



Brussels,
ENV/GK

**MEETING OF THE EU WASTE SHIPMENT CORRESPONDENTS
REGULATION (EC) NO 1013/2006 ON SHIPMENTS OF WASTE
REPORT FROM MEETING HELD ON 12 SEPTEMBER 2016**

Correspondents represented:

Austria	Ministry of Environment
Belgium	Environmental Protection Agency
Bulgaria	Ministry of Environment
Croatia	Ministry of Environment
Cyprus	Department of Environment
Czech Republic	Ministry of Environment
Denmark	Environmental Protection Agency
Estonia	Ministry of Environment
Finland	Finnish Environment Institute
France	Ministry of Environment
Germany	Ministry of Environment and German Environment Agency
Greece	Ministry of Environment
Ireland	Department of the Environment
Italy	Ministry of Environment
Latvia	State Environmental Service
Lithuania	Environment Protection Agency
Luxembourg	Environment Agency
Malta	Environment Authority
Netherlands	Ministry of Environment
Poland	Inspectorate for Environmental Protection
Portugal	Portuguese Environment Agency
Slovakia	Ministry of Environment
Slovenia	Environmental Agency
Sweden	Environmental Protection Agency
United Kingdom	Environment Agency

Other participants:

One EEA country (Norway) and invited stakeholders (ACE, BIR, CEWEP, DIGITAL EUROPE, EERA, EEB, EUCOPRO, EUROMETAUX, EURIC, EURITS, FEAD, FERVER, HWE, MWE).

European Commission:

DG Environment: George Kiayias (chair), Peter Wessman (co-chair),
Artemis Hatzi-Hull (point 10(a))
DG SANTE: Matjaz Klemencic (point 3(b))
DGTrade: John Bazill (point 3(d))

1. ADOPTION POINTS

The agenda for the meeting was adopted without any changes.

2. ADMINISTRATIVE INFORMATION

The Commission made three brief announcements. First it informed about the new online system called AGM for the registrations of participants in future meetings. Invitations, meeting agenda and documents will be sent to participants via AGM. The use of the system requires ECAS login with a password. This new system will also be used for the reimbursement of applicable travel expenses.

The second announcement was on the plans for the preparation in 2017 of the Commission's tri-annual report on the implementation of the Waste Shipment Regulation (WSR) for the years 2013-2015 and the need for Member States to submit the reports pursuant to paragraphs 1 and 2 of Article 51 of the WSR no later than the deadline of 31 December 2016.

Finally, the Commission informed on the plans for the launch of a study to assist in the evaluation of the WSR. The findings of the study will serve as a preparatory step in view of the review of the WSR planned for the year 2020.

3. POINTS OF INFORMATION AND DISCUSSION

(a) UPDATE ON BASEL CONVENTION AND OECD

The Commission briefed on topics covered in the tenth meeting of the Open Ended Working Group of the Basel Convention in May/June 2016 and also alluded to the discussion of the Implementation and Compliance Committee (ICC) of the Basel Convention regarding the improvement of the implementation of Article 6 of the Convention, including two questionnaires that had been collected from Parties: one on issues regarding the term "transit" and another on the use of electronic data approaches for the notification and movement documents.

Regarding OECD, the Commission informed on the decision of the OECD to replace its existing database providing information on pre-consented facilities with a simple Excel file providing information that practically mimics that of Annex VI to the WSR. This file will be published on OECD's database and maintained annually. National competent authorities will be requested to send updated information to OECD annually. DG Environment will liaise for the transmission to OECD of any relevant information on pre-consented facilities in EU Member States which are not members of OECD.

(b) UPDATE ON INTERPRETATION PURSUANT TO ART. 1(3)(d) WSR ON ABPs

The Commission referred to its email of 1 August 2016 providing the opinion of its services on the meaning of "shipments which are subject to the approval requirements of Regulation (EC) No 1069/2009 on animal by-products" in Art. 1(3)(d) of the WSR. According to the opinion of the Commission, shipments of animal by-products (ABPs) that are carried out in accordance with the provisions of the respective ABP category should be understood as shipments that are solely subject to the "approval requirements"

of the Regulation (EC) No 1069/2009 on animal by-products. The term "approval requirements" is understood to refer to any legally dispatched shipments of ABPs between registered or approved operators. It was also noted that shipments of such ABPs, including those that may be (i) mixed or contaminated with non-hazardous waste or (ii) subject to provisions of the WFD, may well remain out of the scope of the WSR.

The Commission informed that a dedicated FAQ document being prepared by DG SANTE¹ will become publicly available as soon as it is finalised. The representative from DG SANTE in charge of the ABP Regulation answered questions (on the applicability of ABP Regulation), e.g. on reaching an endpoint for Category 3 ABPs. One Member State indicated that Art. 1(3)(d) should be reviewed in the context of the review of the WSR planned for the year 2020 because this provision is unclear and that more time is needed to assess the Commission's opinion.

(c) UPDATE ON STUDY ON THE EFFICIENT FUNCTIONING OF EU WASTE MARKETS

The Commission briefed on a recently published study on the efficient functioning of waste markets in the EU, carried out by ARCADIS in cooperation with Trinomics for the Commission². The study analyses possibilities for improvement of the internal market in the field of waste recycling and recovery. As part of its findings, the study makes recommendations based on a public on-line stakeholder consultation and two work-shops with stakeholders, public authorities, industry and NGOs. Several case studies are part of the study, e.g. concerning the procedure of prior written notification and consent and the waste subject to general information requirements (Art. 18) in the WSR.

One stakeholder signalled that the study's conclusions were important to note as regards the lack of application of the existing simplification possibilities that could be achieved by applying Article 14 of the WSR. This provision would not be well applied throughout the EU and therefore would not achieve its simplification goals, i.e. to facilitate a faster processing of the notification procedure in case of shipments of waste for recovery to pre-consented facilities.

One Member States indicated that as regards the most far-reaching recommendation in the study "developing a Schengen area for waste" it would be necessary to examine its legal and international implications, in particular the relationship with the Basel Convention.

The Commission invited participants to send comments on the study by 30 November 2016, including the study's recommendations to improve the functioning of the internal market in waste for recycling and recovery on (i) the short term, (ii) the intermediate term before any legislative changes can be made and (iii) the longer term, including legislative changes.

(d) UPDATE ON REGULATION (EC) NO 1418/2007

The Commission representative of DG Trade³ indicated that no final decision had been taken on whether or not Regulation (EC) No 1418/2007 would be updated in 2017 so as to take account of changes in the rules of certain non-OECD Decision countries

¹ Commission service responsible for Regulation (EC) No 1069/2009 on animal by-products (ABPR)

² See link <http://ec.europa.eu/environment/waste/studies/index.htm>

³ Commission service responsible for Regulation (EC) No 1418/2007

regarding the import of 'green'-listed wastes. While a link had been provided on the DG Trade website for countries to notify such changes, experience had shown that direct approaches to the relevant authorities in non-OECD Decision countries was a more comprehensive way to obtain the necessary information, however these are very resource-intensive exercises. One Member State suggested that in order to facilitate an update of Regulation (EC) No 1418/2007, DG Trade could invite Member States and stakeholders participating in WSR correspondent meetings to inform it about any known changes in the rules of non-OECD countries. In this way, DG Trade would not necessarily have to seek information on all such countries and could follow-up the information received bilaterally with these non-OECD countries. Member States reported that there had been recent changes of relevant legislation in Serbia and Former Yugoslav Republic of Macedonia.

4. ISSUES REGARDING THE ENFORCEMENT OF REGULATION (EU) No 660/2014 ON THE EXPORT OF RECOVERY OF 'GREEN'-LISTED WASTE

A presentation was held by the Bureau of International Recycling (BIR) signalling a number of issues of concern, such as: (i) cases of export to African countries and Ukraine of waste worn clothing declared as used clothing, (ii) the inability of competent authorities to take advantage of existing technological progress and process notifications much faster than the maximum 30-day period.

As regards experience on the enforcement of Regulation (EU) No 660/2014, BIR indicated that more information would be available once information and data from the industry can be properly analysed.

5. THRESHOLD VALUES FOR CONTAMINANTS IN "GREEN"-LISTED WASTES ESTABLISHED BY MEMBER STATES

The presentation held by the European Federation of Waste Management and Environmental Services (FEAD) shed light to the problem of disagreement on classification issues among the competent authorities concerned. One such issue concerns the classification of 'green'-listed waste contaminated with other wastes given that there are no commonly accepted threshold values for contaminants (e.g. glass or plastic mixed with some paper, or metal). The lack of a common approach in the classification of such wastes causes problems to operators in the country of dispatch and when their waste is refused in the country of transit or destination. An additional issue concerns the classification of a good as non-waste in the country of dispatch and as waste in the country of destination (e.g. recycled paper conforming to EN693). In such cases, problems arise when the destination facility is not permitted to operate as a waste treatment facility.

FEAD stressed the importance of communication also prior to the shipment on a voluntary basis with the competent authorities concerned as well as of communication between the relevant authorities within a country and between different countries in case of control.

In the absence of quantitative criteria at EU level, FEAD proposed to refer to the chapeau of Annex III to the WSR:

“Regardless of whether or not wastes are included on this list, they 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

...

(b) prevents the recovery of the wastes in an environmentally sound manner.”

FEAD expressed the view that, if the recovery of a waste is performed in an environmentally sound manner, even in the presence of an identified contamination by other materials, the shipment under the general information requirements laid down in Article 18 would be justified.

FEAD suggested that an expansion of the 'green'-list or the establishment of a 'Schengen area' for waste within the EU would alleviate problems raised due to differences in classification.

One Member State indicated that there is no easy solution to the problem of classification of contaminated 'green'-listed wastes and that a solution should be pursued on a case-by-case basis. It is important that a common ground should be sought by contacting competent authorities in advance. Two Member States noted that they already have published guidance on the classification of 'green'-listed waste.

One stakeholder pointed to the wording of waste code B3010 described as a waste stream 'prepared to a specification' and suggested that a solution could be if specifications became available. This was challenged by another stakeholder who noted that waste by default cannot be produced to a specification. One Member State said that each case should be treated on its own, as it depends on the capability of the receiving facilities to treat a specific waste, and that the relevant details, such as contaminant percentages, could be laid down in the contract. Another Member State held the view that the capabilities of the receiving facility are not indicative to the classification of the waste.

The Commission invited participants to send further comments and feedback by 30 October 2016.

6. ELECTRONIC DATA INTERCHANGE FOR WASTE SHIPMENTS

The Commission informed the participants that the on-going study to assist the Commission in the preparation of an implementing act *establishing the technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information* would be coming to an end soon and that it would be published on its website.

Further, the Commission stated that the contractor took into account the comments received from Member States and any other available information on existing electronic systems. The aim of the contractor is to propose a protocol of data exchange that can be used by all Member States and not to simply copy that of an existing electronic system. The proposed protocol is independent of the specific architecture that may be chosen for a future electronic system.

The Commission added that if the proposed protocol, which should be seen as a starting point that is subject to future evolution, becomes part of an implementing act, this would mean that Member States choosing to use their national systems would need to build

adapters in order to transform messages to the data format of the common protocol. Moreover, if the Commission is involved in a project to develop a software application, an implementing act without the full support of the Member States will be interpreted as a signal that such a project would not succeed. An IT project managed by the Commission can succeed if all Member States support the process. Without this full support, an implementing act that is adopted by a qualified majority (but not unanimously) would be useful in case of a decentralised architecture, whereby each Member State develops its own system and uses the common protocol in order to communicate with the system of another Member State.

In addition, the Commission stated the following:

- if the proposed protocol is not acceptable to Member States, then Member States may propose a different one (e.g. an existing one such as EUDIN) as a basis for an implementing act;
- while the proposed protocol may not be perfect as it stands, it can be seen as a first version (e.g. version 1) which will be subject to future evolution. If the Commission is involved in the management of an IT project to develop an electronic system, then the next step would be the 'analysis' step. In this step the protocol's model will be checked for completeness, feasibility, correctness and the rules will need to be defined prior to the completion of the work;
- in June 2016, the Implementation and Compliance Committee of the Basel Convention suggested to recommend to COP13 that activities be undertaken to consider the merits of an initiative to establish a Basel Convention electronic system. In light of this development, Member States may want to wait and see what developments may take place at the global level before considering the development of a system in the EU.

Some Member States indicated that they would first wait to see the results of the study before deciding the way forward. One Member State indicated that waiting for developments at Basel level may not be the right way forward because these are normally very slow. Another Member State expressed the need to move forward and that general optimism is crucial to achieve a working system. One Member State expressed the view that, subsequent to the adoption of an implementing act, the WSR should be amended to make an electronic data interchange mandatory within the EU.

Stakeholders supported the development of a common EU protocol and one suggested that the development of an electronic system to accommodate the Annex VII document would be desirable.

The Commission agreed to inform when the study is published and, following its publication, to provide a two month period for comments on the study and on a list of questions.

7. USE OF DIGITAL SIGNATURE IN PRACTICE

A presentation on the way documents submitted by e-mail with digital signature in Denmark was presented. As an example, the use of digital signature in the e-mail

application Outlook was shown⁴. In Denmark, printouts of documents sent by e-mail with digital signature are valid when stamped and signed by the Danish authorities.

While some competent authorities do not accept the above approach, others have expressed their agreement. The Danish competent authorities are committed to refrain from using this approach in cases of shipments involving competent authorities that do not accept it.

One Member State was concerned with the issue of security. Denmark responded that it considers digital signature to be superior to handwritten signature because digital signature is heavily encrypted. In Denmark, the same certificate used for digital signature is also used for tax returns and other cases requiring confidence in the signature.

Stakeholders emphasised the need to move forward and progress in the area of digital signature.

***** end of session including participation of stakeholders *****

8. REVIEW OF CORRESPONDENTS' GUIDELINES NO. 1 ON SHIPMENTS OF WEEE

Austria presented the work of the drafting group in reviewing the existing Correspondents' Guidelines No. 1 to bring them in line with the recast WEEE Directive and its Annex VI as well as the Basel technical guidelines on e-waste which were adopted in May 2015.

The draft text was tentatively agreed by all correspondents except from one Member State which was given the time until 30 September 2016 to provide any comments. The correspondents decided that once any such comments are sorted out via written procedure, the agreed version would then be sent to stakeholders for comments. Stakeholders would be given a period of two months to provide comments. It was also agreed that any changes to the guidelines as a result of comments received by stakeholders will be agreed among the correspondents via written procedure.

9. SHIPMENTS OF WASTE PURSUANT TO ART. 18

(a) DRAFT CORRESPONDENTS' GUIDELINES NO. 10 ON SHIPMENTS OF WASTE PURSUANT TO ART. 18

The Commission went through the draft text showing the latest changes in revision mode. Following some minor adaptations of the text, the draft was tentatively agreed by the correspondents. Like in the case of the Correspondents' Guidelines No. 1, the correspondents decided that the agreed text be sent to stakeholders for comments. Stakeholders would be given a period of two months to provide comments and any changes as a result of comments received by stakeholders would be agreed among the correspondents via written procedure.

⁴ The use of digital signature in other applications is also possible.

(b) IMPLEMENTATION OF ARTICLE 50(4c) 2ND PARAGRAPH

In its presentation, Denmark raised the question on whether the 'person who arranges a shipment' is obliged to demonstrate just like notifiers, that the recovery facility would be operated in accordance with human health and environmental protection standards that are broadly equivalent to standards established in the EU. The Commission invited the participants to send comments on the issues raised by Denmark by 31 October 2016.

(c) POSSIBLE ROLE OF DEALERS AND BROKERS AS CONSIGNEES, INCLUDING THE DEMAND FOR WRITTEN AUTHORIZATION

In its presentation, Denmark raised the issue of accepting brokers and dealers as consignees and invited the participants to share their knowledge and experience in writing. The Commission invited the participants to send comments on the issue raised by Denmark by 31 October 2016.

10. END-OF-LIFE VEHICLES

(a) UPDATE ON RELEVANT COMMISSION'S ACTIVITIES

The representative from DG Environment in charge of the ELV Directive informed that the on-going Commission study on ELVs of unknown whereabouts is expected to be finalised by August 2017. The correspondents were reminded that an on-going public consultation on ELV-related issues would run until the 21 September 2016 and were invited to provide input in time. On this matter, they were also invited to liaise with their colleagues responsible for the ELV Directive and the registration of vehicles. The representative also informed on the stakeholder and expert-group meetings on ELV planned to take place on 22 and 23 of November 2016, respectively.

One Member State informed that a similar study on the whereabouts of ELVs is being carried out in Germany and that this study would soon be finalised and published.

Information was also shared on a case of the Court of Justice of the European Union (C-471/15) on a request for a preliminary ruling on the VAT applicable to parts removed from ELVs with a view to resale as second-hand goods.

(b) DECISION OF AUSTRIAN ADMINISTRATIVE COURT AND DECREE OF AUSTRIAN MINISTRY OF ENVIRONMENT

Austria presented the outcome of an ELV-related ruling of the Austrian Administrative Court which takes account of the case of vehicles shipped for reuse. Basis for the classification as used vehicle is the relation of the present value of the vehicle in relation to the repair costs in Austria for rendering the vehicle roadworthy. The repair costs in Austria must not exceed significantly the present value of the vehicle for the classification as used vehicle. In the presentation the viewpoint was expressed that in the case of a vehicle shipped for repair, a potential conflict with Article 28 may occur if the repair costs of the country of destination are used to determine the waste status of the vehicle, as in most cases used vehicles are shipped to countries with lower repair costs and/or standards. Austria presented a set of issues linked to the different approaches in the way repair costs are considered to be 'reasonable' in the Member States and suggested proposals for action, including a revision of Correspondents' Guidelines No. 9 on the shipment of waste vehicles as well as the possible drafting of a new Correspondents' Guidelines on tyres.

As regards a proposal to amend the ELV Directive, the Commission indicated that although an amendment is not currently in the plans, this could potentially change in the course of the inter-institutional discussions regarding the Commission's Circular Economy Package and in particular its revised legislative proposals on waste.

(c) NEED FOR A REVIEW OF CORRESPONDENTS' GUIDELINES NO. 9 ON WASTE VEHICLES

The Commission reminded that according to paragraph 1 of Correspondents' Guidelines No. 9, these should be reviewed at the latest five years after the date of their application which goes back to September 2011. The correspondents agreed that the option for a review would make more sense, if this is considered after the on-going Commission study as well as the German study are both finalised.

The Commission expressed the need to identify the issues in the Guidelines that merit review and also the Member States volunteering to lead such review exercise.

The correspondents were invited to reflect on the need for a review of the Guidelines and send their comments by 30 November 2016.

11. GUIDANCE ON RISK ASSESSMENT FOR INSPECTION PLANS

The Commission informed that it is not planning to draft its own guidance on risk assessment but is instead supporting the on-going work of IMPEL to finalise guidance on inspection plans, including risk assessments. A German IMPEL expert leads in the drafting of the guidance. A discussion on the draft text took place in April 2016 at a meeting in Frankfurt with the participation of the Commission. It is expected that IMPEL adopt the guidance in autumn 2016 and that the adopted guidance be circulated to authorities in Member States responsible for inspection plans. The Commission will inquire if the draft IMPEL guidance can already be circulated to Waste Shipment Correspondents.

12. EXCHANGE OF INFORMATION AND EXPERIENCE PURSUANT TO ART. 50(5), INCLUDING THE ESTABLISHMENT OF INSPECTION PLANS

The Commission referred to the provision of Article 50(5) calling for Member States to exchange inter alia relevant information on shipments of waste and share experience and knowledge on enforcement measures, including on risk assessment within established structures, in particular, through the network of correspondents.

One Member State indicated that current work to establish inspection plans involves the work of responsible authorities in its regions and the cooperation of national inspection authorities such as road and customs authorities. As this is the first time that authorities draft inspection plans (due by 1 January 2017), it is expected that a learning curve be observed and that more knowledge be collected for sharing with the correspondents within a year's time. Other correspondents also agreed that it is currently rather early for sharing any experiences on inspection plans.

The Commission referred to IMPEL's Basecamp database and encouraged correspondents to consult and use it for the purpose of sharing knowledge and experience.

13. POSSIBLE NEW ENTRIES FOR ANNEX IIIA OR IIIB BASED ON PROPOSALS FROM AUSTRIA AND DENMARK

The Commission referred to the six proposals for new entries to Annex IIIA or IIIB; two submitted by Austria and four by Denmark, as follows:

Austrian proposals:

- 1: Multilayer pipes (for Annex IIIB)
- 2: Laminated aluminium foil (for Annex IIIB)

Danish proposals:

- 1: Non-ferrous metal shredder fraction with non-hazardous impurities
- 2: Construction waste aggregates
- 3: Synthetic turf pitches (for Annex IIIB)
- 4: Copper B1010 and lead B1020 granules (for Annex IIIA)

The four Danish proposals represented applications from the industry and were not meant to be seen as formal submissions from the Danish authorities. However, Denmark explicitly gave its support to the proposals of synthetic turf and copper/lead granules, along with supporting the Austrian proposals.

Comments on the six proposals were submitted by three Member States, all of which were in support of the Austrian proposals as well as the Danish proposal on copper and lead granules. One Member State could support the proposal on synthetic turf pitches if these are free from any hazardous substances.

The Commission reminded the correspondents that Regulation (EU) No 660/2014 had restricted the cases in which Annex IIIA or IIIB can be amended through a delegated act and that any amendment introducing new entries into these annexes can only be effected using an ordinary legislative procedure. Unless there is a strong support otherwise, the Commission suggested that an ordinary legislative procedure for the purpose of including a few new entries in these annexes may be a rather disproportionate exercise. The Commission may however consider the possibility to amend these annexes in the course of review of the WSR which is planned for the year 2020.

One Member State suggested that it may be more useful if new entries for Annex IIIA or IIIB are not restricted to specific streams but are instead more general. Another Member State agreed that a broader entry description could cover more unproblematic waste streams.

14. ISSUES REGARDING TACIT CONSENT

In its presentation, Denmark raised the issue of validity of tacit consent pursuant to paragraph 5 of Article 9, whereby, unlike the written consent of the country of transit, the tacit consent may expire prior to the date indicated in the notification document. Some Member States consider shipments through their territory taking place after expiration of the tacit consent but within the validity period of the notification to be illegal, while others consider them as legal within their territory.

One Member State suggested any legislation gap regarding paragraph 5 of Article 9 be examined in the course of the planned review of the WSR.

15. SHIPMENTS OF TEXTILE WASTE AND LEVEL-PLAYING FIELD

The Commission referred to its answer to Written Question E-003038-16 of the European Parliament indicating that “used textiles that are considered as waste can be classified under Basel entry B3030 if the textile materials are listed in one of the indents or sub-indents of this entry and the materials are not mixed with other wastes” and also that “use of entry B3030 is justified if textile waste is properly sorted so that all other non-textile items are removed prior to a shipment” and finally that “issues related to the proper implementation of the WSR as regards shipments of textile waste could be discussed at a meeting of the correspondents”.

The Commission confirmed that some Member States allow that minor quantities of items not listed under entry B3030 may be present in collections of textile waste. Some Member States and the Commission also admitted that by nature, waste, including 'green'-listed waste, cannot be 100% pure and point to the need of accommodating a practical approach in this matter. As regards textile waste, materials that are an integral part of this waste stream (e.g. buttons or zippers) should not be removed prior to the shipment because this would disrupt the preparation for reuse. Therefore, the Commission suggested the importance of keeping a practical approach on this matter which is not specific to textile wastes only.

One Member State pointed out that the answer of the Commission to Written Question E-003038-16 had been strictly interpreted as a prohibition to ship textile waste under B3030 if this is not properly sorted to remove any other non-textile waste prior to a shipment. The same Member State also pointed out that the ambiguity in the interpretation of the use of entry B3030 for shipments between Member States is an obstacle to the effective application of the WSR and to a fair competition between operators from different Member States.

The Commission alluded to the chapeau of Annex III of the WSR and the importance of keeping it in perspective when considering the classification of 'green'-listed wastes contaminated by other material.
