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ENV.C.2 - Waste Management

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MEETING OF THE EU WASTE SHIPMENT CORRESPONDENTS

REGULATION (EC) NO 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SHIPMENTS OF WASTE

REPORT FROM MEETING HELD ON 27 JUNE 2012

Correspondents present:

Austria (Ministry for the Environment)	Belgium (Environmental Protection Agency)	Bulgaria (Ministry for the Environment)
Czech Republic (Ministry for the Environment)	Denmark (Environmental Protection Agency)	Estonia (Ministry for the Environment)
Finland (Finnish Environment Institute)	Germany (Ministry for the Environment)	Greece (Ministry for the Environment)
Italy (Ministry for the Environment)	Lithuania (Environment Agency)	Luxembourg (Environment Agency)
Malta (Environment Authority)	The Netherlands (Ministry for the Environment)	Poland (Inspectorate for Environmental Protection)
Portugal (Environmental Protection Agency)	Romania (Ministry for the Environment)	Ireland (Department of the Environment)
Slovenia (Environmental Agency)	Spain (Ministry for the Environment)	Sweden (Environmental Protection Agency)
United Kingdom (Environment Agency)		

Other participants:

One EEA country (Norway) and invited stakeholders (CEWEP, EEB, EUCOPRO, EUROMETAUX, EFR, EURITS, EUROMETREC, FEAD, IMPEL, HWE) were present.

European Commission:

DG Environment : Julius Langendorff (chair), George Kiayias (co-chair), Peter Wessman
Eurostat: Karin Blumenthal

1. ADOPTION POINTS

The agenda for the meeting was adopted without any modifications.

2. POSSIBLE LEGISLATIVE PROPOSAL FOR WASTE SHIPMENT INSPECTIONS

The Commission presented the state of play as regards a possible legislative proposal for waste shipment inspections. Following the completion of a stakeholder consultation on-line, the next step has been the carrying out of a full assessment of the environmental, economic and social impacts of a possible legislative proposal. Such an impact assessment is made by the Commission before any legislative proposal can be submitted. Before the finalisation of this impact assessment, it is not possible to say whether a proposal will be submitted by the Commission or not. The Commission outlined the possible options that were being examined in terms of strengthening Article 50 of Regulation (EC) No 1013/2006 on shipments of waste (WSR). Four options were being considered: inspection planning, including risk assessments, the reversal of burden-of-proof from authorities to economic operators in cases of suspected illegal shipments, strengthened "up-stream" inspections and targeted, specific training for authorities. Also the possibilities for further guidance was being examined, e.g. for customs authorities. It is expected that the impact assessment report will be finalised during autumn 2012. The Commission will keep the waste shipment correspondents informed of any developments in this regard.

Prior to point 3 of the agenda, the Commission informed on the Commission's work to amend (1) Regulation (EC) No 1418/2007 (expected prior to 1/8/2012) and (2) Annexes IC, VII, VIII of the WSR (later in 2012).

3. BASEL CONVENTION REPORTS – SUBMISSIONS

Eurostat presented the state of reporting for the year 2010. In order to enable an improved management and assessment of the data reported by the Member States, Eurostat requested that Member States submit their reports via the eDamis system and in excel or word format as appropriate. In addition, Member States were encouraged to use the codes of the European List of Waste and also report shipments of non-hazardous waste that are subject to the notification procedure. Member States were also requested to respect the deadlines and follow the instructions provided by the dedicated guidance document on waste shipments under <http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/reporting2012>.

The Commission informed that the tri-annual Commission report on waste shipments pursuant to Art. 51(4) of the WSR is expected to be published by September 2012 at the latest.

4. IMPLEMENTATION OF AN ELECTRONIC DATA INTERCHANGE SYSTEM FOR WASTE SHIPMENTS

The Commission made reference to a two-page discussion paper that had been distributed to the participants, whereby it was indicated that a study was planned to be launched in order to assess the feasibility of establishing an e-system for the data interchange in the area of waste shipments. Reference was made to the current work underway in some Member States and the need to engage in a coordinated approach in order to achieve an

EU-wide solution. The planned study would aim inter alia to assist the Commission in taking a decision as to whether the adoption of measures with regard to technical and organisational requirements pursuant to Art. 59(1)(d) of the WSR would be the right way forward. In such a case, the Commission would take the steps in the direction towards adoption of such measures. The Commission indicated that it would offer to invite the Correspondents and dedicated stakeholders to contribute to the Terms of Reference (TORs) of the study foreseen and encouraged the participants to name potential experts in the field that could serve as potential contractors. A prerequisite for such experts to be considered as potential contractors would be for them to apply timely for registration in the so called AMILIST of DG Environment.

A number of comments made by Member States on this issue included the following:

- As several Member States have already defined national e-gov systems for wastes transported solely within the respective Member States, it would be important that the work of the Commission focus only on the structure of the transboundary exchange of data without affecting the national systems
- An electronic data interchange should be web-based due to the advantage of not having to be restricted to particular servers
- The Commission's study should set priorities and the task should be limited in defining the format of the data interchange and the data interface but not the software. The latter should be left to the Member States. In addition, one Member State emphasised the importance of checking the option of a mandatory use of an electronic data interchange in the study
- The study should cover data security as an EU e-system should be dedicated in the protection of commercially sensitive data

Some stakeholders commented that for reasons of confidentiality, they would support the consideration of Annex VII in the TORs of the study. In addition it was recommended that issues of End-of-waste criteria and waste hierarchy should also be taken on board in the study. The Commission indicated that due to the limited budget of the study, it may not be possible to cover issues of secondary priority.

The second part of this agenda item was dedicated to a presentation of the Nordic-TFS system by a Member State representative. This system was developed for use among the Scandinavian countries however its development could be expanded to include other Member States as well. The Nordic-TFS system transmits data of Annex IA/IB regarding the notification procedure and includes the possibility to include in the data transmission relevant attachments as well. One Member State stressed that in order to ensure interoperability with other systems, an appropriate data structure is needed and transmission can be made in a form such 'XML'.

5. END-OF-WASTE (EoW) CRITERIA

The subject of EoW criteria as these are established in Council Regulation (EU) No 333/2011 for certain types of metal scrap has raised a number of issues particularly important for national authorities responsible for the enforcement of the WSR. A guidance regarding shipments of scrap metal that may fall under the aforementioned Regulation and

which was prepared by the German authorities to become part of a national enforcement guidance document, was presented to the participants. Relevant comments brought up with regard to this subject included:

- Article 5 of Regulation (EU) No 333/2011 requires only the producer or importer of EoW to hand a Statement of Conformity only to the first holder. This means that subsequent transfers may take place without this document. The German guidance however indicates that authorities should require this document in case where there may be doubts that the shipped material could in fact be waste. While this is not a legally binding requirement, the guidance aims to avoid false claims of a material to have reached EoW status.
- A Member State indicated that while only a small number of companies applied for accreditation, the quality of the applications was low due to a misunderstanding of what is meant by 'Quality Management Systems' as this is mentioned in Article 6 of the Regulation. Systems such as EMAS or ISO 14001 do not address 'quality' and therefore any reference to these systems in the Regulation seems to be erroneous. In addition it was indicated that 'accreditation' cannot be confirmed by the authorities of the countries of transit.
- Problems of repatriation of EoW material that may be characterised as 'waste' in the country of destination exist. While in such cases the provisions of Article 28 of the WSR would apply, it remains unclear as to who should pay for the repatriation of the material in the country of dispatch where the material is considered a product. In fact this is an issue today for materials that may have reached a national EoW status in a Member State. One Correspondent suggested that a legislative act that would clearly indicate which third countries regard EoW material as 'waste' would be useful to have (similar to Regulation (EC) No 1418/2007).
- One Member State asked the question of whether controls of the statement of conformity is only required at the stage of imports into the EU. Recently introduced customs classification codes seem to support this (TARIC codes only for import and not for export).

The Commission advised the Correspondents to liaise with the national representatives who participate in the TAC on Waste so that the issues of shipments of waste are known within the Committee that agrees on legislation regarding EoW criteria.

6. PROCEDURE FOR THE IMPORT OF 'GREEN'-LISTED WASTE FOR RECOVERY FROM NON-OECD DECISION COUNTRIES (INCL. TRANSIT THROUGH THE EU)

With regard to the answers in questions 4.11, 4.13 and 4.16 of the FAQ document on waste shipments (see <http://ec.europa.eu/environment/waste/shipments/pdf/faq.pdf>) DG Environment had in the past provided a cautious interpretation as regard the reference to Article 42 (applicable for imports for disposal operations) on the procedure to be used for the import into and transit through the EU of 'green'-listed wastes destined for recovery and originating from a non-OECD Decision country.

The Commission services have, following written comments from Germany, reconsidered the initial understanding and concluded that the initial interpretation is no longer to be maintained. In Article 42 [...] *the provisions of Title II shall apply mutatis mutandis*. This

means that the application of Title II (intra-community shipments) to imports from non-OECD countries for recovery (and not for disposal) makes the application of Article 18 possible. Therefore no notification should be required for imports from non-OECD countries (or transit) for recovery of wastes listed in Annex III or IIIB. In this regard the respective answers in the FAQ document will be revised accordingly.

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

7. WASTE SHIPMENT CORRESPONDENTS' GUIDELINES

7.1. Proposed Draft Guidelines on Financial Guarantees

The Commission made reference to the draft text circulated to the Correspondents on 20/1/2012 and 2/4/2012 for their review as well as to the new version that was circulated on 15/6/2012 taking into account the comments from two Member States.

A number of Member States followed the viewpoint that guidelines on financial guarantees would be a useful tool to have; other Member States were of the opinion that such guidelines would not be necessary. Many Member States agreed that the calculation method already established nationally should be preserved. In addition a number of Member States indicated that the existing draft needs adaptation as there are elements that need to be deleted (such as Section 2.4 on 'global guarantees' which is not provided for by the WSR), or changed (e.g. the title of the guidelines).

The Commission invited Member States to contribute to the text and expand the options of possible methods of calculation in order to include their own national approaches if so desired. The Correspondents were invited to send to the Commission their proposed contributions on the draft text in tracked changes by the end of September 2012.

7.2. Proposed Draft Guidelines on Annex VII (Article 18)

The Commission made reference to the draft text circulated to the Correspondents on 20/1/2012 and 2/4/2012 for their review as well as to the new version that was circulated on 18/6/2012 taking into account the comments from a few Member States.

Several Member States agreed on not including any elements of Articles 49 and 50 in the proposed text but keep the guidelines limited to issues of Annex VII and Article 18 of the WSR. In fact matters on Article 50 should be kept aside until the impact assessment report with regard to a possible proposal on waste shipment inspections has been published. However matters on Article 49 may be put for consideration in the 2013 Work programme of the Correspondents.

Some Member States argued on whether to keep, remove or adjust certain paragraphs of the draft text such as paragraphs 11, 12 and 16, whether to expand the guidelines to include additional guidance e.g. on the shipment of laboratory waste, etc.

The Commission supported the viewpoint that paragraphs serving a useful and clarifying purpose should be kept in the text. It was agreed that the guidelines should only cover

issues which are in need of further clarification. Repetition or restatement of what the regulation already provides should be excluded from the text.

The Commission invited Member States to contribute to the text and send their comments to the Commission (in tracked changes to the latest version) by the end of July 2012.

7.3. Revision on Correspondents' Guidelines No. 3 (Denmark)

This item had originally been suggested by Denmark, however the intent was not a revision of Guidelines No. 3 but instead an invitation to exchange experiences on two issues, namely (1) the indication of subsequent non-interim recovery in shipment documents and (2) the scope of recovery operation R12 vs. R4.

The Commission will distribute the Danish presentation to all Correspondents for comments until the end of July 2012. Denmark intends to distribute some additional information on this subject.

7.4. Classification of GC010 and GC020 (Denmark)

The Danish Ministry of the Environment has developed a guidance document on the classification of 'green'-listed waste which has also become an IMPEL document (see http://impel.eu/wp-content/uploads/2012/03/Vejledning-oversat-til-engelsk_120316.pdf). Denmark held a presentation on the classification of the 'green'-listed WEEE codes GC010 and GC020. This has been a good opportunity for reflection on the way towards the drafting of possible Correspondents' Guidelines on the issue.

The Commission will distribute the Danish presentation to all Correspondents for comments until the end of July 2012.

8. CONTAMINATION THRESHOLD FOR PAPER, METAL AND PLASTIC WASTE

The Dutch authorities have taken the initiative to establish threshold values for contamination of three main 'green'-listed waste streams, namely *paper*, *plastic* and *metal scrap* that would determine whether or not the waste concerns a mixture of wastes.

Member States largely agreed that the Dutch idea is in fact good, however it is not clear how contaminant thresholds (in percentages) can be verified. The problem of contamination is an old issue, yet several Correspondents felt that no effective solution has been found.

The Netherlands indicated that the threshold values are applicable at a national level. If, in case of transit of waste through the Netherlands, the authorities detect 'green' waste contaminated with other waste at a level exceeding the Dutch threshold values, they will inform the authorities of the country of dispatch which will take a decision as to whether or not the shipment can continue as that of a 'green'-listed waste.

The Commission will distribute the presentation held by the Netherlands to all Correspondents for their reflection.

9. RELATION BETWEEN THE WASTE SHIPMENTS REGULATION (1013/2006) AND REACH REGULATION (1907/2006)

Poland presented a case of an import from another Member State of a material considered as a 'product' in that Member State due to its registration under REACH but as 'waste' in Poland. In such a case the provisions of Article 28(1) apply, however Poland has faced some difficulties in enforcing this provision.

The Commission will distribute the presentation held by Poland to all Correspondents.

10. RESPONSIBILITY OF REPATRIATION OF AN ILLEGAL SHIPMENT INITIATED BY A PERSON NOT UNDER THE JURISDICTION OF ANY EU MEMBER STATE

Poland presented a case of a transit through Poland of an illegal shipment allegedly originating from another Member State and destined to a third country. The illegal shipment could not be sent back to the alleged country of dispatch, as this country denies any responsibility that the waste originated from its territory. In the lack of concrete evidence on the origin of waste, the Polish authorities in this example feel particularly challenged because the 'notifier' is not under the jurisdiction of Poland (but of another EU Member State) and the address in Poland shown in the relevant transfer documents was proven to be false. An additional example of an illegal shipment of waste was presented whereby the 'notifier' was not under the jurisdiction of any EU Member State. The question raised in this example was who should assume the treatment costs for an illegal waste that has been detained e.g. in ports.

The Commission will distribute the presentation held by Poland to all Correspondents.
