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**COMMUNICATION FROM THE EUROPEAN COMMISSION  
TO THE COUNCIL**

**An assessment of the link between the IMO Hong Kong Convention for the safe and environmentally sound recycling of ships, the Basel Convention and the EU waste shipment regulation**

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## **An assessment of the link between the IMO Hong Kong Convention for the safe and environmentally sound recycling of ships, the Basel Convention and the EU waste shipment regulation**

### **1. INTRODUCTION**

Following the Communication of the Commission on an EU strategy for better ship dismantling<sup>1</sup>, the Council invited on 21 October 2009 the Commission to assess the link between the IMO Hong Kong Convention for the safe and environmentally sound recycling of ships (the "Hong Kong Convention"), the UN Basel Convention and the EU waste shipment regulation<sup>2</sup>, and report back to the Council by 2010, followed by, if appropriate, legislative proposals in line with relevant decisions by the Conference of the Parties to the Basel Convention and the Hong Kong Convention.

This Communication assesses the link between the three legal instruments as requested by the Council Conclusions, having in mind the importance underlined by Council to ensure complementarity and coherence between different legal provisions related to ship recycling. The Council also referred to the ongoing assessment at international level concerning the level of control and enforcement established by the Basel Convention and the Hong Kong Convention. Taking into consideration such decisions, during a second phase, the Commission may consider appropriate legislative proposals, including measures to implement the Hong Kong Convention. An assessment of environmental, economic and social impacts would be required prior to any proposals for new or amended pieces of EU legislation<sup>3</sup>.

### **2. SCOPE, OBJECTIVE AND APPLICABILITY OF THE DIFFERENT LEGAL INSTRUMENTS**

#### **2.1 The Hong Kong Convention**

The Hong Kong Convention was adopted on 15 May 2009 and is currently open for signature and ratification by individual countries that are members of the IMO. Not the EU, but only its Member States could become Parties to this Convention.

##### **2.1.1 Objectives**

The Hong Kong Convention which represents a major achievement for the international community, provides a 'cradle-to-grave approach'; a system of control and enforcement over a ship's lifetime from design, through construction, operation and up to the recycling stage. This Convention establishes at global level mandatory requirements to ensure the safe and environmentally sound recycling of ships in an efficient and effective manner. In order to raise the level of standards in the ship recycling industry, the Convention relies, in particular,

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<sup>1</sup> COM(2008)767 final.

<sup>2</sup> Regulation (EC) No 1013/2006/EC of 14 June 2006 on shipments of waste, OJ L 190, 12.7.2006, p. 1.

<sup>3</sup> SEC(2009) 92.

on the survey and certification of ships, the authorisation of ship recycling facilities and specific requirements such as the obligation for shipowners to establish an inventory of hazardous materials on board their ships, for ship recycling facilities to establish a ship recycling plan and for the flag states to conduct a final survey in order to issue an international ready for recycling certificate. An important element is the limitation for the use of hazardous materials in shipbuilding.

#### 2.1.2 Scope: Which ships are covered?

The Hong Kong Convention applies to most privately owned and commercial ships, however, with some exceptions.<sup>4</sup> The Convention does not apply to small ships, i.e. less than 500GT, warships, naval auxiliary or other state-owned or operated vessels which are used only on non-commercial service or ships for domestic transport. However, the Convention requires that these ships act in a manner consistent with the Convention, as far as reasonable and practicable. The Convention covers end-of-life ships by referring to vessels "stripped of equipment or being towed", although it does not refer to any notion of "waste" or "hazardous waste".

#### 2.1.3 Scope: Which facilities are covered?

The Hong Kong Convention applies to ship recycling facilities which means "a defined area that is a site, yard or facility used for the recycling of ships".<sup>5</sup> Ship recycling is the activity of dismantling ships in order to recover components and materials for reprocessing and re-use, including on-site storage and treatment of components and materials at the recycling site. Interim operations, further processing, disposal or management of waste in separate facilities are not covered.<sup>6</sup>

#### 2.1.4 Applicability

Each Party shall ensure that ships flying its flag or operating under its authority are surveyed and certified in accordance with the Convention.<sup>7</sup> The shipowner is required to notify his flag-state's administration of his intention to recycle a ship in due time and in writing in order to enable the administration to prepare for the survey and certification.<sup>8</sup>

Ship recycling facilities operating under the jurisdiction of a Party shall comply with the requirements of the Convention and be authorised in accordance with the Convention. Ship recycling facilities must prepare a ship recycling facility plan. The Convention contains provisions on exchange of information between Parties, inspections of ships and violations.

Recycling facilities should be managed so as to prevent adverse effects to human health and the environment, and to ensure safe and environmentally sound management of hazardous materials, emergency preparedness and response and worker safety and training. Facilities shall establish and use procedures taking into account specific guidelines to be developed by IMO. At least six guidelines will be developed to ensure global and effective implementation and enforcement of the Convention.<sup>9</sup> The first guideline on the inventory of hazardous

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<sup>4</sup> Articles 2(7) and 3.

<sup>5</sup> Article 2(11).

<sup>6</sup> Article 2(10).

<sup>7</sup> Article 5.

<sup>8</sup> Regulation 24.

<sup>9</sup> See 4<sup>th</sup> resolution adopted by the Diplomatic Conference 15 May 2009.

materials was adopted on 17 July 2009<sup>10</sup>. The guidelines on safe and environmentally sound ship recycling are in an advanced stage of preparation.

### 2.1.5 Enforcement

Parties shall prohibit any violation of the Convention within their jurisdiction and they shall establish sanctions adequate in severity to discourage violations of the Convention wherever they occur. Parties shall co-operate in the detection of violations and the enforcement of the Convention.

A ship in any port or offshore terminal of another Party may be subject to inspections to determine whether it is in compliance with the Convention. Such inspections are limited to verifying that relevant certificates are on board, which, if valid, shall be accepted. The inspections may only go further if it has been requested by another Party holding sufficient evidence. All possible efforts shall be made to avoid a ship being unduly detained or delayed. Otherwise, it shall be entitled to compensation for any loss or damage suffered.

If the ship is detected to be in violation of the Convention, the Party carrying out the inspection may take steps to warn, detain, dismiss, or exclude the ship from its ports. In this case, it shall immediately inform the flag state administration of the ship concerned and the IMO.

Each Party shall establish a mechanism for ensuring compliance of its recycling facilities, including the establishment and effective use of inspection, monitoring and enforcement provisions and powers of entry and sampling. This may include audit schemes.<sup>11</sup> Following a substantiated request from another Party for an investigation<sup>12</sup>, a Party should investigate the Ship or the Ship Recycling Facility and make a report. This report shall be sent to the Party requesting it, including information on action taken or to be taken, if any, and to the IMO for appropriate action.

At this stage it is difficult to fully assess the expected level of control and enforcement that the Hong Kong Convention will achieve in its entirety. The envisaged system of control and enforcement elements is adapted to the specificities of the maritime world, but the actual degree of success will depend on economic circumstances and on the diligence with which States will take regulatory and enforcement action.

## 2.2 The Basel Convention

The UN Basel Convention on the control of transboundary movements of hazardous wastes and their disposal was adopted in 1989. All individual Member States and the EU are Parties to the Basel Convention.

### 2.2.1 Objectives

The Basel Convention was adopted as the instrument to principally regulate the movement of hazardous waste across international frontiers. The overall goal of the Convention is to protect

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<sup>10</sup> Resolution MEPC.179 (59).

<sup>11</sup> Regulation 15.

<sup>12</sup> Article 9.

human health and the environment against adverse effects which may result from the generation, management, transboundary movements, and disposal of hazardous wastes.

### 2.2.2 Scope: Which ships are covered?

The Convention applies to hazardous wastes and certain other wastes (mixed waste collected from households and residues arising from the incineration of household waste), as well as wastes defined as hazardous waste under national legislation. It is relevant for ship dismantling, as a ship that is sent for scrapping usually contains hazardous materials and may therefore be considered as a shipment of hazardous waste. A ship may indeed become waste under the Convention and at the same time it may be defined as a ship under other international rules<sup>13</sup>. The Basel Convention thus applies to all ships which are "waste" as defined by the Convention. There are no exceptions for any types of ship.

### 2.2.3 Scope: Which facilities are covered?

All types of facilities during the various stages of waste management: collection; transport; recycling; recovery and disposal; including after-care of disposal sites are covered.<sup>14</sup>

### 2.2.4 Applicability

“Wastes” in the sense of the Basel Convention are substances or objects which are disposed of or are intended or are required to be disposed of by the provisions of national law<sup>15</sup>. Main obligations of Parties include minimizing of the generation and transboundary movement of hazardous wastes and ensuring the availability of adequate disposal facilities.<sup>16</sup>

The Convention establishes a control system with a prior informed consent procedure (PIC) for transboundary movements of hazardous waste between parties, requiring a written authorisation from the states of export, import and, if relevant transit, a contract between the exporter and the disposer and possibly an insurance, bond or other guarantee before a transboundary movement of hazardous wastes can take place.

The principle of environmentally sound management (ESM) of hazardous waste is a central goal, applying to all facilities that recover or dispose of waste.<sup>17</sup> Ship recycling facilities shall be authorised in accordance with the Convention’s principles of ESM, which are further elaborated under a series of technical guidelines. Under the Basel Convention's technical guidelines on ship dismantling, 'beaching' is not accepted as impermeable floors are prescribed for full ship containment at any stage of the dismantling process.<sup>18</sup>

Illegal traffic in hazardous wastes or other wastes is criminal and each Party must take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention.<sup>19</sup>

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<sup>13</sup> See decision VII/26 adopted in 2002.

<sup>14</sup> Articles 2(1) and Annex IV.

<sup>15</sup> Article 2 (1).

<sup>16</sup> Article 4.

<sup>17</sup> Article 2.

<sup>18</sup> See decision VI/24 adopted in 2002.

<sup>19</sup> Article 4 (3) and (4).

The Convention's control system also includes import prohibitions imposed some Parties, annual reporting and communication obligations and a dispute settlement process.

The “Basel Ban amendment of 1995 prohibits all transboundary movements of hazardous wastes from OECD, EC and Lichtenstein to other countries.<sup>20</sup> It has not yet entered into force although it is given effect within the EU.

### 2.2.5 Enforcement

Illegal traffic should be prevented through national/domestic legislation, cooperation between Parties and information to the Basel Secretariat.<sup>21</sup>

The Convention’s Mechanism for Promoting Implementation and Compliance<sup>22</sup> promotes implementation of and compliance through a 15 member Committee. It is non-confrontational, transparent, and non-binding.

While Basel convention's enforcement system functions relatively well for most hazardous wastes, it is applied to relatively few end-of-life ships and is difficult to enforce in relation to most of the world's merchant fleet. Specific challenges for the system are identifying in practice when a ship becomes waste, which country is the “state of export” as defined by the Basel Convention.

## 2.3 The EU waste shipment regulation

### 2.3.1 Objectives

The EU waste shipment regulation aims to ensure the protection of the environment when waste is subject to shipment.<sup>23</sup> It implements the Basel Convention at EU level, as well as the Basel "ban" by banning all exports of waste for disposal, whether hazardous or not, except to EFTA countries. No exemptions are possible. All waste shipped between the EU and third countries as well within the EU shall be managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery and disposal. The requirements of the EU waste framework directive and other EU legislation, for example on health and safety of workers or regarding the specific management of certain materials such as asbestos, shall be respected.<sup>24</sup>

### 2.3.2 Scope: Which ships are covered?

The regulation applies to all ships which are "waste" as defined under the EU waste framework directive i.e. when its holder discards or intends or is required to discard the ship.<sup>25</sup>

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<sup>20</sup> See decision III/1 adopted in 1995.

<sup>21</sup> Article 19.

<sup>22</sup> See Decision VI/12 adopted in 2002.

<sup>23</sup> Regulation (EC) No 1013/2006/EC of 14 June 2006 on shipments of waste, OJ L 190, 12.7.2006, p. 1, in particular recitals 1 and 42.

<sup>24</sup> Article 49 (1).

<sup>25</sup> Directive 2008/98/EC on waste, OJ L 312, 22.11.2008, p. 3.

### 2.3.3 Scope: Which facilities are covered?

EU waste legislation covers the management of waste at all stages and at all types of facilities, including interim operations, during the entire period of shipment.

### 2.3.4 Applicability

If an end of life ship contains hazardous substances listed in Annex V of the regulation (e.g. asbestos or PCBs), what is often the case, it is covered by the export ban. The export of 'non-hazardous' end-of-life ships, can take place to facilities which can carry out environmentally sound management of waste.<sup>26</sup> Recycling facilities in a country of destination are to be operated in accordance with human health and environmental protection standards that are broadly equivalent to standards established in the European Union.

### 2.3.5 Enforcement

The regulation is directly applicable in the Member States, who shall take all necessary measures to ensure that the regulation is enforced, including by setting penalties which are effective, proportionate and dissuasive. Member States must provide, inter alia, for inspections of establishments and undertakings in accordance with the Waste Framework Directive and for spot checks on shipments of waste or on the related recovery or disposal. In addition, Member States shall cooperate to facilitate the prevention and detection of illegal shipments. Member States shall designate the competent authority or authorities responsible for the implementation of this regulation and identify the permanent staff and focal points responsible for cooperation and physical checks.<sup>27</sup>

In practice, enforcement of the regulation is difficult when a ship becomes waste outside European waters although some decisions have been made by national courts.<sup>28</sup> Recent cases have shown uncertainty of some national authorities on when and how to enforce the waste shipment rules in relation to suspected end-of-life ships.

## 3. COMPARISON BETWEEN SCOPE, OBJECTIVES AND APPLICABILITY OF THE THREE INSTRUMENTS

The EU Waste Shipment Regulation and the Basel convention are already in force at European level. The Basel Convention has currently 172 Parties which includes nearly all of the Member States, with the exception of the USA.

The willingness of both flag and Recycling States to ratify the Hong Kong Convention will be influenced by the political, legal and economic incentives for becoming a Party or staying outside the Convention. Flag States could find it attractive to become a Party to such a Convention with a clear and relatively simple system of rules which would satisfy the public demand for safe and environmentally sound ship recycling without creating unnecessary burdens for shipowners and administrations. Recycling States might be expected to support this Convention if it is apparent that the majority of shipowners will send their ships only to facilities which comply with the new rules, and if the costs of improving the recycling

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<sup>26</sup> Articles 2(8) and 49. .

<sup>27</sup> Article 50

<sup>28</sup> See Communication on an EU strategy for better ship dismantling COM(2008) 767 final .



industry are outweighed by the economic benefits. Ratification by both Flag and Recycling States will be needed in order for this Convention to enter into force.

The Hong Kong Convention covers the whole life cycle of a ship, of 500 GT and above with the normal exclusion of warships or government owned ships, from their construction phase to their environmentally sound recycling. The EU waste shipment regulation and the Basel Convention cover all type of ships when they are waste and subject to transboundary movement to environmentally sound managed facilities.

The Hong Kong Convention does not contain any geographical export limitation as long as the recycling facilities are authorized and located in a Party to the Hong Kong Convention. Its provisions are addressed to Flag States, where the ships concerned are registered, and to Recycling States.

The EU Waste Shipment Regulation set up some geographical limitations since exports to certain countries is prohibited. The Basel Convention and the EU Waste Shipment Regulation also require the recycling facilities to be authorized. Their provisions are addressed to Exporting States, Importing States and, if relevant, Transit States.

Dismantling in order to recover materials and components for reprocessing and re-use is covered by all three legal instruments. However, subsequent processing and downstream treatment of components and materials, such as further recovery- and recycling processes and disposal operations are only covered by the Basel Convention and the EU Waste Shipment Regulation. The latter achieves particularly extensive coverage by covering facilities carrying out interim operations and subsequent final recovery and disposal.

The systems of control under the PIC-procedures and export bans of the Basel Convention and the EU Waste Shipment Regulation aim to secure that end-of-life ships only go to environmentally sound management as defined by the existing guidelines under the Basel Convention. The EU Waste Shipment Regulation goes further by implementing the Basel ban and prohibiting all exports of hazardous waste to non-OECD countries. The Hong Kong Convention requests Parties to establish the necessary legislation, regulations, and standards to ensure that recycling facilities are designed, constructed, and operated in a safe and environmentally sound manner. Technical guidelines on safe and environmentally sound ship recycling are in an advanced stage of preparation. Their technical requirements will have to be taken into account by Parties in their implementation of the Hong Kong Convention. In addition, guidelines for the Authorization of ship recycling facilities will be developed.

Under the Hong Kong Convention, 'beaching' remains as an open issue until guidelines have been adopted by IMO. Under the Basel Convention's technical guidelines and the EU Waste Shipment Regulation 'beaching' is not accepted as a dismantling method and it is clearly stipulated that impermeable floors are prescribed for full ship containment at any stage of the dismantling process.

On enforcement, it may be said that the system of control and enforcement for transboundary movements of hazardous waste through the Basel Convention and the EU Waste Shipment Regulation is strict and functioning relatively well for most hazardous wastes, but is difficult to enforce in practice in relation to end-of-life ships.

The practical effectiveness of the mechanisms of the Hong Kong Convention will depend on a variety of factors, such as the authorization policy of the recycling state, the possible involvement of third parties in the monitoring and auditing of ship recycling facilities, the

practice of port State control, and the existence of strong incentives for compliance with the rules of this new Convention.

#### 4. NEXT STEPS

At international level, further procedural steps require<sup>29</sup> the carrying out of an assessment of whether the Hong Kong Convention establishes an equivalent level of control and enforcement as that established under the Basel Convention. The seventh Open-ended Working Group of Basel convention that will meet from 10 to 15 May 2010 has been requested to carry out a preliminary assessment on whether the Hong Kong convention, as adopted, establishes an equivalent level of control and enforcement as that established under the Basel Convention, in their entirety, after having developed the criteria necessary for such assessment. The results of the assessment will then be transmitted to the tenth Conference of the Parties of Basel Convention that will meet in October 2011 for consideration and action, as appropriate. Following this assessment it is expected that a decision will be made by the Parties to the Basel Convention on whether any amendments shall be introduced to this convention.

At EU level, the EU should contribute to this international debate on the equivalent level of control and take the necessary follow-up action as appropriate. Individual Member States are strongly encouraged to ratify the Hong Kong Convention as a matter of priority, so as to facilitate its entry into force as early as possible and to generate a real and effective change on the ground. In any case it has, however, to be noted that they remain bound also by the legal obligations of the Basel Convention and the EU Waste Shipment Regulation.

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<sup>29</sup> See decision IX/30 adopted in 2008.

	IMO Convention	Basel Convention	EU waste shipment regulation
<u>Scope:</u> ships	All end-of-life, privately owned ships apart from certain small ships (<500GT), no coverage of warships and other state-owned ships.	All end-of-life ships.	All end-of-life ships.
<u>Scope:</u> facilities	The first dismantling- and recycling site, but not any interim facilities or installations for subsequent processing and disposal of waste.	All waste management facilities, including collection, transport, interim- and final recovery and disposal.	All waste management facilities, including collection, transport, interim- and final recovery and disposal. Explicit coverage of interim operations.
Objectives and applicability	Control of ships from design, through construction, operation and at the recycling stage. However, specific requirements for authorisation and environmentally sound management of hazardous waste not clear until the IMO guidelines, that are currently being developed, are adopted. .	Prior informed consent procedure (PIC). The principle of environmentally sound management (ESM) of waste applies to all facilities that recover or dispose of waste and is defined by guidelines, also specifically covering ship dismantling. The Basel guideline on ESM for ship dismantling does not accept 'beaching' (impermeable floors are prescribed for full ship containment).	PIC procedure. "Basel ban" is implemented prohibiting exports of hazardous waste from OECD countries to all facilities in non-OECD countries. Exports of non-hazardous waste are not allowed to facilities which do not respect environmentally sound management. The EU regulation refers explicitly to the Basel Convention's technical guidelines on ESM