received.

Order ⁹	Ref. of question	Topic	Title	Enquirer	Channel	Standard Partner in charge	Non-standard Partner in charge
7	O	Classification issues	MS guidelines for the classification of green-listed waste	Jacques Hoffenberger, Waste Denmark (JH@affalddanmar.k.dk)	Telephone + Email		BiPRO
8	M	Classification issues	Procedural issues Importing wet blue leather scraps from Italy	Lindsay Sidwell, E-Leather (Lindsay.Sidwell@eleathergroup.com)	Email		BiPRO
9	F	Procedural issues	Countries involved in notification and approval procedure	madalina - Madalina Lobda (madalina.lobda@yahoo.com)	Forum (unanswered post)		BIO IS
10	I	Procedural issues	Time frame evaluation for CA	Pivaz (export@vidori.it)	Forum (unanswered post)		BIO IS
11	N	Classification issues	PET waste to Malaysia	Inmaculada Blazquez (mblazquez-mico@icali.es)	Email		BIO IS
12	U	Other issues	Article 27 the choice of language	Jaap Koreman, Agentschap NL (jaap.koreman@agentschapnl.nl)	Forum (unanswered post)		BIO IS
13	I	Procedural issues	Time frame evaluation for CA	Jaap Koreman, Agentschap NL (jaap.koreman@agentschapnl.nl)	Forum (unanswered post)	BIO IS	
14	I	Classification issues	B3020: paper waste to Argentina	Jaap Koreman, Agentschap NL (jaap.koreman@agentschapnl.nl)	Forum (unanswered post)		BIO IS
15	V	Basic definitions and fundamental questions	Annex VII (regulation 1013/2006)	Robert de Ruijter Roba Metals RdRuijter@robametal.com	Email		BiPRO
16	R	Classification issues	Municipal waste	Julia Darby, DEFRA Julia.Darby@defra.gsi.gov.uk	Email		BiPRO
17	S	Classification issues	GC020 - Non-hazardous waste electrical items	Julia Darby, DEFRA Julia.Darby@defra.gsi.gov.uk	Email		BiPRO
18	P	Classification issues	Animal by-product vs waste regulations	Jaap Koreman, Agentschap NL jaap.koreman@agentschapnl.nl	Forum		BiPRO

Order ⁹	Ref. of question	Topic	Title	Enquirer	Channel	Standard Partner in charge	Non-standard Partner in charge
19	Q	Classification issues	Operation code on notification document for municipal waste	Jaap Koreman, Agentschap NL jaap.koreman@agentschapnl.nl	Forum		BiPRO
20	W	Basic definitions and fundamental questions	Moving waste	Paul Ainsworth, TOPP Paul.Ainsworth@topp.si	Email		BIO IS

All questions and answers are compiled below.

Open Forum

Category “Procedural Issues (including take-back)”

- Question A: “Late arriving trucks”

Question A.1:

Waste shipments have to be announced to all authorities three days in advance e.g. by faxing the movement form.

For Notifications covering multiple shipments, e.g. 10 000 tonnes, it sometimes happens, that a given truck cannot move on the planned day, e.g. the truck arrives one day later or the truck has a technical problem.

In such a case, the transport cannot start at the announced day.

--> what would be the correct way to inform all authorities?

--> should the predicted movement form be cancelled and a new one used for the transport?

--> if yes, how would the sender handle the three days?

We think that the original movement form should still be used, and that only the competent authorities need to be informed about changes to the departure date, however some competent authorities clearly have different opinions.

It can be particularly problematic if movement forms are issued as though the original documents by competent authorities which is the case in some MS and can not be copied by the notifier which is the case in other MS.

We hope the request is clear enough, as the matter is not too easy to explain.

Question A.2:

European Commission

Report on the Experiences gained with the Helpdesk Service related to the Waste Shipment Regulation
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I would like to know the procedure taking into account provisions of the R 669/2008 on completing Annex IC - instructions for completing the movements documents (box 2 - number of the shipments) when the number of the shipments is finished and the total quantity is not to exceed the maximum declared in block 5 Annex IA and procedure of notification and consent.

1. Is it necessary for the notifier to request a supplementary number of the shipments?
2. Who is responsible for this approval, the competent authority of dispatch or the competent authority of destination?

Answers:

Answer A.1, provided by users:

User 1

In my opinion the subject you mention should not be "late arriving trucks" but the fact that a pre-notified shipment cannot start at the intended date noted on the movement document when it was forwarded by fax to the competent authorities. There are numerous reasons as to why a shipment can't start on the intended day. This depends neither on the amount of waste nor on the number of shipments on a notification. Competent authorities will never be in a position to verify the given reason, so they have to make their own assessment on the matter.

In my opinion the competent authority of dispatch need only be informed that the shipment will not take place on the intended date. To inform the authorities of transit and destination is in my opinion not necessary, because an intended date of departure does not indicate an exact date of arrival in the country of transit or destination. . The competent authority of dispatch should decide whether or not the shipment can start on a later date by referring to the initial movement document. There are dozens of reasons why they may or may not agree. So one can't ask for a standardized approach on this matter. If the authority of dispatch agrees to use the same movement document, then there is no need to resend this document with an altered transport date to the other competent authorities. It should be indicated in box 16 of the copy of the movement document that accompanies the transport, that the transport left on [date] with the approval of the authority of dispatch. However once the competent authority of dispatch decides to make the shipment on a later date, a new pre-shipment notification should be made. The movement document for the cancelled transport should be crossed with the word "cancelled" and sent to the competent authorities involved. For the new shipment a new serial number must be used and unless the authority of dispatch decides otherwise, the three days again apply.

For each transport there should be only one movement document with its unique serial number and only one date of intended transport.

User 2

The "late arriving trucks" are the starting point for the discussion, it is for this reason that I selected this title. I still think it is illustrative enough. No doubt that there are numerous different reasons for trucks to arrive late.

Anyhow, taking your answer, life would be much simpler if your argument is right, and only the competent authority of dispatch needs to be informed and can decide accordingly, whether the same IB form can be used or a new one needs to be issued.

Undoubtedly, there should not be two original movement forms with the same serial number. This would not happen, however, as the announcement is made mainly by fax or scan.

As far as I know the competent authority of dispatch has no problem with the procedure in the cases which are the basis for the request, in the way you describe. Instead it is the competent authority in the recipient country that is requesting to issue a new form IB instead of using the original one with e.g. a changed date.

Answer A.2, provided by a user:

In past cases, it was possible to ask for further movements if the original numbers of required movements was exceeded, but the quantity permitted not.

But the cases I remember were all under the former regulation.

I am not aware of such a case with the existing regulation.

But I think: Principally the granting of further transports is not excluded, so it should be possible. The competent authority of dispatch, should provide the additional movement forms, and the request to increase the number should be issued to all competent authorities having to do with the dossier and need their written approval. There is no special form required for requests and answers.

Answer A.3, provided by ETAGIW:

The question raised concerns the validity of the notification, especially the movement document, when actual date of shipment differs from the announced date, following an unforeseeable technical or logistical problem. Two options can be discussed:

- The notification shall still be considered valid.
- The notification shall be cancelled and a new one has to be submitted by the notifier to the competent authorities.

The notification document is included in Annex IA of WSR. Annex II, Part 1 lists the information and documentation that shall be supplied on, or annexed to that document.

Date(s) envisaged for start of the shipment(s) shall be supplied on the notification document.

For general notifications, requested period of validity shall be supplied. Block 6 of the notification document requires that a detailed list of the intended period of time for each shipment be attached.

Hence, the date of shipment shall be considered as a consented condition of the shipment.

Case 1: Single notifications

As regards Article 17(1), if any essential change is made to the details and/or conditions of the consented shipment, including changes in the date of shipment, the notifier shall inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts. The WSR does not precise the way of information that shall be used.

As regards Article 17(2), in case an essential change is made to the conditions of the consented shipment, a new notification shall be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.

In case one of the competent authorities concerned consider that a new notification shall be submitted, the notifier shall so fill in a new notification document and submit it to the competent authorities. After consent has been given to the new notified shipment by the competent authorities involved, the notifier shall fill in a new movement document. Therefore all the deadlines associated with the notification procedure apply again.

Case 2: General notifications

Additionally the WSR includes the possibility to submit a general notification. Such a general notification may be submitted by the notifier to cover several shipments, in case the conditions given in Article 13(1) of WSR are fulfilled.

Article 13(2) covers the changes of circumstances in case of general notification. Contrary to Article 17 related to single notifications, only a route modification involving competent authorities other than those concerned by the general notification requires a new notification to be submitted.

Hence, in case of general notification, an unforeseen change in the date of shipment does not require a new notification to be submitted.

Concerning the movement document, as regards Article 16 points (a) and (b) of the WSR, the notifier shall insert the actual date of shipment and otherwise complete the movement document to the extent possible, and send signed copies of the then completed movement document to the competent authorities concerned and to the consignee at least three working days before the shipment starts.

The WSR emphasizes that the date on the movement document be the “actual date”, since the term “to the extent possible” is connected to the filling in of the rest of the document.

Therefore, a new movement document with the actual date of shipment needs to be sent to the competent authorities concerned and to the consignee.

Answer A.4, provided by a user (in reaction to ETAGIW’s reply):

Hello,

First of all, for future discussions we don't need to refer single notifications, as they scarcely exist in praxis, and all questions will be related to general notifications, if not explicitly mentioned differently.

Now the core of your answer is:

"Concerning the movement document, regarding Article 16 points (a) and (b) of the WSR, the notifier shall insert the actual date of shipment and otherwise complete the movement document to the extent possible, and send signed copies of the then completed movement document to the competent authorities concerned and to the consignee at least three working days before the shipment starts.

The WSR emphasizes that the date on the movement document be the "actual date", since the term "to the extent possible" is connected to completing the rest of the document.

Therefore, a new movement document with the actual date of shipment needs to be sent to the concerned competent authorities and the consignee."

This sounds as if it could be legally correct (who am I, as a chemist, to doubt that). I will check it with what is feasible, but it is just not workable in praxis.

When we talk about general notifications, we talk about numbers of up to 50 000 tonnes per year. Sure, there are also less, but there are often many more. If we just take 10 000 to, that is two trucks per day leaving a plant if deliveries are distributed equally. Under such circumstances, combined with how movement forms are issued in several countries, it is not feasible to issue a completely new movement form and cancel the old one if a delivery has to start a day later than scheduled, and the truck arrives later.

And how shall it work considering the rule of sending a movement form three days in advance to authorities,? Would keeping the three days rule mean sending the truck away empty?

Wonderfull solution for the environment too!

So what now? The practicalities of this piece of legislation partly continue to be extremely difficult to implement and need either quick improvement or a more flexible approach.

Answer A.5, provided by the same user as A.4:

Hello all,

One of the biggest problems within the waste shipment regulation is the fact that this piece of legislation is constructed on the basis of single notifications, which in reality hardly exist. The few existing ones will cover less than 0,1% of all shipped wastes.

Worded in that way, the regulation obviously does not describe in a practical way how to deal with certain issues which arise during application with the papers.

When ETAG/W quotes Article 13 (2) of the regulation dealing with the issue we discuss here, then that in my opinion is not the correct Article to be used here, as 13 is about general notifications as such and does not really deal with changes after the permit of such a dossier has been granted. Article 13 (2) concerning changes of the transport route has a different background.

So if we want to find something that has to be in Articles 16 and 17, then we are back to the problem described before.

Although general notifications are mentioned in the introduction of Article 16, it is obvious that the rest is written for the seldom occurrence of a single notification.

- Question B: “Art 22 – Take-back shipment”

Question B:

According to art. 22 of the Regulation 1013/2006 mentioned above, the notifier has responsibility for the return if a shipment cannot be completed as intended.

The competent authority of dispatch shall ensure that the waste in question is taken back to its area of jurisdiction. But this has not happened, the recovery facility received the waste and issued Annex IB signed in box 19. In this case what is the responsibility for the competent authority of destination?

Answer B, provided by a user:

If the recovery facility signed box 19, why does the waste have to be taken back?

From a mere legal position I would think, that a signature in box 19 by a receiving facility means, that they have taken ownership of the waste, so the problem if there is one, is theirs to manage.

- Question C: “How many movement forms?”

Question C:

The case:

100 trucks fill one ship. The ship moves by sea, is reloaded at three barges.

In the final harbour the trucks are refilled to, in this case let us say, 120. How many forms are then required?

--> 100 movement forms, as that is the number of movements from the beginning?

--> 1 movement form, as the ship on sea sustained most of the journey?

In any of these cases, how can the question of the additional forms needed be solved for at minimum 20 cases which are more than if 100 forms would be the starting point?

In one practical case we copied one of the original forms and gave the additional copies an additional numeration in form of letters starting with a, b, c etc.

We never were sure if this type of working is right, nor is anything foreseen in the regulation.

This can be seen of course also for other combinations like truck--train--truck etc.

“Duration of SRF notifications from UK”

Answer C, provided by ETAGIW:

A similar question “In the shipment of wastes requiring notification, how should the movement forms be handled in the case of split shipments, where more than one mode of transport (e.g. trucks, train, ships) is involved in a shipment?” is included in the FAQ document regarding the WSR published on DG ENV’s web page (see <http://ec.europa.eu/environment/waste/s...df/faq.pdf>, chapter 4.9, p. 59).

In the answer to this question, it is pointed out that “it has to be assured that the movement document accompanies the shipment at all time of the transport. Therefore the use of a single movement document for more than one transport mode (e.g. for several trucks) is not in line with the WSR.”

Hence, a general notification and 100 movement documents would be needed in the described case.

As regards the question of the additional movement documents, the FAQ points out that “The use of copied movement document at the location of off-loading from one to another transport mode should be possible only in exception.”

Hence, copying one of the original movement documents for the additional ones was possible in the described case.

As regards what information should be included in the movement documents, the FAQ points out that “When using copies of the movement documents to accompany an actual transport, the information of the actual weight of the single transport and the total weight of the whole transport is required. Also it should be indicated how many transports are involved (e.g. number 1 out of 3) and where the rest of the load is transported (e.g. number of plate of trucks transporting the rest of the load).”

Hence, for cases where a notified load will be divided into several smaller loads (e.g. off-loading to smaller trucks) as in the described case, a new numeration should be adopted for the subsequent mode of transport and the above information should be added to all the movement documents.

- Question D: “Show forwarder?-Annex VII field 5-Green listed waste-Export”

Question D:

We discussed how to handle the annex VII for a forwarder who places the booking with the carrier (container) only.

A) EXPORT

the forwarder did not arrange the precarriage (truck/train/barge transport) to the port.

the forwarder does not own the vessel.

the forwarder buys space on the vessel and sells it to the shipper/exporter.

the forwarder may arrange the export customs clearance

B) IMPORT

the forwarder only changed the B/L in to the delivery order, that the consignee can pick up container in port.

the forwarder did not arrange the oncarriage (truck/train/barge transport) to the consignee.

the forwarder may arrange the import customs clearance.

did this forwarder need to be mention in field 5a/b/c)?

did this forwarder need to save this annex VII as well for many years?

Answer D, provided by ETAGIW:

The first question, i.e. whether a forwarder needs to be mentioned in block 5 of Annex VII for shipments of waste subject to the general information procedure (Article 18 procedure) as referred to in Article 3(2) and (4), is not explicitly specified by the WSR.

However, the same question arises when filling in blocks related to carriers in the notification and movement documents for the prior written notification and consent procedure. Point 19 of Annex IC of the WSR, completed by the Commission Regulation No 669/2008 of 15 July 2008, gives further provisions on filling block 8 of the notification document: "Where the transport is organised by a forwarding agent, the agent's details and the respective information on actual carriers should be provided in an annex."

For shipments of waste subject to the general information procedure, there is no such further provision and so mentioning forwarders in Annex VII is not explicitly required by the WSR.

As regards the second question, Article 20(2) of the WSR says that "Information given pursuant to Article 18(1) shall be kept in the Community for at least three years from the date when the shipment starts, by the person who arranges for the shipment, the consignee and the facility which receives the waste."

For shipments of waste subject to prior written notification and consent procedure, point 39 of Annex IC gives further provisions regarding keeping of the movement document: "A copy of the signed document is to be retained by the previous carrier."

For shipments of waste subject to the general information procedure, there is no such further provision and so carriers and forwarders do not need to save the Annex VII.

- Question E: “3 days prior the shipment”

Question E:

Following European regulation you have at least 3 days to announce a transboundary shipment of waste to authorities.

In these 3 days, I assume that personnel at authorities check the documents and verify if everything is ok or if there are remarks to be made.

Sometimes I receive a fax from authorities in the afternoon of shipment day informing me that, for instance, a weight is missing and therefore the shipment cannot take place unless correction is filled in 1B and sent.

I'm lucky and have always been able to repair to some "orthographical" mistakes that can happen when filling the movement document in by hand, but I wonder what these 3 days are for if the authorities do not use this time to raise objections?

Why messing up only the third and day, when probably the shipment has already left the plant? They have 3 free working days to raise any remarks.

Answer E, provided by a user:

The three day rule was initiated before email and fax existed, and air mail was the primary means of communication.

Authorities often answer or put questions at the end of a working period as defined by law. That may look intentional, and I would never exclude this possibility, but on the other hand I know from many competent authorities, that the quantity of people working on an issue like transboundary movements of waste is very limited and the work load greater than easily possible to manage.

Therefore it would be more useful to have quite precise procedural rules on such things and again this is a point rather unclear, similar to the point I have raised.

I am curious, when we will receive a more binding answer from somewhere.

- Question F: “Countries involved in notification and approval procedure”

Question F:

What is the responsibility for a recipient country when metal waste (auto bales) comes for recovery from another non-OECD country when the country of destination has transitional measures according to art.63 of the Regulation 1013/2006. In this example; who bears responsibility for issue Annex IA and Annex IB?

Answer F, provided by ETAGIW:

As regards Article 45, where waste destined for recovery is imported into the Community from a non-OECD Decision country Party to the Basel Convention, Article 42 shall apply mutatis

mutandis. The provisions of Title II shall so apply mutatis mutandis, with the adaptations and additions listed in Article 42 (2) and (3).

In accordance with the prior written notification and consent procedure laid down in Title II, the notifier shall submit a prior written notification to and through the competent authority of dispatch. According to Article 4 (1), “the notification document and the movement document shall be issued to the notifier by the competent authority of dispatch”.

Regarding the responsibility of the country of destination, the following adaptations are made to that procedure:

- According to Article 63 (5) (b), by way of derogation from Article 12, until 31 December 2011, the Romanian competent authorities may raise objections in conformity with the grounds for objection laid down in Article 11.
- According to Article 42 (3) (b), the competent authority of destination shall send a stamped copy of their decisions to consent to the shipment to the customs office of entry into the Community.

- Question G: “Confirmation of disposal/recovery; financial guarantee”

Question G:

Under the condition of general notifications, the confirmations of disposal/recovery are done by the receiving plant by filling out, signing and stamping box 19 of form IB.

When finalised in this way, the form will be sent nowadays either by fax, scan by e-mail to the competent authorities and the notifier.

For many countries this form of confirmation is enough to close the movement and complete the whole file to give back the financial guarantee.

In other member states competent authorities request to receive the IB form as a copy of the original movement form that is signed and stamped in the original in boxes 18 and 19, and sometimes in addition even stamped and signed on the backside.

These additional requirements creates additional work for the plants, but plants do this to support customers and return their financial guarantees in a reasonable time frame...

Now we receive a request from one regional competent authority, to issue a letter that all copies of the original movement forms be signed and stamped in the described way, ensuring that all documents are valid copies of the original movement forms. This case has been closed for about one year, and as can be imagined they have been holding the financial guarantee of the customer since then.

From our perspective such a request is really exaggerated and not justified by the legislation. The

fact that financial guarantees are being kept back for over one year, although the recovery of the waste is confirmed by the receiving plant, is also not okay.

Answer G, provided by ETAGIW:

Two issues have to be distinguished: Firstly, what kind of proof can a CA request before releasing the financial guarantee; secondly, what format of communication has to be accepted by CA.

As regards the first question, please note that a similar question “what kind of proof can a competent authority require before releasing the financial guarantee associated with the prior written notification and consent procedure” is included in the FAQ document regarding the WSR published on DG ENV’s web page (see <http://ec.europa.eu/environment/waste/s...df/faq.pdf>, chapter 4.4, p. 58). In the answer to this question, it is pointed out that “[...] before releasing the financial guarantee the competent authorities can request: signed (but not stamped) copies of the movement document with block 19 completed; [and] signed copies of certificates according to Article 15(e) as outlined in the Correspondents’ guidelines No 3”.

Based on this position, the Helpdesk opines that submitting “[a] cop[y] of the movement document” (Article 16 (e)) does not oblige the receiving facility to attach any form of additional certification to the copy as regards the substantial truth of the content, i.e. as regards the question whether the copy complies with the original. Neither a confirmation of this compliance by a third person (e.g. a notary) nor a confirmation by the person / institution in whose name the original was signed is required by the WSR.

As regards the second question, the relevant provision is Article 26 of WSR. Following Article 26(1) (i), the regular way of submitting the copies of the certificate for the non-interim treatment of waste –i.e. the movement document containing the confirmation non-interim treatment has been completed – is via post. Alternative means of communication, namely fax and e-mail with or without electronic signature, are only admissible in case all concerned CA agree (Article 26(2)). In case a CA does not accept fax or e-mail as format of communication, the information has to be sent by post.

- Question H: “Procedural issues”

Question H:

What is legal interpretation for Annex II, Part 1, point 20, point (a), (b), (c), (d) of the Regulation 1013/2006 taking into account that recipient country has national legislation stating that the transfer/import of waste for disposal is prohibited.

Answer H, provided by a user:

Please note that this answer was provided by a forum member and not by ETAGIW and is therefore not listed in the table above.

This part of annex II (20 a-d) shall obviously allow competent authorities to have a rational measure to judge whether a certain waste treatment option is recovery or disposal.

During the writing of the regulation we have as industry argued, that although it is of course necessary to have a tool to decide which measure is recovery and which is disposal that this type of questions will not really help to do so.

Just imagine certain clear measures of recovery and what you would have to fill in here.

This difficulty to judge the one or the other is of course quasi the same also for a country which does not allow im- or export of waste for disposal. Quasi non of the recovery options is totally clear in its description, there are always borderline cases. And the many recovery measures existing but not at all really described by one of the R codes are even more difficult to judge in such cases.

E.g. in many MS in Europe the backfilling of a salt mine is accepted as R5, at least if the mine is obliged to backfill by its mining license. So no problems to get a notification into these mines based on R5. At least one MS says that this is not R5, but a D operation and does not grant any notification till now. Is that acceptable based on legislation?

- Questions I: “Time frame evaluation for CA”

Question I:

Following the WSR the CA has 3 working days to evaluate a submitted notification. After this deadline, they should ask for additional informations to notifier or release their OK.

Maybe 3 working days is too strict for an accurate check of all annexes of TFS, but how could a notifier make a claim against a CA taking at minimum 1 month to give first response?

Furthermore, is there a fixed time in which a CA should release the movement documents to the notifier in order to start the shipments after the regular submission of the insurances guarantee? Also in this case a month passed before I received the documents.

Answer I.1, provided by ETAGIW:

Articles 7, 8 and 9 of the WSR lay down the validation procedure for the notification document, which is recalled below.

1. Article 7: transmission of the notification by the competent authority of dispatch
The competent authority of dispatch shall, **within three working days of receipt of the notification**:
 - transmit the notification to the competent authorities of destination and transit and inform the notifier of the transmission (Article 7 (1)); or
 - request additional information from the notifier (Article 7 (2)), if it considers the notification has not been properly carried out in accordance with Article 4 (2).

To answer the first question, the notifier has the possibility to claim against a competent authority that has not met the deadline before a court of justice, following national legislation.

Furthermore, if, **within 30 days of receipt of the notification**, the competent authority of dispatch has not transmitted the notification as required under paragraph 1, it shall provide the notifier with a reasoned explanation upon his/her request (Article 7 (4)). In case the competent authority does not comply with this provision of the WSR, or in case it does comply but the notifier is not satisfied with the explanation, the notifier also has the possibility to claim against the competent authority before a court of justice.

Please note that this transmission only testifies that the competent authority of dispatch considers that the notification has been properly carried out. The rest of the validation procedure is recalled below.

2. Article 8: Requests for information and documentation by the competent authorities concerned and acknowledgement by the competent authority of destination
Any of the competent authorities concerned shall, within three working days of receipt of the notification, request additional information from the notifier if it considers this is required (Article 8(1)).

The competent authority of destination shall, within three working days of receipt of the properly completed notification, send an acknowledgement to the notifier.
3. Article 9: Consents by the competent authorities of destination, dispatch and transit and time periods for transport, recovery or disposal
The competent authorities of destination, dispatch and transit shall have 30 days following the date of transmission of the acknowledgement to take one of the following duly reasoned decisions:
 - consent without conditions;

- consent with conditions in accordance with Article 10; or
- objections in accordance with Articles 11 and 12.

Answer I.2, provided by ETAGIW:

Besides, the procedure to complete the movement document, laid down in Articles 4 and 16 of the WSR, is recalled below.

According to Article 4 (1), in submitting a notification, the notifier shall fill in the notification document and, where relevant, the movement document. Annex IC point 32 further clarifies that at that time, blocks 3, 4 and 9-14 have to be completed.

According to Article 16, after consent has been given to a notified shipment by the competent authorities involved, all undertakings involved shall complete the movement document. Annex IC point 32 further clarifies that at that time, blocks 2, 5-8 and 15 have to be completed.

According to Article 16 (b), the notifier shall, at least three working days before the shipment starts, send signed copies of the completed movement document to the competent authorities concerned and to the consignee. According to Article 16 (c), the movement document shall accompany each transport up to the disposal or recovery facility.

It follows from the procedures laid down in the WSR that, when the competent authority of destination consents to a notified shipment and signifies its written consent by appropriately stamping, signing and dating the notification document according to Article 9 (2) and (3), it shall send back the movement document to the notifier, in order to enable the latter to complete it and start the shipment (assuming the other competent authorities concerned also consent to the shipment). If the competent authority retains the movement document, preventing the notifier to follow the procedure laid down by the WSR, the notifier has the possibility to claim against the competent authority, following national legislation.

Category “Other topics”

- Question J: “French authorities”

Question J:

Who can give me an idea on how to reach the French authorities?

I have sent so many emails and tried to call so many times, I do not know how to get some answers...

My contact is Mrs. Genty (one of the EU correspondents), she must be very busy and apparently nobody else can help me there...

any ideas?

Answers J, provided by users:

Please note that this answer was provided by a forum member and not by ETAGIW and is therefore not listed in the table above.

User 1:

Did you try the link below ?

[http://ec.europa.eu/environment/waste/s ... rities.pdf](http://ec.europa.eu/environment/waste/s...rities.pdf)

User 2:

the question will be, for which purpose you need them. The list should contain the regional ones too, needed for practical work in case of notifications.

If you really need the focal point, I would wonder why there is no answer at all, as it sounds.

Category “Basic definitions and fundamental questions”

- Question K: “M&A and notifications”

Question K:

What happens if a recycling company of destination is subject to M&A?

Let's see the scenario. The new company:

- has a new name
- has a new VAT number and a new entry into the local registry of enterprises
- inherits the environment authorizations
- inherits all insurances for environmental risk
- inherits all the contracts

Of course, the waste recycling process doesn't change, the plant, logistics, etc. do not change either. In other words, I'm talking about a modification of the organizational structure of the old company.

Is it possible to use the old, notifications that are still running? What should the new and the old companies do?

Answer K, provided by a user:

We have made such changes for both sides of the notification dossier, as this can also happen to the notifier.

We have informed the competent authorities without a special form. We sent a letter requesting the change and annexed the notifier's letter describing what they changed.

For authorities here in Germany we normally have the power of attorney from our clients to do so. For the other authorities notifiers do themselves.

Category “Treatment operations”

- Question L: “Article 15 point (e)”

Question L:

We would like to deliver 8,000 tons of waste to a company in Germany. This waste will be stored in a location for 1 year (D15) and then sent to another location for destruction (D10).

Question L.1:

How long can we store this waste at location 1?

Question L.2:

How long do we have to wait before the waste has to be destroyed?

Answer L, provided by ETAGIW:

As regards Article 9(6) of the WSR, a planned shipment subject to the procedure of prior written notification and consent may take place only during the period of validity of the written or tacit consents of all competent authorities concerned. For single notifications, as regards Article 9(4) of the WSR, a written consent to a planned shipment shall expire one calendar year after it is issued or on such later date as is indicated in the notification document. Hence, the WSR leaves the possibility for the competent authorities to consent to shipments with more-than-1-year duration. For general notifications, the intended period of time for shipments may not exceed one year, with the exception of multiple shipments to pre-consented recovery facilities according to Article 14, for which the intended period of time may not exceed three years (Point 17 of Annex IC of the WSR completed by the Commission Regulation No 669/2008 of 15 July 2008). In accordance with Article 9(7), shorter periods of validity might be indicated by the Competent Authorities.

The thus defined period of validity should include the shipment from the moment it leaves the waste producer to its arrival at the disposal facility in the country of destination.

Additionally, in order to answer your questions, please find below the provisions related to the time periods for interim disposal and non-interim disposal operations:

1. In all cases (single or general notifications), as regards Article 15 point (d) in accordance with Article 9(7), the interim disposal operation shall be completed no later than one calendar year from the receipt of the waste by the facility, unless a shorter period is indicated by the competent authorities concerned.

2. As regards Article 15 point (e) and Article 16 point (e) in accordance with Article 9(7), the final disposal operation shall be completed no later than one calendar year from the receipt of the waste by the facility, unless a shorter period is indicated by the competent authorities concerned.

Consequently, in cases of waste shipments to which the notification procedure has to take place, waste can be stored maximum one calendar year at location 1 and has to be destroyed maximum one calendar year after it has been delivered to the final disposal facility (shorter periods might be indicated by the Competent Authorities).

Category “Classification issues”

- Question M: “Importing wet blue leather scraps from Italy”

Question M:

Our company produces a man-made material which is made by recycling wet blue leather trimmings and shavings. At the moment we use wet blue leather waste from British tanneries but we would like to be able to consider receiving leather waste from Italy.

I have found Annex 1B at the end of Reg No 1013/2006. Would our company need to register to receive wet blue scraps from Italy or is this material something that can be sent without licence? If we need to register and/or obtain a licence, how would we go about doing this?

Answer M, provided by ETAGIW:

1. To determine whether there are obligations under the Waste Shipment Regulation (WSR) at all, check as a first step whether the material in question is actually waste. The WSR uses the definition of Waste Framework Directive (WFD – note that the reference to Directive 2006/12/EC in the WSR is to be construed as reference to new WFD 2008/98/EC according to Article 41 of and Annex V to new WFD), i.e. “any substance or object which the holder discards or intends or is required to discard”. Note that the interpretation of this term is given distinction by a number of CJEU court rulings.

If the waste nature of the material which is intended to be transported is confirmed, the extent of obligations under the WSR has to be determined. The WSR introduces two different procedural frameworks:

- the procedure of prior written notification and consent, which means that the Competent Authorities of the countries of dispatch and destination (and – if applicable – transit) have to give consent on the planned shipment; and
- the procedure of general information requirements of Article 18 WSR, which means that no prior notification to the authorities is required (still there is the obligation that the waste is accompanied by certain information, see Article 18 WSR).

2. Which of these procedures is applicable depends – if assumed that all countries involved in the planned shipment are EU Member States as it is the case with UK and Italy – on the planned treatment operation and on the type of waste to be shipped.

- The classification of waste has to be done in accordance with the Annexes to the WSR;
- The treatment operation has to be classified according to Article 2 No 4 to 7 of WSR, that means according to the disposal / recovery categories of the WFD or, if applicable, interim disposal / interim recovery.

In broad terms, the procedure of general information requirements of Article 18 of WFD is only applicable for different types of non-hazardous waste listed in Annex III, IIIA and IIIB to the WSR which are destined for recovery operations.

3. As regards the classification of waste, note that the classification is in the first place not to be done according to the EU List of Waste, but in accordance with waste lists stemming from international agreements, namely Basel Convention and OECD Decision 2001/107 final as amended. Incorporating the system of the Basel Convention, Annex V to the WSR obtains two parts (A-List and B-List) out of which only the B-List is included into Annex III to the WSR and, by this, submits the waste featured on the B-list to the procedure of general information requirements of Article 18 WSR.

From the information given in the inquiry, it seems that the following waste codes could be applicable:

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

Note that even if a classification leads to the result that the entry B3090 is appropriate, still it may not be subject to the general information requirements laid down in Article 18 if they are contaminated by other materials to an extent which increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in the WFD; or prevents the recovery of the wastes in an environmentally sound manner.

4. Please note that without further information on the leather material to be shipped – namely the composition / hazardousness of the material, a more detailed answer cannot be provided. For a first overview on the system of transfrontier shipments of waste, we recommend to

consult [http://ec.europa.eu/environment/waste/s ... /index.htm](http://ec.europa.eu/environment/waste/s.../index.htm) , for a contact in the UK and further guidance material on the obligations in case of transfrontier shipments and, inter alia, classification of waste, we recommend to consult [http://www.environment-agency.gov.uk/bu ... fault.aspx](http://www.environment-agency.gov.uk/bu...fault.aspx).

5. In case a proper classification shows that the notification procedure is the applicable procedure, a notification for that transport has to be submitted to the competent authority of dispatch (Article 4 WSR). Note that General Notifications for a number of shipments are possible under the conditions of Article 13 WSR.

6. This obligation to notify waste shipments is without prejudice to any obligations regarding permitting or registering of waste treatment establishments under national legislation.

- Question N: “PET waste to Malaysia”

Question N:

Could you please tell us if Malaysia accepts pet bottle scrap imports?

Answer N, provided by ETAGIW:

1. According to Article 34, all exports of waste from the Community destined for disposal shall be prohibited, except to EFTA countries which are also Parties to the Basel Convention. Consequently, exporting PET bottles scrap for disposal from the Community to Malaysia is prohibited.

2. To assess whether exporting PET bottles scrap for recovery to Malaysia is authorized, that waste has to be classified. Waste code B3010 seems to be applicable:

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

— Scrap plastic of non-halogenated polymers and copolymers, including but not limited to the following (2): [...]

— polyethylene terephthalate”

A waste within the requirements of this waste code is included in Annex III.

In accordance with Article 37(1) of Regulation (EC) No 1013/2006 the Commission has sent a written request to each country to which Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations does not apply, seeking confirmation in writing that waste which is listed in Annex III or IIIA to that Regulation and the export of which is not prohibited under its Article 36 may be exported from the Community for recovery in that country and requesting an indication as to which control procedure, if any, would be followed in the country of destination.

The replies received by the Commission are listed in the Annex to Regulation No 1418/2007.

For Malaysia, waste code B3010 is included in column a), which means that, according to the chapeau of the Annex, exporting a waste included in this waste code for recovery from the Community to that country is prohibited.

- Question O: “MS guidelines for the classification of green-listed waste”

Question O:

Question O.1:

Would national guidelines elaborated by Member States for the classification of green listed waste be in accordance with Community legislation if they:

- Introduce waste code specific thresholds for impurities (like: “up to 5 %” for B1010, “maximum 10 % impurities for example plastic, soil and wood” for B1050) above which the shipment of the waste may not follow the procedural requirements laid down in Article 18
- Introduce other limitations like the “if the waste contains other components to an extent that requires further washing, cleaning or sorting before material recycling is possible, it is not sorted sufficiently to figure on the green list” (applying to B3010)
- Present a legally binding character that can be disregarded only in specific situations
- Do not offer indications on how the technology and processes used at the receiving treatment facility should be taken into account when classifying the waste (Case C-192/96Beside BV)?

Question O.2:

Without prejudice to Article 49, §1 of the WSR, where does the burden of proof lie regarding the second criterion established in the chapeau to Annex III for the impossibility of recovering the waste in an environmentally sound manner? Concretely, what status should be ascribed to the thresholds mentioned under question 1 a) if they were to be lower than the levels of impurities commonly accepted at the receiving facility?

Answer O.1, provided by ETAGIW:

Member States may adopt additional requirements in the area of waste shipments with binding effect at national level. Possibilities and preconditions for Member States were discussed within the FAQ document regarding the WSR published on DG ENV’s web page (see <http://ec.europa.eu/environment/waste/s...df/faq.pdf>, chapter 4.20, p. 73). It was pointed out that

- Where an additional requirement is not a more stringent measure but a measure executing the obligations laid down in the WSR, the measure must be compatible with and proportionate to the objectives of the Regulation;
- Where an additional requirement imposed by a Member State is a more stringent protective measure, it must fulfil the conditions of Article 193 of Treaty on the Functioning of the European Union, and in particular be compatible with the Treaty.

This approach is supported by the jurisprudence of the CJEU in the Daimler Chrysler case (C-324/99)

“ (...) it therefore follows from the context in which the Regulation was adopted, from its nature, from the aims which it pursues and from its content, that it regulates in a harmonised manner, at Community level, the question of shipments of waste in order to ensure the protection of the environment. Accordingly, any national measure relating to shipments of waste must be assessed in the light of the provisions of the Regulation (...)” (point 42, 43).

However, it should be stressed that the Court did not state that the WSR harmonises the procedures to be followed in relation to shipments of wastes “in an exhaustive manner”, as expressed in the question.

Further precisions on the above-mentioned terms (compatibility with and proportionality to the objectives of the Regulation; protective measure) are provided below.

I. Are binding measures as described in the question compatible with the provisions of the Regulation?

The legislative framework with which Member States’ binding guidance must be compatible can be summarized as follows:

1. No binding interpretation by the CJEU or documents from EU level binding for Member States is in place as regards the criteria of chapeau to Annex III WSR and, for example, how to understand the term “extent [of contamination]”.
2. One could argue that the Commission’s competence to amend the Annexes and adopt measures according to Articles 58 and 59 WSR prevents Member States from issuing guidelines binding for national authorities, and notably guidelines for the application of Article 12(1) (g), see Article 59(1) (b) WSR. It remains to be seen whether this applies in case that the Commission has actually taken such measures as the Commission has not yet adopted such guidelines. There is no indication from the WSR that the entire area mentioned in Article 58 and 59 should be reserved to Commission’s guidance and Member States must not issue any guidance, binding or not.
3. Note that some of the entries of Annex III require a specific extent of contamination, which is to be assessed irrespective whether chapeau to Annex III WSR applies. For example, entry B3010

requires that the waste is not “mixed with other waste”.

4. From the structure of the Annexes III and IV, it can be derived that the cases as described in the chapeau to Annex III WSR are atypical, exceptional cases and not typical, regular cases. The chapeau to Annex III WSR, point (a) applies in cases the risk associated with contaminated wastes listed in Annex III in comparison to non contaminated wastes listed in Annex III is increased; or in case that the contamination of the wastes listed in Annex III introduces a specific risk with respect to the recovery in an environmental sound manner (ESM).

5. Article 3(3) and Article 58(1) (d) WSR provide the possibility for the Commission to amend the Annexes of the WSR in a way that wastes, listed in Annex III in exceptional cases are dealt with as if they had been listed in Annex IV, if they display any of the hazardous characteristics listed in Annex III to WFD 2008/98/EC. From a comparison with these provisions, it can be derived that the criteria of chapeau to Annex III WSR are meant to allow the competent authorities suitable case-by-case decisions rather than following general abstract criteria set by a legislator.

6. Taking this framework into account, the most critical aspects are certainly the points (4) and (5).

7. Regarding point (4) raised above, an EC provision construed as exceptional clause should not be turned into a provision applying regularly to Annex III-wastes by means of a national binding rule; a factor which also affects the principle of proportionality. However, this does not mean that binding guidance for authorities are not possible in this area, providing criteria in what cases the authority has to assume that a case as of chapeau to Annex III WSR is in place.

When assessing whether recovery in an ESM is prevented, the circumstances of the envisaged treatment operation should be considered. However, it should be noted that ESM is defined in Article 2 No. 8 WSR as “taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste”. Again, this term is open to interpretation. In the light of Article 49(2) and Annex VIII WSR, the Contractor does not opine that the decisive criterion for the question whether ESM is prevented in the meaning of Annex III WSR, point (b) is what the receiving facility usually accepts.

8. Regarding point (5) raised above, it is reported that the respective national guideline does foresee that “it can be disregarded [only] in specific situations”. In the Contractor’s opinion, this wording leaves room for the case-by-case approach as foreseen by chapeau to Annex III WSR.

II. Principle of proportionality

Note that the application of the national guidelines must lead to result which are in line with the principle of proportionality.

III. Additional protective measure

Note further that the national measures, if going beyond the provisions of the WSR, might be

justified as an additional protective measure in the sense of Article 193 TFEU.

Answer O.2, provided by ETAGIW:

The burden of proof in its function as a procedural convention and the application of the burden of proof in cases related to the WSR by national authorities and Courts depends on the Member States' administrative law and juridical system.

Independently from this general perspective and as pointed out above in the answer to question 1, it is the Contractor's opinion that the provisions of chapeau to Annex III WSR are dealing with exceptional cases, a fact which should be considered when imposing obligations in administrative and Court proceedings under national legislation. As a practical example: A person or a company planning a shipment of waste is responsible for classifying the waste. In case wastes arising from a well-known source is shipped and no indication is in place that the waste to be shipped might be contaminated unexpectedly, the Company is not obliged to conduct tests with respect to all possible sorts of contamination prior to the shipment in order to comply with the requirements of the chapeau to Annex III WSR.

Please note that this answer is, as requested, without prejudice to Article 49 WSR.

Restricted ForumCategory “Classification issues”

- Question P: “Animal by-product vs waste regulations”

Question P:

In the Netherlands we received a notification for a catering waste and out-of-date products shipment from supermarkets destined for transformation into biogas and for composting. In our opinion, transformation into biogas and composting should be seen as regular waste treatment operations. In this case, a notification procedure seems likely. This notification resulted in a discussion whether or not the waste is to be seen as an animal by-product (hereafter ABP) and therefore is excluded from the waste regulation.

Both catering waste and out-of-date products can be seen as category-3 ABP (article 10 (f) and (p) of Regulation (EC) 1069/2009). In article 2, para 2 g (iii) of this ABP-regulation is indicated that catering waste is excluded from this regulation except if it:

(iii) is destined for processing by pressure sterilisation or for processing by methods referred to in point (b) of the first subparagraph of Article 15(1) or for transformation into biogas or for composting

For out-of-date products there is no such specific exclusion. The ABP-regulation only gives a general exclusion if the waste is to be landfilled or incinerated. In the notifications landfilling and incineration are not in the picture.

On the other hand there is directive 2008/98/EC (hereafter the WFD). In article 2, para 2 (b) it is mentioned that:

The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

(b) animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant;

The Regulation (EC) 1013/2006 (hereafter the WSR) on the shipment of waste. In article 1, para 3 it is mentioned that excluded from the scope of this regulation is:

(d) shipments which are subject to the approval requirements of Regulation (EC) No 1774/2002

Because the ABP-regulation, the WFD and the WSR seem to be in contradiction, we are puzzled as to the correct interpretation and how we should proceed. We have some questions for the helpdesk.

Question P.1:

How is article 2, 2 (b) WFD to be interpreted in relation to article 2, 2 g (iii) ABP-regulation? Can the WFD regulate this when it is already regulated in the ABP-regulation (which was also published on a former date)?

Question P.2:

How do the WFD and the WSR relate? In our opinion if the waste is included in the WFD the WSR is always applicable. Can you explain how article 2, 2 (b) WFD and article 1, 3 (d) WSR relate and how these articles should be interpreted? Can a type of waste be included in the WFD and on the same time be excluded from the WSR? If yes, is that the case with these ABP?

Answers:

Answer P.1, provided by ETAGIW:

In principle, waste legislation applies to every substance or object that meets the definition of Article 3(1) WFD 2008/98/EC (such as most likely the described outdated products and catering waste), unless if it is excluded from the scope. Regarding the described case, the Helpdesk shares the understanding of the enquirer that the exclusion of Article 2(2) lit. (b) WFD does not apply, since the material is destined for use in biogas / composting plant.

The same basic approach is shared by the ABP Regulation (EC) 1069/2009: The rules of that Regulation apply to any material that meet the definition of Article 3(1) ABP Regulation, unless the material is excluded from the scope. Again, the Helpdesk is of the same opinion as the enquirer, namely regarding the case of the catering waste in question, because catering waste is not excluded from the scope of ABP Regulation if the material is destined for transformation into biogas or for composting (Article 3(2) lit. (g) (iii) ABP Regulation).

The problem that the question describes is how to handle a situation where material is in the scope of both legislative documents. The obvious solution seems to be that the material would be subject both to waste law requirements, and additionally to those of ABP regime.

Are there arguments that this result is not appropriate? There is, in the opinion of the Helpdesk, no basic principle in waste or ABP law that would mandatorily lead to the need for a clear-cut approach (i.e. an approach that results to a situation where any type of material that meets the definitions both of the WFD and the ABP Regulation would always have to be submitted to either one or the other regime). Indeed, contrariwise, the approach the legislator took when adopting the ABP Regulation in October 2009 – at that time being aware of the text of the WFD which was adopted in November 2008 – clearly shows that the legislator did not intend to make such a clear-cut distinction, but deemed it appropriate to restrict the mutual exclusion to certain specified cases. It is true that this may lead to administrative frictions when enforcing legislation at MS level, however, it is the MS task to set into place an administrative system in order to enforce that obligations under both legal acts are complied with by the responsible actors.

To conclude, in the opinion of the Helpdesk, there is no contradiction in or between the two legal acts. The result of an interpretation of the relevant provisions of the two legal documents is that the material in question (outdated products and catering waste destined for composting in a composting plant or transformation into biogas in a biogas plant) is subject to both waste and ABP regime.

Answer P.2, provided by ETAGIW:

The scope of the WSR (EC) 1013/2006 is to be determined on the basis of the rules laid down in Article 1 of WSR. Article 1(2) WSR makes reference to shipments of “waste” which, read in conjunction with the definition of “waste” provided for in Article 2(1) WSR that refers to the WFD definition means that any material that is to be shipped and meets the definition of “substance or object which the holder discards or intends or is required to discard” is subject to the rules of the WSR, unless it is excluded from the scope of the WSR.

Article 1(3) WSR provides a number of exclusions from the scope of the WSR, among this material which is subject to the “approval requirements” of ABP Regulation. The background of this exclusion from the scope is to avoid duplication with ABP Regulation, which already contains provisions covering the overall consignment, channelling and movement (collection, transport, handling, processing, use, recovery or disposal, record keeping, accompanying documents and traceability) of ABP within, into and out of the Community (see recital 11 to the WSR).

Thus, if a material is subject to both waste and ABP approval requirements – which is the position of the Helpdesk regarding the material discussed here – and consequently submitted to the said ABP provisions covering the overall consignment, channelling and movement, it is excluded from the scope of WSR.

To conclude, it is the opinion of the Helpdesk that in the case discussed (transfrontier shipment of outdated products and catering waste destined for composting in a composting plant or transformation into biogas in a biogas plant) the material in question is excluded from the scope of WSR, but subject to all applicable requirements of ABP Regulation.

- Question Q: “Operation code on notification document for municipal waste”

Question Q:

On the one hand Directive 2008/98/EC has in Annex II the recovery operation R1. In the footnote of this operation it is mentioned that this operation includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above a certain value. Most if not all of the Dutch municipal waste incinerators will comply with the energy efficiency levels and therefore will be indicated as a R1-facility. For the companies this is reason to apply for the status of pre-consented recovery facility.

On the other hand there is article 3, paragraph 5 of Regulation (EC) 1013/2006 (hereafter WSR) indicating that:

Shipments of mixed municipal waste (waste entry 20 03 01) collected from private households, including where such collection also covers such waste from other producers, to recovery or disposal facilities shall, in accordance with this Regulation, be subject to the same provisions as shipments of waste destined for disposal.

The question to the helpdesk is whether a notification for the shipment of mixed municipal waste to a R1 incineration plant for municipal solid waste can be made under the operation R1? In the Netherlands Agentschap NL is of the opinion that the notification document can and should show the operation R1, if the receiving incineration plant has the R1-status. Article 3,

paragraph 5 of the WSR is seen as a possibility for a competent authority to base its decision on article 11 WSR, grounds for objection for waste destined for disposal.

Answer Q, provided by ETAGIW:

The Helpdesk shares the opinion that the notification form should correctly reflect the intended treatment operation as it appears de facto, and that a filling of the notification form by referring, in all cases of Article 3(5), to “D” or “D 10” would not meet this requirement.

The legal implication of Article 3(5) has the consequence that a shipment of the concerned waste destined for a recovery operation are subject to the provisions as shipments of waste destined for disposal for procedural purposes (and notably possible objections on ground of Article 11(1) lit. (i)); it does not substantially modify the classification of the treatment operation.

- Question R: “Municipal waste”

Questions R:

Question R.1:

When considering whether a shipment is “mixed municipal waste” under Article 3(5) of the WSR, which waste treatment operations substantially alter the properties of mixed municipal waste, as referred to in Recital 33 of the Waste Framework Directive, and are there any European standards that we could apply, such as CEN 15747 or CEN/TS 15359 to demonstrate substantial alteration? What properties should be changed (and by how much) and which current treatments might be considered to deliver this level of change?

Recital 33 of the revised waste framework directive

‘For the purposes of applying Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (4), mixed municipal waste as referred to in Article 3(5) of that Regulation remains mixed municipal waste even when it has been subject to a waste treatment operation that has not substantially altered its properties’

Question R.2:

Is all municipal waste that emerges from a waste management facility to be classified under Chapter 19 of the European List of Waste (ELW) or are there circumstances where such waste would not move from 20 03 01 to a Chapter 19 waste (for example because of a minimal level of treatment in a waste management facility) ?

Chapter 19 is ‘Waste from Waste Management Facilities....’ However, classifying waste by referring to its last location in this way means that mixed municipal waste having been minimally treated in a waste management facility could be described as, for example, refuse derived fuel (RDF) or another Chapter 19 code. This could hinder attempts to drive the treatment of waste up the hierarchy towards recycling or even re-use, but is there a legally enforceable alternative?

Background

Article 3(5) of Regulation (EC) No 1013/2006 states that mixed municipal waste shall be subject to the same provisions as shipments of waste subject to disposal. Within the UK shipments of

waste for disposal are generally prohibited under national rules and in line with Article 16 of the Waste Framework Directive in relation to Member States moving towards the aim of self sufficiency in waste disposal (see Part 2 of the Transfrontier Shipment of Waste Regulations 2007 and The UK Plan for Shipments of Waste). In light of our approach we require our competent authorities to objection to any notified shipment of mixed municipal waste (waste entry 20 03 01) to or from the UK even if moving for recovery. They are not required to object to the shipment of wastes from Chapter 19 of the ELW for recovery.

UK authorities are increasingly being asked whether waste is to be considered as remaining under waste entry 20 03 01 or whether it has been treated sufficiently (1) to be considered as another coded waste stream, for example, as code 19 12 10 refuse derived fuel (RDF). There is also the potential for other codes to be considered to be reached apart from 19 12 10 such as, for example, 19 02 03 premixed wastes composed only of non-hazardous wastes, 19 02 10 combustible wastes other than those mentioned in 19 02 08 and 19 02 09, 19 05 01 non-composted fraction of municipal and similar wastes and 19 12 12 other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11.

Currently UK competent authorities do not prescribe the level of treatment required, but make clear that the waste must have undergone some sort of treatment in a waste management facility which may comprise mere physical treatment, but this position is subject to review.

As a policy point, we would like to encourage recovery as high up the waste hierarchy as we can, and we cannot see how the export of minimally sorted municipal waste for energy recovery supports this. We do, of course, recognise that there is a role for RDF, for example when recovered materials are not suitable for operations higher up the hierarchy (because of contamination etc).

(1) Waste treatment operations include the use of MBT (mechanical/ biological technology), shredding, manual sorting, compaction and pelletisation.

Question R.3:

Does waste that has been altered substantially enough to have moved from waste code 20 03 01 and into, for example, 19 12 10 remain classified as Y46 for the purposes of export to non-OECD countries?

Y46 waste collected from households. Unless appropriately classified under a single entry in Annex III.

Background

This question arises when considering if waste that had originated from households and subsequently treated sufficiently to code it under chapter 19 of the European Waste List (e.g.as RDF) retains its Y46 classification in Part 3 of Annex V of the waste shipments regulation (WSR). UK competent authorities have been approached regarding the shipment of RDF to Pakistan and China.

By referring to Part 3, List A of Annex V of the WSR a view can be taken that waste remains Y46

unless it can be appropriately classified under a single entry in Annex III (see footnote (3)). It follows that although waste has moved from 20 03 01 to a Chapter 19 code it can remain Y46 and subject to the export prohibition to non-OECD countries in Article 36 (1)(b).

From a purely policy perspective this interpretation is one we are comfortable with because we believe that while energy can be recovered from RDF in the appropriately licensed and controlled facilities in the EU and the OECD, we are less certain of standards in non-OECD countries.

Answers

Answers R.1 and R.2, provided by ETAGIW:

Regularly, mixed municipal solid waste is subject to the amber list (Code Y 46 of Annex II to Basel Convention, to which reference is made by Annex IV of the WSR), and within the concept of Article 3(1) and (2) WSR, subject to the notification procedure of Article 3(1) even if it would be shipped for recovery. Thus, the real substantial change introduced by Article 3(5) is not that it would submit wastes to the notification procedure which otherwise would be subject to the Article 18 procedure, but that it opens the possibility to an objection on grounds of Article 11(1) lit (i) without further preconditions (regarding mixed municipal waste collected from private households only, not applying to a collection which also covers such waste from other producers, as in Article 3(5)).

The background of introducing Article 3(5) and Article 11(1) lit (i) to the WSR was to ensure national self-sufficiency and to keep and maintain established municipal waste management system, which could potentially be undermined by the modification of the understanding of “recovery” in the CJEU jurisprudence and the new WFD.

Recital 33 of WFD intends to extend this concept for mixed MSW which have undergone only minor treatment.

From a methodological perspective, it is important to bear in mind the purpose, and the limits, of recitals. Recitals shall cast light on the interpretation to be given to a legal rule, but shall in no way themselves constitute a rule (see CJEU ruling of 13 July 1989, case 215/88 (Casa Fleischhandels-GmbH), para 31). Taking this in mind, recital 33 may aim at explaining the exact impact of the rule of Article 3(5) WSR, but there is no way that recital 33 could derogate Article 3(5) of WSR, or, in other terms, the impact of recital 33 is restricted to the one of Article 3(5) of WSR.

Taking a closer look at Article 3(5), it is obvious that the wording of the provision not only refers to “mixed municipal waste collected from private households, including where such collection also covers such waste from other producers”, but makes unambiguously a reference to entry 20 03 01 of the List of Waste. By this, in the understanding of the helpdesk, Article 3(5) also makes unambiguously reference to the source-orientated concept provided by the LOW, which has

been incorporated by the new WFD, see Article 7 WFD.

The conclusion is that any understanding of the impact of recital 33 which would lead to a modification of the LOW system, would be misleading against the purpose and the limits of a recital and neglect the fact that the legislator has not introduced a legal provision with the content of recital 33 into the WFD (or the WSR).

Against this background, the impact of recital 33 is in the opinion of the Helpdesk restricted to an instruction to Member States, that

- in case of minor treatment of mixed MSW
- with the intention to re-categorize the waste in terms of LOW entry (and to move it into chapter 19), in order to avoid the consequences of Article 3(5),

the Member States' authorities are not bound to strictly apply the LOW scheme, but may deviate where the behaviour of the waste holder represents a misuse of the law.

Where to set the limit of a waste treatment operation that has or has not "substantially altered [the] properties [of the waste]" and thus is evidence for a misuse described above, is in principle left to Member States. The Helpdesk opines that the idea of "some sort of treatment in a waste management facility which may comprise mere physical treatment", taking into consideration applicable standards to evaluate the extent of usual treatment (in order to derive what would be a minor treatment in comparison), seems to be a justifiable position.

Answer R.3, provided by ETAGIW:

In the first place, the suggested interpretation of Annex V to the WSR is entirely in line with the wording. Footnote (2) to Part 3 Annex V WSR can indeed be understood as if saying that the point of re-classification of Y46 waste is when it is "appropriately classified under a single entry in Annex III", which is not the case when the waste only undergoes minor waste treatment.

The possibility of this understanding is confirmed by the idea of Article 36(1) lit (b) which is described in the COM's proposal: "Clearly, the Community should not export household waste and incineration residues to non-OECD countries. This is in accordance with the principle of self-sufficiency laid down in Article 5 of Directive 75/442/EC, as amended." (COM proposal of 30 June 2003, COM(2003) 379 final, p. 20). The case of Y47 wastes ("residues arising from the incineration of household wastes") shows that this concept is not restricted to the shipments of untreated mixed MSW. Given that the principle of self-sufficiency has been confirmed and reinforced by Article 16 WFD 2008/98/EC, the Helpdesk opines that the understanding provided as outlined in the COM's proposal is still valid.

To conclude, the Helpdesk shares the understanding of the enquirer regarding this issue.

- Question S: “GC020 - Non-hazardous waste electrical items”

Question S:

Can GC020 be used for whole and crushed whole non-hazardous waste electrical items?

As a result of a recent review, the Environment Agency for England and Wales has come to the view that it cannot.

We would very much welcome the views of the helpdesk as we seek to arrive at a UK National position on this issue. We also see the answer to this question as providing the starting point for more detailed work on the classification of different types of WEEE.

Background

The issue that sparked a review of the use of GC020 was concerns over the export of crushed/whole WEEE to Hong Kong - who have indicated that they will accept GC020 - but where there were doubts that the WEEE arriving in Hong Kong would have been what the authorities there anticipated based on the wording of the entry. Namely, there were doubts as to whether they would they have anticipated whole and crushed electrical domestic appliances after reading *GC020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc) and reclaimed electronic components suitable for base and precious metal recovery*?

The Environment Agency conducted an internal review on the use of GC020 and has arrived at a ‘Position Statement’ on its use. This concludes that whole and crushed whole non-hazardous waste electrical items cannot be classified as GC020. The principal reason cited for this conclusion was that waste classified under GC020 should be electronic rather than electrical as this is what is stated in the wording of the entry for this code. Additionally, the distinction between electronic and electrical hinges on whether the item in question could function without an electronic component. If the item could function without an electronic component then it should be viewed as electrical (e.g. toaster, kettle, washing machine) and not electronic. The classification of WEEE for shipments of waste is problematic, and the root of this problem lies in the fact that the only classifications available for non-hazardous WEEE shipments from Member States are GC010 and GC020 as follows:

‘GC010 Electrical assemblies consisting only of metals or alloys’

‘GC020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc) and reclaimed electronic components suitable for base and precious metal recovery’.

A literal interpretation of these provisions might indicate that GC010 is restricted to only metals and GC020 only to electronic scrap or reclaimed components suitable for metal recovery. This leaves a potentially large gap for non-hazardous WEEE made up of a mixture of materials or that is electrical rather than electronic. From a strategic waste management perspective we would prefer that this could be shipped for recovery with no greater administrative burden than for GC010 and GC020, but the WSR does not legally appear to allow this.

The reason for this gap, as we understand it, is that at OECD level, where the GC codes originate, agreement was only possible by using these classifications. Agreement to the use of the Basel

B1110 code that includes waste electrical and electronic scrap together was not possible and this left Member States with two codes that are more limited in scope.

The limitations of the OECD codes has led to a varyingly pragmatic approach being taken by Member States on the use of GC020 and a certain lack of enthusiasm for pursuing a strict legal interpretation. This group included the UK, but in the face of this review from one of our competent authorities we consider it appropriate to reconsider our position.

Correspondent's guidelines 4 and 8

If the view of the Environment Agency for England and Wales is correct, then:

1. Paragraph 7 of Correspondents Guideline No. 4 on the classification of WEEE (Non-hazardous WEEE may be classified by using OECD entries GC010 or GC020) may need re-consideration.
2. Correspondents Guideline No.8 states that GC020 may be used for certain categories of toner cartridges. We may need to reconsider whether these are electronic or electrical.

Answer S, provided by ETAGIW:

It is true that Basel entries A1180 do not apply for the purpose of the Waste Shipment Regulation, and OECD entries GC010 and GC020 in Annex III, Part II apply instead when appropriate.

There is indeed a distinction between “electrical assemblies” as referred to in entry GC010, and “electronic scrap” in GC020. This basic understanding is also shared by the CJEU in the *Omni Metal* case ruling (see Case C-259/05, para 21); and the additional observation that “electrical assemblies” are only subject to entry GC010 in case they consist of metals or alloys only, can be derived directly from the wording of that entry.

However, neither the definition of Annex III, Part II, nor in the said CJEU ruling, nor in any other identified CJEU ruling, a definition of the terms “electrical assemblies” and the distinction of “electronic scrap” has been identified.

From general understanding of the wording of the two terms as provided by general dictionaries, it can indeed be derived that “electric assignment” is any assignment “of, worked by, charged with, or producing electricity”; whereas any electronic device is “having or operating with components such as microchips and transistors that control and direct electric currents” (see Oxford Dictionaries Online). Thus, in comparison of the two terms, “electric” is the general term and “electronic” the specific; an electronic device is an electric device, plus having or operating on an active component.

This literal understanding, and the need for demarcation between the two terms “electrical” and “electronic”, occurs in parallel in the French and German version of the text:

GC010: Déchets issus d'assemblages électriques consistant uniquement en métaux ou alliages
 GC020 : Débris d'équipements électroniques (tels que circuits imprimés, composants électroniques, fils de câblage, etc.) et composants électroniques récupérés dont il est possible d'extraire des métaux communs et précieux.

GC010: Ausschließlich aus Metallen oder Legierungen bestehende elektrische Geräte und Bauteile

GC020: Abfälle aus elektronischen Geräten und Bauteilen (z. B. gedruckte Schaltungen auf Platten, Draht usw.) und wieder verwertete elektronische Bauteile, die sich zur Rückgewinnung von unedlen und Edelmetallen eignen

This understanding is not disproved by taking a look at the genesis of the provision. The opposite terms “electronic” and “electrical” were firstly used by OECD in OECD decision 92(39) FINAL, although with a different wording. Although an extensive search on the public accessible library for OECD documents has been conducted, it was not possible to identify the motivation of the OECD regulator to introduce this distinction.

However, it should be noted that although in regular cases, the unambiguous wording of a provision is the limit for interpretation, it should be noted that when applying a legislative term in strict line with the wording, also the consequences of the application have to be regarded. If the result of the literal interpretation leads to a result which is contrary to the aims of the basic legislative act, it might be appropriate to reconsider the interpretation, against the sense and the meaning of the provision. In this context, it has to be considered that not only the proposed approach might be difficult to handle for enforcement officers – for instance, the same type of device (e.g. washing machine, which functions as example in the question) can have an active component or not, without obviously being visible. Also, the Helpdesk would like to remind that the active components (e.g. printed circuit boards, electrolytic capacitors) which actually make an electric device an electronic, are often those elements of a WEEE material which raise concerns from an environmental point of view. A consequence of literally applying CG010 and GC020 would be that WEEE would only appear on the Green List if one would positively confirm that it has no component which may raise concerns from an environmental point of view.

To conclude, the Helpdesk shares the view of the inquirer, and concurs on the results in terms of literal application of the legal text, but the Helpdesk also would like to remind that another interpretation of the legal text as the one from the literal application may be held.

- Question T: “B3020: paper waste to Argentina”

Question T:

In Regulation (EC)1418/2007 we can find for code B3020 in column a) a prohibition for:
 from B3020:

— paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter),

— other, including but not limited to 2. unsorted scrap.

When reading the questionnaire Argentina sent in 2007 we can see that they only indicate a prohibition for

— other, including but not limited to 2. unsorted scrap.

The question is whether the first indent in column a) is a mistake. Can somebody please indicate why this indent is mentioned in the Regulation in column a)?

If it is a mistake can this be altered then when a new third country regulation is published?

Answer T, provided by ETAGIW:

ETAGIW cannot see any reason for the difference between Argentina's reply to the "questionnaire on non-hazardous waste" and Regulation 1418/2007.

The European Commission (DG TRADE) has been informed of this inconsistency.

Category "Other topics"

- Question U: "Article 27 the choice of language"

Question U:

Article 27 WSR 1013/2006

1. Any notification, information, documentation or other communication submitted pursuant to the provisions of this Title shall be supplied in a language acceptable to the competent authorities concerned.
2. The notifier shall provide the competent authorities concerned with authorized translation(s) into a language which is acceptable to them, should they request one.

The (Dutch) Industry has complained about the extra administrative burdens, because Member States do not accept documents annexed to the notification document in the regular EU used languages English, German or French.

Example: A Dutch company shipped waste to another Member State (destination) for recovery through a Member State(transit). The country of destination accepted the English translation/version of the notification and the annexed documents. The country of transit required that all the information in the annexes be translated, according to Article 27 WSR, in its own language. Stating that the notification would otherwise not be dealt with and no positive decision would be taken.

The Dutch position in this matter is that Member States of origin and destination ought to decide on the languages the notification is issued in. Beside their own language the competent authorities of origin and destination must also accept at least one of the regularly used languages English, German or French. The competent authority of transit should accept this language and

cannot ask for a specific translation into their own language.

If article 27 is dealt with as is mentioned in the wording, the Netherlands is of the opinion that Article 27 blocks the possibility of free trade/shipments within the EU. Why should not all competent authorities be obliged to indicate that at least one of the languages English or German or French will be accepted? As competent authorities, we also use one of the languages listed here, so why can't we allow the industry to do the same?

We would like to know your position. Do you think we can make a correspondence agreement (Guideline??) or is it necessary to change the WSR 1013/2006.

Answer U, provided by ETAGIW:

A correspondent's guideline specifying that every competent authority must accept at least one of the languages English/German/French would not be compatible with Article 27 of the WSR.

In addition, according to Article 59 (1) (g), "the Commission may adopt additional measures related to the implementation of this Regulation as follows: [...] further guidance concerning the use of languages referred to in Article 27". However, additional measures cannot be incompatible with the WSR.

Therefore, it would be necessary to change the WSR to include such provisions.

The other competent authorities could however give their position on this subject, discuss it and find an agreement beforehand.

Question and answer by email:

Category "Basic definitions and fundamental questions"

- Question V: "Questions regarding Annex VII"

Part I

Question V.1:

Due to differences in interpretation we are not sure about how annex VII of regulation 1013/2006 should be composed. We hope that you will be able to clarify how article 18 of said regulation is to be read.

We have spoken to several organizations which deal with this subject but conclude that everyone has their own interpretation of the regulation and that these interpretations are differ dramatically.

Hereafter we present some cases for which we would like to know:

- Who is responsible for delivery and filling out the Annex VII?
- Who should be mentioned in the fields:

- 1: Person who arranges the transport
 - 2: Importer
 - 6: Waste generator
 - 7: Recovery facility?
- What is the influence of council regulation 333/2011 of 31-03-2011, where end-of-waste status can be invoked after activity R12?

In all the situations we presume that the exporting and importing countries are member states of the EU.

Situation 1:

A producer of waste in country A concludes a contract with a recipient in country B. The recipient in country B shall process the material according to activity R12. The recipient in country B instructs a transporter to transport the material from country A to country B.

Situation 2:

A producer of waste in country A concludes a contract with a merchant in country A to remove the waste from the producer.

Merchant in country A concludes a contract with recipient in country B. Recipient in country B shall process the material to R12 or R4.

The merchant in country A shall instruct a transporter to move the goods from Producer in country A to recipient in country B.

Variations:

a. Recipient in country B shall instruct a transporter to move the goods from the producer in country A to the recipient in country B.

b. The merchant in country A shall process the material according to activity R12 before the goods are sent

to recipient B (the merchant arranges transport).

c. The merchant is now located in country B instead of country A, otherwise the same situation as above under situation 2.

d. The merchant is located in country B and the recipient is located in country C.

e. Same as d, except now the merchant in country B shall process the material according to activity R12.

We hope that you are willing and able to answer our questions so that it is clear to us how article 18 should be read and how Annex VII should be completed.

Answer V.1, provided by ETAGIW:

- Who is responsible for delivery and filling out the Annex VII? **In general, this is the person under the jurisdiction of the country of dispatch who arranges the shipment = person to be mentioned in field 1**

- Who should be mentioned in the fields:

- 1: Person who arranges the transport **Always insert the person who de facto arranges**

the shipment

- 2: Importer **This is the person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal = responsible for the reception of the waste (can also be a broker or merchant)**

- 6: Waste generator **Usually the waste generator is the person who arranges the shipment (=field 1), if this is not the case, information about the producer or collector has to be provided.**

- 7: Recovery facility? **Contact data and address of the plant where the waste is to be received.**

- What is the influence of council regulation 333/2011 of 31-03-2011, where end-of-waste status can be invoked after activity R12?

In our opinion, an operation which has the foreseeable result of waste reaching the end-of-waste status must not be classified as interim recovery (Article 2 (7) WSR), but as non-interim recovery operation, because no further treatment is necessary.

In our view, shipment for R12 operation needs documentation and procedure for interim treatment, as well as for final treatment (regarding the latter, we invite you to consult question 4.1 of the Commission FAQ document:

<http://ec.europa.eu/environment/waste/shipments/pdf/faq.pdf>, p.48). If the result of applying R12 operation is end-of-waste material, this material does not need Annex VII documentation for further transport.

Situation 1:

A producer of waste in country A concludes a contract with a recipient in country B. The recipient in country B shall process the material according to activity R12. The recipient in country B instructs a transporter to transport the material from country A to country B.

Responsible for delivery and filling out the Annex IV: **recipient in country B**

To be mentioned in the following fields:

1 - Person who arranges the transport: **recipient in country B**

2 - Importer: **recipient in country B**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country B where the waste is to be received**

Situation 2:

A producer of waste in country A concludes a contract with a merchant in country A to remove the waste from the producer.

Merchant in country A concludes a contract with recipient in country B. Recipient in country B shall process the material to R12 or R4.

The merchant in country A shall instruct a transporter to move the goods from Producer in country A to recipient in country B.

Responsible for delivery and filling out the Annex IV: **merchant in country A**

To be mentioned in the following fields:

1 - Person who arranges the transport: **merchant in country A**

2 - Importer: **recipient in country B**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country B where the waste is to be received**

Variations:

a. Recipient in country B shall instruct a transporter to move the goods from the producer in country A to the recipient in country B.

Responsible for delivery and filling out the Annex IV? **Recipient in country B**

To be mentioned in the following fields:

1 - Person who arranges the transport: **recipient in country B**

2 - Importer: **recipient in country B**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country B where the waste is to be received**

b. The merchant in country A shall process the material according to activity R12 before the goods are sent

to recipient B (the merchant arranges transport).

Responsible for delivery and filling out the Annex IV? **merchant in country A**

To be mentioned in the following fields:

1 - Person who arranges the transport: **merchant in country A**

2 - Importer: **recipient in country B**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country A where the waste is to be processed**

c. The merchant is now located in country B instead of country A, otherwise the same situation as above under situation 2.

Responsible for delivery and filling out the Annex IV? **merchant in country B**

To be mentioned in the following fields:

1 - Person who arranges the transport: **merchant in country B**

2 - Importer: **recipient in country B**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country B where the waste is to be received**

d. The merchant is located in country B and the recipient is located in country C.

Responsible for delivery and filling out the Annex IV? **merchant in country B**

To be mentioned in the following fields:

1 - Person who arranges the transport: **merchant in country B**

2 - Importer: **recipient in country C**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country C where the waste is to be received**

e. Same as d, except now the merchant in country B shall process the material according to activity R12.

Responsible for delivery and filling out the Annex IV? **merchant in country B**

To be mentioned in the following fields:

1 - Person who arranges the transport: **merchant in country B**

2 - Importer: **recipient in country C**

6 - Waste generator: **producer in country A**

7 - Recovery facility: **plant in country B where the waste is to be processed**

Part II

Question V.2:

Thank you very much for your reply. Unfortunately, now we are even more confused.

First of all you state that this is an opinion and not legally binding, how can we get a legally binding answer?

To whom do we need to address our questions?

Secondly: In general, you have stated that the obligation for filling in an Annex VII lies with the person under the jurisdiction of the country of dispatch. This person is also supposed to be mentioned in Field 1. However in the cases we have presented, you state that the person to be mentioned in field 1 is often the recipient in country B, who falls under the jurisdiction of the country of receipt and **not** under the jurisdiction of the country of dispatch. Can you please clarify this for us?

Thirdly: If the person to be listed in field 1 is the same as the recipient (as in many of our cases), how can a legally binding contract be drawn up between the person who arranges the transport and the recipient containing a clause to take the material back if the recovery cannot be completed (according to article 18)?

I hope you can see our confusion and guide us in the right direction.

Answer V.2, provided by ETAGIW:

"First of all you state that this is just an opinion and not legally binding, how can we get a legally binding answer.

To whom do we need to address our questions?"

The disclaimer the Helpdesk is using is to be understood against the general rule that binding interpretation of EU legislation can only be delivered by the CJEU, not by guidance provided by the Commission, let alone the opinion of a consultant. In other terms: The Helpdesk is not in the position to provide statements on the interpretation of the Waste Shipment Regulation having legally bindingness. Although our answer represents the current status of discussion, there is always the possibility that authorities or courts have another understanding of the Waste Shipment Regulation than the Helpdesk.

Depending on national legislation on administrative procedures, the statement of Competent Authority may (without prejudice to the competence of the CJEU outlined above) have a certain level of bindingness towards the inquirer – so, in case of doubt, it may be appropriate to ask the relevant Competent Authority for a statement whether they support a certain interpretation.

"Secondly: In general you have stated that the obligation for filling in an Annex VII lies with the person under the jurisdiction of the country of dispatch, who also is to be mentioned in Field 1. However in the cases presented by us you state that the person to be mentioned in field 1 is often the recipient in country B, who falls under the jurisdiction of the country of receipt and **not** under the jurisdiction of the country of dispatch. Can you please explain this for us?"

The question implies that the term "person under the jurisdiction of the country" is necessarily to be understood as if the person in question has to have a business address in the Member State from which the shipment originates. However, this question is debatable and not yet fully clarified, not least because a general requirement of a business address in a Member State as a precondition for initiating a shipment of waste under the Article 18 procedure raises questions of compliance with fundamental EU principles such as the free movement of goods and services.

The issue has been, with a view to Article 2(15) of Waste Shipment Regulation related to the definition of "notifier", discussed at EU level. The current position of waste shipments correspondents is that *"there is no indication in the Waste Shipment Regulation that the notifier has to have a business address in the Member State from which the shipment originates"*. (see Question 4.21 of the FAQ document of the EU Commission on the Waste Shipment Regulation, where the issue is an extensively discussed; the document is available at <http://ec.europa.eu/environment/waste/shipments/pdf/faq.pdf>). The correspondent's position continue: *"While recognising that national requirements applied to persons intending to ship waste to another Member State pose a restriction on the free movement of services under Article 56 of the Treaty on the Functioning of the European Union (TFEU) which might be justified on environmental grounds, a case-by-case assessment would be required before a position can be taken on the compatibility with the TFEU. So far in its case law the Court of Justice has interpreted restrictively the possibility of justifying such restrictions to the free movement of services; it was noted that derogations must be in conformity with the principles of necessity and proportionality. It is for the national authorities to demonstrate that these conditions are fulfilled in each specific case."*

It is the Helpdesk's opinion that this discussion related to the definition of notifier and the said consequences are identically applicable for the case of a person initiating a shipment under the Article 18 procedure. For the position of the relevant Competent Authority, it may be appropriate to contact them and ask for a statement.

"Thirdly: If the person to be filled in field 1 is the same as the recipient (as in many of our cases), how can a legally binding contract be drawn up between the person who arranges the transport and the recipient containing a clause to take the material back if the recovery cannot be completed (according to article 18)?"

The contract under Article 18(2) Waste Shipment Regulation has to be concluded between the person who arranges the shipment and the consignee for recovery of the waste. The Regulation does not foresee a specific provision how to proceed in case the person who arranges the shipment and the consignee for recovery of the waste are in fact identical. In the Helpdesk's opinion, it is suggested to apply the idea of Article 5(5) of Waste Shipment Regulation that in certain cases, a contract may be replaced "by a declaration by the entity in question undertaking to recover the waste". We recommend that you ask for a statement of Competent Authorities whether they accept such a declaration, replacing (and having the impact of) a contract in the sense of Article 18(2) Waste Shipment Regulation.

- Question W: "Moving waste – waste license"

Question W:

I work for a transport company in Slovenia and we currently do not move any waste goods, however looking to the future we can see that this market is growing. If we are moving waste from the UK in our vehicles would we be able to have a waste license from the Slovene government or a licence from the UK be required? We ask because one department in the UK has told us we should have a license from the UK government. But my worry is that if we pass through other EU countries, they would also demand that we have a license approved by them. In my opinion we should only need one from the area in which we are registered. i.e. Slovenia. Could you please confirm to whom I should go.

Answer W, provided by ETAGIW:

- First of all, a transporter carrying out shipments within the EU must hold a Community authorisation pursuant to Regulation 881/92 (which is issued by the competent authorities of the Member State where the transporter is established) allowing traffic through EU Member States. Regulation 881/92 has been repealed by Regulation 1072/2009, which does however not modify the requirement for a need for a Community authorisation (called Community licence in Regulation 1072/2009) issued by the Member State of establishment.*
- In addition to this authorisation, when shipping waste, a transporter also has to be registered pursuant to Article 26 of the Waste Framework Directive. The concrete procedures regarding the registration may vary among Member States. For this registration, we assume that the same applies as for the Community authorisation, i.e. it is provided by the competent authority of the Member State where the transporter is established and it is valid throughout the EU.

- In the concrete case you describe, this would mean that a Community authorisation and a registration issued by the Slovene competent authorities would enable you to ship waste from the UK to Slovenia (if the minimum standards outlined in Article 27 of the WFD, related to the protection of human health and the environment, are respected).

*Regulation 1072/2009 only applies from 4 December 2011 on, the old legislation remains applicable until then. Community authorisations issued before the date of application of Regulation 1072/2009 will remain valid until their date of expiry.

Miscellaneous

- Question X: “Not legally binding answers”

Question X:

When you say that an answer is not legally binding, is it because the answer is from your service or because an answer from the EC would also not be legally binding? Are answers checked with EC before posting?

Answer X, provided by ETAGIW:

Thank you for your feedback.

In response to your email, neither replies from ETAGIW nor from the EC are legally binding.

Answers to the enquiries and interventions on the Forum are from the experts of ETAGIW's team and are not checked with EC. They only reflect the opinion of the ETAGIW's team.

The discussion in the Forum as well as the input from ETAGIW will provide the basis for further amendment of the Commission services' FAQ section on waste shipments, which is intended to assist national authorities and economic operators with the Waste Shipment Regulation. This document reflects the views of the Commission services and is not legally binding, as the binding interpretation of EU legislation is the exclusive competence of the European Court of Justice.

2.3 Annex 3: Potential cooperation between the EU Waste Shipment Helpdesk and the IMPEL Basecamp

Input material for discussions at

TFS Cluster steering committee meeting

29 September 2011, Berlin

Background:

A forum on the implementation of the Waste Shipment Regulation (WSR) with a focus on exchanging information and best practices and discussing questions concerning the day-to-day application of the WSR ("Waste Shipment Helpdesk") is available on the EUROPA website, currently run by the ETAGIW Consortium (on behalf of DG ENV).

As there seems to be an overlap of certain topics between this forum and the IMPEL basecamp, namely in terms of practical questions related to waste classification and/or identification of illegal shipments and administrative procedures, e.g. in case of illegal shipments, it could be beneficial for both fora to cooperate.

Means and tools for enhanced information exchange and dissemination:

1. *Establish a link to Basecamp on the Helpdesk forum website* - text agreed and already in place
2. *Establish a link to the EC helpdesk/discussion forum on the TFS basecamp site.* – preliminarily agreed; draft text provided below for approval/amendment

The draft text suggested for this purpose is as follows (*to be amended if necessary*):

"The EUROPA website provides a [forum on the implementation of the Waste Shipment Regulation](#) with a focus on exchanging information and best practices and discussing questions concerning the day-to-day application of the WSR. The forum is divided into a restricted part accessible to Member States' authorities only and a general part open to the public. The forum includes a FAQ section and provides expert answers to questions related to classification and procedural issues, treatment operations, basic definitions and best practice. Participation requires registration. For access to the closed section request permission via helpdesk@waste-shipment.eu after registration."

Other options for intensified cooperation (first ideas and suggestions)

1. *Active email alert and encouragement of users to register in the corresponding forum:*
As the access to the basecamp is restricted to competent authorities and the access of a part of the Helpdesk forum is restricted to Member States' authorities, it would make sense to actively encourage these stakeholders to register for both fora to get access to all resources

available. This could for example be done via emails sent to all registered users of one forum, explaining the usefulness of the other forum, specifying its content as well as the registration/application procedure. This might be even more useful than a short paragraph on the forum websites.

2. *Regular exchange of discussion results for inclusion in FAQs:* As the discussions stored on the basecamp are generally not supposed to be disclosed, information could be exchanged in an anonymised way where feasible. This could for example be done for exchanges on classification issues (which do not necessarily need the identity of an organisation or other to be comprehensible). The answers provided in the Helpdesk forum so far could easily feed into the basecamp, at least the ones provided in the open forum. As far as the answers provided in the Member States' section is concerned, it would depend on the kind of question if the answer can be generalised/slightly modified and therefore divulged.
3. *Reading access to basecamp for helpdesk experts and vice versa:* In order to avoid competing answers and parallel discussion in the two fora and to take into consideration the more practical basecamp discussion in the more juridical answers based on the WSR provided on the Europa website it could be beneficiary to provide limited access to the basecamp for the experts involved in the helpdesk (*BiPRO and BioIS*). Such access could correspondingly be granted to the IMPEL TFS secretariat on the helpdesk site.
4. *Mutual notification about incoming questions:* It could be tested if it is useful to establish a mutual notification when a new question comes in, in order to launch a discussion of this issue in both fora (in an anonymised way if necessary, this could be checked on a case-by-case basis with the respective enquirer) for maximised outcome and agreement.

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