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

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REPORT ON IDENTIFIED PROBLEMS AND SOLUTIONS FOR IMPLEMENTATION & ENFORCEMENT OF ANNEX VII AND ARTICLES 18, 49 AND 50, INCLUDING AN IMPACT ANALYSIS

(D 2.1.2)

Task and Report elaborated by BiPRO

16 November 2011

Involved organisations:

BiPRO
Beratungsgesellschaft für integrierte Problemlösungen
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<td>CA</td>
<td>Competent Authority</td>
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<tr>
<td>DE-BE</td>
<td>Berlin (Berlin)</td>
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<td>DE-HB</td>
<td>Bremen (Bremen)</td>
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<td>DE-HH</td>
<td>Hamburg (Hamburg)</td>
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<td>DE-MV</td>
<td>Mecklenburg-Vorpommern (Mecklenburg-West Pommorian Region)</td>
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<td>DE-NI</td>
<td>Niedersachsen (Lower Saxony)</td>
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<td>DE-NW</td>
<td>Nordrhein-Westfalen (North Rhine-Westphalia)</td>
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<td>DE-SL</td>
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<td>DE-SN</td>
<td>Sachsen (Saxony)</td>
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<td>DE-ST</td>
<td>Sachsen-Anhalt (Saxony-Anhalt)</td>
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<td>Andalucía</td>
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<td>ES-AR</td>
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<td>ES-AS</td>
<td>Asturias</td>
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<td>ES-B</td>
<td>Basque Country</td>
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<td>Catalunya</td>
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<td>ESM</td>
<td>Environmentally sound management</td>
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<td>IT-V</td>
<td>Verbania</td>
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<td>LAGA</td>
<td>Länder Arbeitsgemeinschaft Abfall (Federal Government/Federal States Working Group on Waste)</td>
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<td>MS</td>
<td>Member State</td>
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<td>UBA</td>
<td>Umweltbundesamt (German Federal Environmental Agency)</td>
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<td>UK-SC</td>
<td>Scotland</td>
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<td>UK-NI</td>
<td>Northern Ireland</td>
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*European Commission*

*Final Report*

*Assessment and guidance for the implementation of EU waste legislation in Member States*
<table>
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<tr>
<th>Acronym</th>
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<tr>
<td>WSR</td>
<td>EU Waste Shipment regulation</td>
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<td>WFD</td>
<td>EU Waste Framework Directive</td>
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1 Background, objectives and methodology

1.1 Background

The amounts of green listed wastes (e.g. paper, plastics, metals) shipped to third countries namely in Asia has significantly increased over the last years resulting in part in recovery operations severely endangering environment and human health. Thus, the EU Shipment Regulation contains detailed requirements (Annex VII document) to ensure traceability also for these types of waste.

After almost two years of being in force of Regulation (EC) No 10013/2006 (hereinafter referred to as Waste Shipment regulation WSR), there are strong discussions about the practical application of the Article 18, Annex VII requirement. On the one hand, requests for a further strengthening and clarification of the practical implementation and on the other hand severe criticism against the detail of information required in Annex VII. These concerns in particular relate to issues such as confidentiality requirements for brokers and dealers and container shipments of waste.

In addition, there are repeated complaints about continuous illegal shipments, lack of level playing fields and major difficulties as regards practical enforcement of the requirements on waste shipment controls set out in Articles 50 and 49 of the WSR.

Therefore an analysis of the current state of implementation and enforcement of certain provisions of the WSR in EU Member States was performed (see report on “Analysis of the implementation & enforcement Annex VII and Articles 18, 49 and 50 of the Waste Shipment Regulation.

1.2 Objectives

Based on that background this report contains an identification of main problems with implementation and enforcement and proposals of solutions taking into account related impacts. Based on these, proposals for EU guidance on the application of Annex VII, Article 18 and Articles 49-50 are elaborated.

1.3 Methodology

The analysis of implementation and enforcement of the above mentioned provisions of the EU Waste Shipment regulation EC (No) 1013/2006 was based on answers from competent Member States authorities and industrial stakeholders to a questionnaire on implementation/enforcement of annex VII, article 18 and art. 49-50, on an evaluation of information reported by Member States to the European Commission pursuant to article 51 (Copy of Basel report and Annex IX) and on an evaluation of information where relevant (no more recent information available) compiled in the reports from awareness raising events performed during the past years.
The questionnaire was disseminated to the competent authorities in all 27 Member States. Apart from the national level, all competent regional authorities have been contacted directly in Spain, France, Germany and Italy with a questionnaire translated into the national language.

Furthermore, a wide range of industrial stakeholders has been contacted via European Associations, or via direct contact in particular cases (direct requests addressed to EC, participation in WSR events).

The feedback from Member States was very good and constructive. In total 21 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HU, IE, LU, NL, PL, PT, RO, SE, SI, SK) returned filled in questionnaires.

At regional level answers were provided from two regional authorities in the UK (Scotland and Northern Ireland), twelve German Länder (DE-HB, DE-BY, DE-HH, DE-HE, DE-SL, DE-MV, DE-NI, DE-NW, DE-SN, DE-TH) nine Spanish Regions (ES-AND, ES-CAT, ES-AS, ES-AR, ES-B, ES-G, ES-MAD, ES-NV, ES-V) and seven Italian provinces (IT-PDT, IT-AV, IT-AL, IT-G, IT-L, IT-P, IT-V). For France the feedback from the 26 competent authorities (regional level) was compiled into one summary answer for the country, so that details on differences in enforcement practice cannot be assessed.

No information was provided by LV, LT, MT, BG, DK, the national authority of IT, the majority of Italian Provinces (60) and several Spanish regions (8). In addition, the competent authority from the Walloon region in Belgium did not provide any information. Answers to the questionnaire are restricted to Flanders and the federal authority responsible for transit of waste.

Responses from industrial stakeholders were limited. In total industry responses were received from the European association of Chemical industry (CEFIC), National Members and or Member companies of European associations like FEAD (8), BIR (1 association), EUROMETAUX (2 associations), ECSA (European Community Ship owners’ Associations, one national Member association), and five individual companies active in either hazardous waste management or recycling of waste materials.
2 Difficulties and problems with implementation/enforcement of Annex VII and Article 18 in EU Member States

This chapter is based on mainly on information received from competent authorities and industrial parties in response to a questionnaire. In addition it comprises deficits and challenges identified by the project team in assessing the reported information, and evaluating information and experiences from the ongoing IMPEL TFS enforcement action project. Information received via the questionnaires is further complemented by information summarized from the WSR related events held through the past three years in the vast majority of Member States. This information is in particular important for Member States which did not provide more recent information, whereas it is only complementary, and might be partly out-dated in the case of others. In general deficits as reported via the questionnaires are confirmed. (A table compiling the information in provided in the Annex to this report.)

2.1 Overview of existing deficits and challenges in implementation and enforcement of Article 18 and Annex VII

Answers received from a vast majority of competent authorities in EU 27 show, that Article 18 is fully implemented and enforced, in the pure meaning of the wording used, and that deficits in enforcement in terms of a breech to the set provisions cannot be observed in general, except of details relating submission of the contract (see Art. 18(2)), where one authority reported a deficit in implementing national legislation, currently exclusively based on Article 18(1).

An important number of challenges for effective and harmonized enforcement throughout the European Union however, have been identified, which stem from the Article 18 itself. In addition problems and deficits have been observed by competent authorities as regards enforceability of legal provisions, classification, and compliance of economic parties with the Annex VII related obligations.

On the other hand problems with the obligations of Article 18 and the related enforcement for industrial operators have been observed.

The limitation of mandatory provisions and preciseness in the legal text and the facultative provisions for concerned authorities lead to considerable impacts and implications as well as to differences in enforcement and control.

This includes in particular lack of knowledge as regards waste quantities, destinations and treatment standards of recovery operations, and difficulties with the application and enforcement of the annex VII document.

The impossibility to trace reloading activities in transit countries is not regarded as a problem by the majority of competent authorities, but a limited group of 6 MS has experienced problems with enforcement and control in this context.

Problems and deficits identified can be roughly classified into the categories
• Lack of definition
• Lack of enforceability
• Lack of knowledge and lack of compliance of involved economic parties
• Difficulties for economic parties

2.1.1 Challenges and deficits due to lack of definition and requirements

The wording of the article in many aspects is very general.

The only mandatory provisions set for the involved economic parties are as follows:

1. For any waste listed in Annex III, IIIA (classified mixtures of Annex III wastes) or IIIB, if the amount of waste shipped exceeds 20 kg, the person who arranges the shipment has to assure that the waste is accompanied by an Annex VII document.

2. Annex VII has to be signed by the person who arranges the shipment before the shipment starts.

3. The Annex VII document shall be signed by the recovery facility (or the laboratory) and the consignee when the waste in question is received.

4. The contract (referred to in Annex VII) between the person who arranges the shipment and the consignee for recovery of the waste shall be effective when the shipment starts and shall include an obligation, on the person who arranges the shipment or on the consignee, to take the waste back or ensure its recovery in an alternative way; and to provide, if necessary, for its storage in the meantime.

5. Article 18(1)(a) implies that the person who arranges the shipment shall be under the jurisdiction of the country of dispatch, although daily practice seems to be different

6. Annex VII information shall be kept confidential if required by (Community or) national law

The involvement of authorities and their possibilities for action are restricted to the following facultative provisions:

7. Member States may in accordance with national legislation require Annex VII information for inspection, enforcement, planning and statistical purposes

8. The person who arranges the shipment or the consignee shall provide a copy of the contract to the authorities concerned upon request
Instructions related to Annex VII are limited to:

9. Declaration that information has been filled completely and corrected to best knowledge (in box 12)
10. Referral to Annex IC, which does not contain any description related to Annex VII
11. Article 2 (35g); illegal shipment in relation to waste as referred to in Article 3(2) and (4), occurs if: the waste is not listed in Annexes III, IIIA or IIIB, the waste is not sent to laboratory analysis (Article 3(4)), the shipment is effected in a way which is not specified materially in the document set out in Annex VII.

There is no clear specification on:

- Who can be the person that arranges the shipment
- Under which jurisdiction the person who arranges the shipment has to be
- What is the practical parameter assuring submission to the jurisdiction of a specific competent authority (company address)
- How the waste is accompanied by the Annex VII document (copies, original)
  - Whether copies or original have to be / can be used
  - What occurs if an original waste load is divided into several shipments
- How the Annex VII is to be filled in (which boxes filled, when boxes filled, etc.)
  - Whether the Annex VII document has to be filled completely (except)
  - When the individual boxes are to be filled (namely those for transporters)
- The details of the contract (limited to the existence of a written contractual obligations with the consignee; and these not required for waste explicitly destined for laboratory analysis)
- Legal enforceability of the contract
- How the obligation to use the Annex VII document can be enforced for imports from third countries into the European Union
- Offences to article 18
  - Partly filled document or only missing document

There is no indication in Article 18 that:

- The treatment facility shall inform anybody that the waste has arrived and was treated

The annex VII form does not foresee:

- To contain a serial number
- To contain information about a specific routing (except countries of transit)
- A differentiation between interim and final recovery
**The annex VII form does not entail:**

- Abbreviation lists or other types of information required to correctly fill in the codes

### 2.1.2 Lack of enforceability

The specific wording of the WSR and the fact that the regulation is applicable only in EU in the context of worldwide trade lead to a number of limitations in enforceability of the set provisions:

- Lack of enforceability in case the sender is outside the jurisdiction of the competent authority; *brokers and dealers are located in other countries* and no “person under the jurisdiction of the country of dispatch who arranges the shipment”.

- Major difficulties or impossibility to receive signed annex VII documents from treatment facilities in third countries for verification. Frequent lack of Annex VII documents (or use of similar documents) in case of *Waste imports from third countries*.

- Lack of legal background to prosecute incomplete or incorrectly completed documents § 18 (paragraph 1 No. 8 AbfVerbrG V. with § 1 paragraph 3 No. 9 AbfVerbrBußV)

- The verification of final treatment in case interim recovery codes/traders as consignees are used

### 2.1.3 Challenges and deficits due to lack of knowledge or lack of compliance of involved economic parties

The major problem identified in this context, from evaluation of the reported information is the lack of knowledge on green listed waste shipments subject to Article 18 requirements. In a vast majority of Member States/regions competent authorities are not involved in information transfer on these types of shipment and are not aware of related quantities and destinations. Only in few Member States competent authorities require to be informed prior to waste shipments. The fact that Member State authorities are generally not intended to be involved into the information transfer on “green listed” waste shipments as long as subject to Article 18 procedures, entails the problems that:

- Quantities, types and destinations of waste exports to a large extent are unknown to authorities in the majority of EU Member States.

- Competent authorities in countries of destination (EU or third countries) are not informed about imports of green listed waste in general

- The environmental standards of recovery operations in third countries are unknown to EU authorities

- In case of reloading (interim operations) in a transit country information on “the person who arranges the shipment” may be lost, Annex VII documents are duplicated or may be missing afterwards, and traceability or identification of liable persons might become impossible in case of offences.
The major problems experienced by CAs with respect to Article 18 and Annex VII in the context of inspection obligations according to Article 50, are incomplete or missing annex VII documents (both import and export), which obviously occur in particular if brokers are involved.

Further problems are the use of interim operations that dissimulate the final destination, the use of brokers and dealers instead of waste producers and treatment facilities, the impossibility to decide about the existence of the indicated recovery facility, divergence between papers and waste, or the fact that the “person who arranges the shipment” is not under the jurisdiction of the country of dispatch, but a broker or dealer located in other countries; it may even be the consignee of the waste.

An example for difficulties in enforcement due to limited cooperation of economic parties is the collection and export of WEEE as used EEE. Following the analysis of the treatment situation for waste electrical and electronic equipment and electronic scrap of [UBA 2010], for WEEE few large and numerous small exporters are active. Several hundreds to thousands of WEEE collection points exist. In addition so-called “waste tourism” can be observed – exporters who come to the country, buy material for one or more containers and export the equipment to the country of destination, mainly to a country in Africa. In general the equipment is already stored and transported in closed containers, but in some cases WEEE are exported in used cars/ELV, which are welded for transportation, thus making control even more difficult.

2.1.4 Differences in enforcement practice

Differences in enforcement practice namely relate to the information of competent authorities about green listed waste shipments including all potential consequences (e.g. inspection planning) and to the classification of Annex VII documents are missing or incomplete.

The differences related to Article 18 (3) are as follows:

- 7-8 Member States and several regional authorities in Germany, Spain, Italy and the UK established measures to be informed also in case of “green listed” waste shipments subject to “general information procedures”, whereas a majority of 11 MS and various regional authorities do not use this possibility.

- It is particularly interesting that the differences can be observed also within Member States, which means from regional authority to regional authority in Germany, Spain, and Italy. (No individual information is available for France, whereas a uniform policy seems to be applied in the UK).

Differentiation continues as regards the timing of information:

- Four MS, one German authority, three Spanish Regions, and one Italian Province require that the information (copy of Annex VII document and/or contract) is transmitted to the authority prior to the shipment.
• Three MS and one German authority require information after the shipment took place. Timing and scope ranges from import only, via annual reporting to detailed intervals after shipment took place
• Two regional authorities from Spain require information either prior to or after the shipment, depending on the direction of transport.

It is noteworthy, that information requirements are not necessarily met, due to lack of specific sanctions as indicated by the regional authority of one MS, and that one industrial stakeholder pleads for strict administration and reporting requirements as this would be the best way to guarantee that professional waste organizations are involved and the risk of free riders would be minimised.

Further differences can be observed as regards scope of information collected and use for statistical purpose:

In case of an existing information request for “green listed” waste authorities in general require a copy of Annex VII and the contract, in certain cases either of the two documents.

• According to information provided 10 MS (three more as above) indicated to use data on “green listed” waste transports for statistical purpose, whereas 8 MS, and many of the regional authorities do not use such data. Information sources are Annex VII documents or annual waste reports; data storage is performed in secured databases managed by the competent authorities in general. Information storage either comprises all Annex VII entries or basic data such as type of waste, codes, quantities and destination are compiled and stored.
• Apart from the basic approach (type of waste, codes, quantities and destination) collection practice can differ slightly between Member States with certain priorities on sender, recipient and route, or information related to waste shipment inspections (see BE, IE, UK).

Differentiation continues as regards use of collected information for inspection planning:

• According to information received, collected data are used for inspection planning and risk profiling in the majority of the 10 countries using such information, but the level of sophistication and intelligence used seems to differ.
• Only part of the Member State authorities (6) report to use information for transport control planning.
• Environmental authorities in other countries (7) apparently do restrict predominantly to company controls on suspicion.

Differences include information of other concerned authorities:

Whereas authorities in countries of destination are generally not informed in case of green list waste exports, due to lack of corresponding provisions in article 18 of the WSR except in case of verification requests, Ireland has adopted an information practice towards industry, which might be worthwhile to be further considered by other Member States as well.

• Irish CA advises all Green List Customers to consult with the Competent Authority of Destination regarding any further importation controls, & to check Regulation EC (No) 1418/2007 ( & amendments) prior to export.
Differences related to procedural requirements and classification of Annex VII as incomplete/missing:

Apart from discrepancy between the waste shipped and the information contained in Annex VII (false or erroneous declaration), the major discrepancies observed are the acceptance or non-acceptance of copies and the acceptance or non-acceptance of partly filled Annex VII forms. In more detail the major practices currently applied by Member State authorities are as follows:

- Acceptance of copies of the Annex VII document during transport or company controls (partly limited by readability, or is restricted to certain types of transport e.g. train and maritime traffic.
- Exclusive acceptance of the original of the Annex VII.
- Additional transfer of Annex VII to competent authorities (in these cases in general copies (fax or email) are accepted.
- Electronic signature accepted.
- Request to have contracts accessible during control
- “Person who arranges the shipment” mandatory under jurisdiction of the CA of dispatch
- Business address in the country of dispatch regarded as criterion for acceptance as under jurisdiction of CA of dispatch.
- National Annex VII form.
- Acceptance of two annex VII documents for the same shipment (split of data for confidentiality reasons)
- Exclusive acceptance of completely filled Annex VII document
- Complete signatures required as minimum criterion
- Additional request of contract and compliance of the contract with Art. 18 requirements
- Acceptance if part of required information is contained in an accompanying document (in particular waste identification)
- Acceptance of partially filled documents in case “essential” (variable from CA to CA) info is contained
- Acceptance that specific fields are filled with “confidential”, in case complete information is provided to CAs
- Acceptance exclusively depending on validity of contract (?)
- Documentary proof that recovery facility holds an appropriate environmental license (in case of notification to CA)
- If recovery facility has not duly returned the document after completion of reprocessing
It was highlighted by one competent authority, that the procedures foreseen in the WSR in case of missing annex VII - illegal shipment according to Art. 2(35g) - seems to be disproportionate in comparison to potential damages caused by green listed waste, and that therefore many competent authorities do not detain the transport but let it pursue its itinerary, with prosecution limited to an administrative fine.

2.1.5 Challenges and difficulties for involved economic parties

Problems for industry are in particular the confidentiality aspect, the difficulty to obtain required signatures and to provide required information details, reluctance of economic partners due to incertitude about legal obligations, and divergent enforcement/inspection practices of MS authorities.

- The major challenge for concerned industry is the traceability of the whole trading chain, due to the obligation to indicate all involved parties from producer to recovery facility.
- Another major difficulty is the divergent enforcement practice of competent authorities in Member States.
- A third problem from the point of view of industry is the, the inconsistency1 of the Annex VII with the UN Layout key for Trade documents and documents for customs declaration, which causes additional administrative efforts and hampers the traceability and identification of transports.

One stakeholder stated that the procedure foreseen in the WSR in case of missing annex VII (illegal shipment according to Art. 2(35g)) seems to be disproportionate in comparison to potential damages caused by green listed waste.

2.2 Details on existing deficits and challenges in implementation/enforcement of Article 18 and Annex VII

2.2.1 Major problems with Article 18 and Annex VII identified

*Member State responses*

The vast majority of answering authorities reported specific problems and deficits related to the enforcement of Article 18 and Annex VII.

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1 This inconsistency relates namely to missing blocks for reference number, shipping number, container number, blocks for delivery address and buyer, and an empty space for additional information in the Annex VII if compared to the International Trade document. The obligation to fill in also the corresponding customs code in block 10 would improve the consistency with customs declarations. As regards customs declaration documents the introduction of a box/code indicating the necessity to provide an accompanying Annex VII for the specific shipment would be helpful.
Only four Member States including the German and Spanish central authorities, 4 Länder, 3 Regions and three Italian Provinces, Estonia and Slovak Republic reported not to experience difficulties or problems regarding the provisions of Article 18 and with the document in Annex VII.

Problems identified either relate to confidentiality issues, or – in the majority of cases - to the traceability. The current lack of information to the authorities on the transport of green listed waste is seen as a problem in this context. Lack of definitions in the WSR itself is highlighted as a basic problem as well. The reported difficulties vary considerably but major challenges and deficits observed are as follows:

**Lack of definitions in WSR:**

- Lack of reporting requirements and information of authorities in Article 18 of WSR
- Lack of definition “of the person who initiated the shipment” from section 1 of Annex VII. specific difficulties with regard to the identification of the responsible person who has to sign the documents in case of shipment of green listed waste as a number of persons/companies (producer, owner, broker, transport companies etc.) would be involved
- Obligations (e.g. submission of a copy of Annex VII to the competent authority) according to Article 18 (1) of WSR arise only for the person who initiates the shipment – but not for the waste producer.
- The obligation that the person who organises the shipment is not necessarily under the jurisdiction of the expedition country; according to practical experience persons in the country of destination also arrange shipments. Sometimes the company which organises the transports is the same as the recovery company.
- Lack of definition of illegal shipments under Article 18 (e.g. when Annex VII is incomplete (not all codes indicated, no signature etc.). Article 2(35) mainly refers to amber list documentation.
- In order to be able to control the contract (see box 12 or Article 18(2)) and the fulfilment of the legal requirements, the submission of the contract is necessary which is not ensured with the current legal provisions in DE only based on Article 18(1).
- Not clear where the Annex VII documents shall be presented
- Annex VII does not contain a section for container number or seal number. According to practical experience a container number would be often the easiest way to track waste.
- No obligation to send Annex VII signed in the field 13 and 14, to the person who arrange the shipment after recovery by the facilities

**Lack of knowledge:**

- Unknown quantities and to unknown (final) destinations

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2 As regards this observed deficit it should be noted that Article 50(1) refers to the penalties of infringements of the provisions of the WSR. Any violation of a provision of the regulation is a breach of law, even if it may not be assigned the term “illegal shipment”.

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**European Commission**

Final Report

Assessment and guidance for the implementation of EU waste legislation in Member States
o When Art. 18 applies the authorities do not deal with Annex VII document except for the random inspections and the customs proceedings in cases of export/import out of/into the Community

o The regulation does not foresee a verification of the treatment facility in the country of destination by competent authorities in case of green listed waste;

o Green listed waste are mass wastes in many cases, entailing huge administrative burden to involved industrial parties

o In the light of the huge number of concerned companies, inspections are only performed in case of suspicion.

o Except for (rare) verification cases, competent authorities (in a number of Member States) do not take any measures to get information about destinations and applied recovery standards in third countries. (Traders tend to refuse to reveal the data of the treatment facilities, due to lack of legal obligation)

- Lack of clarity about the identity of the competent authorities in non-OECD countries that responded to the Commission questionnaire on the green list waste.

- Lack of clarity what the controls are that third countries request for waste placed in column D of the Reg. (EC) No 1418/2007\(^{3}\)

- Lack of clarity whether a collector (box 6) can collect only from one company only or whether a collection of various companies is required

**Lack of enforceability:**

- "The person who arranges the waste shipment" is seen as a major problem in the context of enforceability.
  
  o No administrative power in case the sender is outside the jurisdiction of the competent authority; brokers and dealers are located in other countries and no “person under the jurisdiction of the country of dispatch who arranges the shipment”.

  o Validity of the documents is limited to the territory of the Community. In case of waste shipment exports from the EU, the document would not be valid when crossing the EU border. In this context, CAs and exporter experience difficulties with the issuing of a confirmation of receipt for recovery in non-OECD countries. Also after inquiry completed documents have not been received

  o The requirement for the receiving facility to sign for receipt of waste only works if the site is located in the EU.

  o Complete lack of enforcement possibilities in case of “green listed waste imports”. The person initiating the shipment from outside (imports from OECD countries, and Basel) has no knowledge of/ no interest in the requirements of Article 18 of the WSR

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\(^{3}\) Neither ban, nor notification, nor no control (Art.18)
- The requirements of the WSR and Regulation 1418/2007/EC are ignored or are not known by involved parties in third countries
- Non EU countries are not obliged to follow WSR and EU competent authorities are not required/not able to check this has been completed
- Non-EU brokers cannot be made liable. Therefore in case of an illegal shipment in practice the waste producer has to be made liable who might have initiated the export in good faith
- Sometimes it is not clear if the recovery facility really is the place where the waste is treated (e.g. Ltd-constructions in China, Hong Kong...). Difficult to know the recovery facilities when the person who arranges the shipment (box 1) or consignee (box 2) is a broker

- Lack of legal background in Germany to impose fines on incomplete or incorrectly completed documents (§ 18 (paragraph 1 No. 8 AbfVerbrG V. with § 1 paragraph 3 No. 9 AbfVerbrBußV)
- Annex VII requirements hardly applicable in practice in container shipment via harbours. In case of marine shipping traffic, containers are handed over from one transport company to another with high frequency in short times. Annex VII documents therefore often not accompany the shipment (trailer), but are forwarded via fax to the next transport company. Even if the document is accompanying the transport it is often exchanged during handover.
- The use of the R12 and R13 codes causes difficulties, because the final destination cannot be readily identified, where there are a number of brokers/traders involved who are not necessarily within national jurisdiction.
- There is no legal background to get information about applied recovery standards in third countries. (Traders tend to refuse to reveal the data of the treatment facilities, due to lack of legal obligation)
- To whom should competent authorities address a requirement “to provide Annex VII information for inspection, enforcement, planning and statistical purposes, when participants in the shipment process are only partially known, and would be the benefit of such a request?
- Article 18 does not require minimum knowledge of legal requirements from the involved economic parties. At court consequently only knowledge on business as required by commercial law can be expected.
- The current wording of article 18 does not empower concerned authorities to oblige economic actors to perform a take-back procedure.
- A systematic control of green listed waste shipments is impossible in the light of human resources available
- A major problem is the lack of administrative power to stop and open transport without support of police and/or customs
- Verification of destination/treatment standard for green listed waste can only be performed in case of illegalities
It has to be highlighted that authorities in favour of lower regulation, consider the lack of legal definition and enforceability as well as the lack of knowledge as intended and implicit consequence of Article 18, which according to their opinion is consistent with and necessary to comply with relevant legislation on free trade.

Filling and acceptance of Annex VII documents:

- Incomplete Annex VII documents (boxes 1, 2, 4, 6, 7, 10 and 12). Dispatchers do not complete Annex VII documents to protect business secrets.
- Annex VII document is not carried with the waste
- Instead of treatment facilities often brokers are indicated in the document.
- Often copies and not original documents accompany the waste shipment
- Different Annex VII documents are carried to accompany a single waste shipment
- Details on filling of Annex VII documents
- Waste imports from third countries are often not accompanied by the WSR required documents, but only by national similar waste shipment documents.
- Indicated destination is only a mailbox address
- Importer in most of the cases is a trader and not the treatment facility

Waste not corresponding to documents/classification:

- Particular difficulties with green listed waste which contains hazardous substances and is mixed with other green listed waste
- waste not corresponding to the declaration
- Original signature in the accompanying document would be impracticable.
- Differentiation between product and waste
- Correct classification (Basel code, EWC code)
- In some Member States certain types of waste are considered as products disregarding Art. 28(1) of the WSR.
- The main problem is to examine the correct classification of the waste.
- Often, waste is declared as non-waste, for example WEEE, scrap, and plastic waste.
- How to precede in case the documents are not signed or of it has been signed by the waste generator

Practical problems

- Confidentiality aspects (problem that the producer gets to know the (final) destination)
• Difficulties to fill in the weight of waste prior to shipment. This would be a major problem as the weight is not known in advance

Industry responses

Roughly one third of the industrial parties (including FEAD) reported to not facing any specific difficulties with the provisions. Others reported problems with the Annex VII form, namely as regards confidentiality and divergent enforcement practice as regards classification as illegal. The following major problems and deficits:

• Annex VII document is not aligned (as by contrast EU customs documents) to the UN Layout Key for Trade Documents.

• Exporters would deal with brokers and traders who would not reveal the end processor. However, the regulations would prohibit this trade unless the processor could be identified and certified to be in possession of an appropriate license.

• If transport data are provided to competent authorities, the possibility that authorities could provide the confidential data to the third parties would exist. It is uncertain, that exporters could claim damages of authorities in case of possible information leakage.

• Confidentiality about transporters

• According to information received several EU plants (e.g. steel mills in Italy) still do not accept waste from other EU or non-EU countries and refuse to fill in the Annex VII document and the contract mentioned in Article 18.

• Need for clarification regarding validity and the role of the Annex VII on the route and on the national territory.

• Sometimes confusion between the broker/importer and the recovery plant.

• Huge interest of waste producer to get knowledge about recovery facility to shorten trade chain

• Involvement of numerous authorities with different levels of awareness and perceptions leads to particular and contradictory decisions

• Lack of knowledge on reporting obligations entails incertitude and reluctance on the side of the recovery installations

• Lack of knowledge of certain customs services that specific material mixtures can be shipped under Article 18 procedures.

• Heavy administrative burden, given the quantity of shipments which are realized daily.

• Customs require to receive originally signed documents (from third parties)

• Not clear who has to fill in Annex VII documents (original company/broker)

• Difficult to receive the signatures from the consignee, recovery facility and carriers

• Some authorities require the transport route definition in green waste transports as well.
• Filling of box 5 (first carrier) by exporter using rented vehicles is not accepted by one regional authority whereas another one accepts this since years. Police in another Land does not accept this practice.

• The existence of a set of controls on exports of waste (pursuant to Regulation 1013/2006) that operates separately from and in parallel with customs controls on the export of the goods is problematic - especially where different agencies are responsible for enforcing the two regimes.

• Divergent opinions between involved authorities are associated with considerable delays to the detriment of the exporter.

• Although familiar with difficulties in enforcement CAs tend to initiate administrative procedures in case of minor offenses instead of making use of the offer to provide support for clarification.

Example of difficulties in green listed waste shipment practice:

Company planning +/- 600 trucks a week from +/- 10 depots.

Receive signature from treatment facility:

Receive the right document from customers, to couple it with a planned lot, to send it out, to encourage the weighbridge employees to use the right form for the right lot, make them to send the undersigned annex VII back, and send a copy to the customer (only for export by maritime containers). Still almost impossible to receive signed documents from third parties. For European traffic, transporters take annex VII to the final customers. Box 7 on the recovery facility would not be completed by raw material importer/consignee due to the protection of business secrets.

Document carriers, receive carriers’ signature:

Container shipping companies decline to sign the document. Container shipping companies may change their feeders during the transportation, so the transshipment carrier is off-hands.

In small brake bulk transports, all transport carriers cannot be documented since the carriers, such as post offices, DHL, TNT and Schenker, can use many subcontractors in their carrier chain. According to law, all transport companies need to be registered as waste transport company.

Define transport route in advance:

Some authorities require the transport route definition in green waste transports as well. This has prevented some raw material business agreements, since the container carrier from the waste generator’s facility to the railway station could not be defined in advance.

On the other hand arguments in favour of a stricter control and observations as regards current practice have been brought forward.

• Scrap exporters do not comply with the requirements and Environmental Authorities have chosen not to prioritize enforcement of the provisions. Exporters often cannot identify the eventual recovery facility and cannot obtain evidence of their compliance.

• A hazardous waste management company without own experience mentioned the potential lack of supervision as the documents only have to be shown upon request.
The additional global pollution loading from the processing of aluminium scrap exported from one of the bigger MS alone in 2007 (assuming it is recovered in unregulated facilities) is estimated at being 600 tonnes of particulates Volatile Oxygenated Compounds 3,000 tonnes, Chlorides 3,600 tonnes, Fluorides 730 tonnes, Dioxins 800 gram, NOx 30,000 tonnes, SOx 38,000 tonnes.

Any additional provisions would be against current legislation. In addition this could be used as instrument from competitors towards competent authorities.

2.2.2 Problems and deficits with reloading

BE, FI, FR, RO, SI, and PL see certain problems with reloading activities, even if these might not always coincident completely with the original intention of the question. The majority of countries do not consider the lack of information on the route a problem, either because they are no transit countries or because, they see no legal basis for being informed and involved.

In most detail the problem is raised and addressed by Belgian authorities. The problem identified by Belgium is as follows:

Sometimes a large time difference exists between the date of entry in the territory and the date of exit. In this case it has to remain clear who the “person who arranges the shipment” is. If the shipment has been organised before departure from the country of dispatch (a) to the transit country (b) (e.g. a contract has been made with a recycler in country (c)), and there is only a quick reloading activity in the country of transit, than we don’t deem it necessary to mention the reloading activity on the Annex VII. In most cases however, we see that the company where the reloading takes place, is mentioned in box 7 (recovery facility). From there on, a new Annex VII is drafted for the transport from country (b) to country (c). In this way, an important part of the administrative trail for the shipment from (a) to (c) is whipped out. In case of offenses inspection services in country (c) will never be able to find out the true origin of the imported waste.

France reported that this would be a major difficulty both for Annex VII waste and for waste subject to the notification procedure (in particular in case of maritime transport routes which are constantly changing, or as regards getting permission from non-OECD transit countries which is far from clear). However, as there is no notification obligation for the Annex VII document, there would not be any measures that could be undertaken.

Asturias sees a problem in multiplication of Annex VII documents, which is described as follows:

In case of reloading activities in transit countries, we understand that it was necessary to fill in as many “Annex VII” documents as reloading have been made, because in each of them the quantity, the producer, etc. have to be indicated, which do not coincident with the original documents anymore. All of these Annex VII documents would need to accompany the transport.

Poland states, that competent and enforcement authorities allow only for transit which is carried out in accordance with accompanying annex VII. If the route is changed or shipment stops for reloading in companies not indicated on annex VII - such a situation may be classified as illegal shipment.
Romania responded to require additional information from the person organising the shipment, and Slovenia remarked that this was identified as a major problem, especially if the waste is not green listed or if waste from different sources (but one company initiating the shipment) is reloaded to be shipped to the same destination.

In this context is has to be taken into account that Poland, Romania and Slovenia have transition periods wherein all waste (including green listed) is to be notified.

Answers from industry are relatively scarce as regards this aspect. Only one company reported real difficulties with this provision as indicated in the example below:

*A lorry leaves from a Belgian recovery plant to a paper mill in France. Annexe VII has been provided for by the French paper mill, because they organize the transport. By arrival at the paper mill, the material is not accepted, not because of presence of waste or other out throws, just because the percentage of presence of mechanical pulp is higher than agreed. Material is not unloaded, will not be transported back to the Belgian plant, but to a German plant that is nearby. Material will go to this German plant to be loaded again with another destination. For transport from French paper mill to German recovery plant, there is no annexe VII, only transport document.*

Another answer relates reloading to the interest to reduce treatment costs asks for economic measures to regulate and considers transhipment as illegal. A third answer refers to up-coming plans to tackle this aspect in trade to Far-East, without however, having experienced problems so far.

2.2.3 Practical problems with application of Annex VII (and Article 18) in case of container shipping

This question in part is linked to the issue of reloading. Therefore cross check of answers provided might be helpful.

12 Member State authorities (AT, BE, CZ, FI, FR, GR, IE, NL, PL, PT, RO, SI), Scotland, Northern-Ireland, 6 German Länder, 2 Spanish regions and 3 Italian provinces reported to have experienced specific problems of applying Annex VII and Article 18 related to container shipping.

Major problems identified are as follows:

- Keeping the Annex VII to the container on board of the container (sea) vessel. A ship may carry thousands of containers and the containers are moved several times during shipment. It would be therefore practically difficult to attach the form outside each container; and due to the fact that the form has to accompany each shipment/container it would therefore need to be placed within the container; the carrier would in this case be required to sign the form before it receives the container since the container is at that moment sealed, preventing the carrier from confirming actual receipt of the container. A problem would also exist from a legal and economic point of view if seals are broken when a subsequent carrier receives the containers and has to sign the Annex VII document.
- A lot of information on the cargo nowadays only in electronic form (e.g. bill of loading)
• In many cases the Annex VII never reaches the destination.

• Signed "blank" Annex VII documents provided by traders (box 1) to reloading companies. The latter fills in the document from the moment that the container is loaded, based upon the orders of the trader. In other cases a filled in document is completed by the trader and sent by fax to the reloading company, to accompany the containers. This practice leads to abundant copies, faxes and pdf documents.

• In case of overseas waste shipments and subsequently, in the harbour, the waste has to be divided into several consignments, each container to be transported by single lorry.

• No section on Annex VII for container number, seal number and reference number.

• Keeping the Annex VII document in rail transport

• Difficult to control (lack of unloading space, staff, lift trucks and trackers)

• Opening of containers not possible during inland water shipment

• Bad allocation of accompanying documents to containers

• Opening of sealed containers

• Safety of the staff opening the shipment containers

• Visualisation of all shipped waste

• Cooperation with customs

• Ownership of container (neither transporter, nor company or dispatch/destination)

• Temporary storage during investigations

• Cases in which one Annex VII document is accompanying a load of several containers

Industry responses confirm the difficulty observed as regards placement of the document at/in the container and repeat the difficulty to receive signed copies of Annex VII from recovery plant.
3 Problems and deficits with implementation/enforcement of Articles 49 and 50

3.1 Overview of existing deficits and challenges in implementation and enforcement of Articles 49 and 50

Answers received from a fast majority of competent authorities in EU 27 show, that Articles 49 and 50 are implemented in general in the wording of the two articles.

Answers on legislation and enforcement measures have been received from the fast majority of Member States (except five countries) and a considerable number of competent regional authorities namely in Germany and Spain.

But it has to be also clearly stated that deficits and challenges in control of waste exports from the Community and in knowledge about treatment standards applied in third countries exist, in part due to lack of detail and precision in the articles themselves. In addition it becomes obvious that the type and extent of measures taken in Member States and the level and intensity of enforcement varies considerably throughout the European Union, as does the number of detected illegal shipments.

Standardisation seems to be urgently needed as regards calculation of illegal shipments, and inspection activities.

Furthermore intensive discussion and deliberations are needed, how to limit or even reduce the administrative burden for involved parties (industry and authorities) trying to behave in compliance with the legal requirements and to how to better focus on intentional offenders and on material offenses which entail risks to environment and human health.

Current practice of inspection and prosecution/fining tends to put too much focus on accurate filling of documents, and mere procedural aspects (e.g. notification requirement for green listed waste to new member States), whereas systematic hazard assessment, risk profiling and chain enforcement based on coordinated use of intelligence is not sufficiently developed.

Effective prevention of illegal exports of wastes and of low level recovery of “second hand” goods in third countries do not seem to be achieved with the current level of enforcement.

Apart of increased control (of actual loads), the information of involved economic actors needs to be significantly extended and improved in terms of easy to read and easy to understand guidance. Given the high complexity of potential procedures and alternative classification systems, orientation and compliance is difficult to achieve even if intended.

Furthermore practical aspects such as a feasible way to assure that documents accompany the transport need to be urgently solved. Compatibility of WSR requirements and documents with customs and international trade systems need to be improved, to enable systematic traceability and control.
Given the limited enforceability of EU requirements in worldwide trade, namely the awareness raising, cooperation and collaboration with competent authorities in third countries needs to be promoted and improved.

According to the responses to questionnaires major problems for competent authorities can be allocated to the categories:

- Legal restrictions and/or lack of preciseness
- Measures for enforcement and inspections
- Cooperation/collaboration
- Prosecution of persons suspected to commit violations
- Insurance of ESM

3.1.1 Challenges and deficits due to legal restrictions and lack of preciseness in legislative text

*Challenges related to Article 49*

The predominant problem identified is the enforcement of Art. 49.2. a) and b) (see box below).

This applies both for waste subject to notification and to Article 18 procedures, but is even more difficult if not regarded as impossible (not foreseen) for wastes subject to Article 18 procedures\(^\text{4}\), due to the restriction/exclusion of authorities from information transfer foreseen in Article 18.

2. [...] the competent authority of dispatch in the Community shall:

(a) require and endeavour to secure that any waste exported is managed in an environmentally sound manner throughout the period of shipment, including recovery [...] or disposal in the third country of destination;

(b) prohibit an export of waste to third countries if it has reason to believe that the waste will not be treated ESM.

Further difficulties mentioned in single cases are the impossibility to prevent green list waste shipments to third countries.

Another challenge due to the legislative wording of Article 49 (whether or not regarded as sufficient) is the fact that the information on what MS authorities can and shall do to verify ESM during waste recovery or disposal is restricted to:

* [...] may, inter alia, be assumed [...], if the notifier or the competent authority in the country of destination can demonstrate that the facility [...] will be operated with human health and environmental protection standards that are broadly equivalent to standards established in*

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\(^4\) Article 37; procedures for waste listed in Annex III or IIIIA; if a non-OECD country indicated in its reply (EC Reg 1418/2007) that waste is not subject to any control; Article 38; Exports to OECD countries, Annex II waste and Annex IIIA in case, no subsequent interim or non-interim treatment is performed in non-OECD countries
Community legislation. [...] For the purposes of seeking guidance on environmentally sound management, the guidelines listed in Annex VIII may be considered.

Challenges related to Article 50

As regards Article 50, the legislative text does not seem to cause problems or restrictions from the point of view of Member State authorities. The only aspects raised in single cases are:

- Lack of administrative power for environmental authorities as regards transport inspections; and/or mandatory involvement of competent authorities outside the scope of environmental hierarchy and legislation
- The problem (again related to Article 18) of brokers and traders in green list shipments
- The lack of sufficiently severed administrative penalties for illegal shipments

From a neutral point of view potential challenges can be observed in the fact that:

Article 50 does not specify:

- How to define penalties
- How to organise inspections
- How to organise cooperation
- How to take enforcement actions against suspected persons on request

Provisions are particularly vague and not mandatory as regards spot checks on shipments (where).

3. Checks on shipments may take place in particular:
   (a) at the point of origin, carried out with the producer, holder or notifier;
   (b) at the destination, carried out with the consignee or the facility;
   (c) at the frontiers of the Community; and/or
   (d) during the shipment within the Community.

Provisions are even less precise are regards the type of inspection, requiring a physical check of waste only “where appropriate”.

4. Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

Such limitations and restriction lead to considerable impacts on enforcement practice and differences in effectiveness of control throughout EU Member States.
General deficits of implementation

Difficulties with implementation of WSR in national law were mentioned by one regional authority in Italy.

Additional deficits that can be identified from an independent point of view on the basis of reported information are:

- The lack of information on established national/regional legislation (5 MS)
- The lack of information on rules on penalties (4 MS)
- The current lack of penalties (SE)
- Limitations in applicability of penalties (DE)
- Divergent penalties

3.1.2 Challenges and deficits as regards measures for enforcement and inspections

Based on the information provided by Member State authorities, compiled from awareness raising events, and derived from IMPEL TFS data, the following challenges and deficits with respect to enforcement including education and execution of inspections can be observed:

- Lack of inspection plans in a considerable number of MS (7) and/or regions (many)
- No intention to develop inspection plans in most of the countries/regions lacking plan
- Restriction of inspection planning to IMPEL TFS enforcement actions (max 9 days per year)
- Restriction to company controls as only activity
- Wide range of number and frequency of (physical) inspections performed
- Lack of calculation system for inspections and violations and wide range of applied practice
- No use of electronic data exchange tools in the vast majority of MS
- Competing incompatible systems in the few cases established
- Ongoing activities in a considerable number of MS (risk of incompatibility)
- Lack of action taken at EU scale
- Lack of measure to control/verify waste shipments subject to Art. 18 in the vast majority of MS

The basic problem raised in this context by competent authorities repeatedly, is the number of inspectors available for control of waste shipment in all involved authorities, in particular however, in competent environmental authorities. The lack of control/verification (see also lack of knowledge) in addition is due to missing legal obligations, and to the practical difficulty to collect corresponding information.
**Challenges and deficits due to practical obstacles and classification aspects**

- Equipment and appropriate locations for control and storage, the complexity of the topic, the difficulty to collect necessary information as required
- Accessibility of containers for physical inspection
- Proper classification as either amber or green or product or waste.

### 3.1.3 Challenges and deficits related to cooperation/collaboration

Apart of the deficits related to Article 49 and 18, cooperation is the category wherein the biggest number of competent authorities experienced difficulties. Reported problems relate to:

- Fragmentation of competences
- Lack of goodwill of competent authorities in country of dispatch
- Language problems
- Shortcomings in the cooperation between different authorities at regional/national level
- Low prioritisation of WSR aspects at customs and the police

In this context an authority statement is worthwhile to be highlighted here, because it is considered to reflect very well the situation in many Member States.

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Existing cooperation at present is based on the fact that a network of committed enthusiasts has been established. That is perhaps appropriate in the light of current circumstances, but such a basis for cooperation is vulnerable in the long run.
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### 3.1.4 Challenges and deficits as regards prosecution of persons suspected to have committed violation

According to Article 50(7) of Waste Shipment Regulation, at the request of another Member State, a Member State “may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State”. It is obvious that this provision’s wording is rather soft (particularly the word “may”) as regards the obligation of MS to comply with Community acquis according to Article 4(3) Treaty on European Union as amended by the Treaty of Lisbon (former Article 10 EC) to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. In substance, Article 50(7) obliges MS to not much more than to carefully consider enforcement actions.

It has been reported repeatedly during awareness raising and information exchange events related to the WSR that difficulties exist in terms of co-operation between authorities of different MS in the process of prosecuting legal or natural persons responsible for transfrontier shipments of waste and that the penalties that can be imposed in such cases vary considerably between Member States, as obviously do court rulings.
Czech republic representatives stated during the 2008 event in the framework of the EU project on “Awareness Raising Events concerning the application and enforcement of Community legislation on shipments of waste” that reaction by other MS as regards the prosecution of companies or individuals registered/living in that MS would often be not in time – or that it would even be not reacted at all.

A problem that arises in this context is that given criminal sanctions usually are imposed by other institutional bodies than those which are concerned with implementation and enforcement of waste shipment legislation. One consequence out of this is that well-established personal contacts between the officers (which was often described to be one important result of cooperation in the framework of IMPEL) are not in place with these authorities’ representatives.

Another consequence might be that these bodies sometimes might have a different perspective to the importance of environmental crimes and illegal waste shipments. For example, MS environmental authorities repeatedly have expressed their discontent about prosecutor’s or courts decisions which would weight too low environmental issues.

### 3.1.5 Challenges and deficits as regards insurance of ESM

Major problem identified by Member State authorities in this category is the lack of knowledge on ESM in third countries, in particular in case of waste exports subject to Article 18 (see above and Article 18).

Apart of this the following two deficits have been raised:

- Lack of technical guidelines on ESM, green list waste contamination, and enforcement actions on suspected persons
- Lack of clarity about the competent authorities in non-OECD countries that responded to the questionnaire from the commission on the green list waste, and about procedures to apply for waste placed in column D of the Reg. EC (No) 1418/2007.
- Lack of knowledge on collection/storage points/loading areas for certain waste streams

According to thematic reports and documentation from NGO there is evidence that treatment standards for recovery of Annex III wastes/B-list of Annex V in third countries in various cases are not equivalent to the situation in the EU and endangering the environment and human health. A similar conclusion is taken in the analysis of the treatment situation for waste electrical and electronic equipment and electronic scrap of [JBA 2010]. According to the report treatment facilities for WEEE in third countries are mostly not fulfilling the minimum level of protection for the environment and human health. Dismantling takes often place essentially through the informal sector with no control or monitoring in place.
3.2 Details on problems with Implementation/enforcement of Article 49 and 50

With respect to major problems identified a differentiation has to be made between information compiled during the information exchange events held in the majority of Member States during the past years and most recent information directly provided via the questionnaires.

13 Member States (AT, BE, CY, CZ, ES, FI, IE, NL, PL, PT, RO, SE, SI), 11 German Länder, Scotland, Northern-Ireland, and 4 Spanish Regions and Italian Provinces each, sent answers to this aspect. No direct information on this issue was provided by the remaining 14 Member States and regional authorities; however, observed problems and deficits in part have been reported and can be compiled from other sections of the questionnaire. According to the responses to questionnaires major problems for competent authorities are as follows:

3.2.1 Legal restrictions and/or lack of preciseness

- Huge difficulty to verify/assure that a particular site is operating under broadly equivalent standards due to communication difficulties with authorities in countries of destination, or lack of involvement (Article 49)
- Art. 49.2.a) is a good "moral" support to enforcement authorities when they want to investigate thoroughly a specific shipment, and ask all the administrative and other details from the companies involved. It is too vague too enforce however.
- Art. 49.2.b) can only be applied in case the competent authority has identified and examined a specific waste stream, and has made its judgment (export prohibition) clearly known to the branch of companies that is involved in this export. This article cannot be applied on an ad hoc basis, for a specific shipment, by an environmental inspector - and therefore this article is not used for enforcement by the inspection authorities.
- For "green" listed waste the provisions of the art.49 are not secured, due to lack of prior access to the information of Annex VII.
- Impossibility to assure/determine anything, especially when the recipient of the waste resides in a non-EU countries and non-OECD (China, etc.).
- Difficulty to enforce Article 49, 2(a), "any waste exported is managed in an environmentally sound manner throughout the period of shipment, including recovery" as verification is needed from other CAs (in incomplete responses, time delays and no responses, especially in relation to Non OECD Countries).
- In case of exports to third countries, information on treatment methods is generally restricted to the translation of the permit. The main responsibility consequently is on the side of the notifying authorities in the importing country.
- Article 49 (2) WSR is to be seen in connection with the objection grounds under Article 11 and 12 WSR
- No information and no legal mandate on import/export of green listed waste.
• In the process subject to Article 18 it’s not possible to verify compliance with Article 49
• Article 49 (1) WSR does not concern authorities but market players.
• Impossibility to prevent green list waste shipments to third countries although the competent authorities would love to apply the principle of proximity and to keep them within the country
• Lack of administrative power (transport inspection) for Inspectorate for Environment. Police and customs are the primary control bodies for enforcement of article 50, but lack information, legal background and prioritisation
• The person who arranges the shipment (box 1) is often not identical to the waste producer (box 6). Control of registered brokers and dealers is complicated.
• Administrative penalties for illegal shipments are too low
• Lack of implementation of requirements in national legislation
• Italy has not yet determined the rules laid down in Article C.1. 50 of Regulation 1013/2006

Implementing national/regional legislation

Based on information provided, the legal framework to implement WSR requirements is established in all Member States, via national legislation, decrees, ordinances, statutory instructions or direct application of the WSR. The only Member States not providing information are BG, DK, LT, LV, and MT. It is to be noted that an analysis whether national law is compliant with WSR requirements could not be performed in the scope of this study.

As regards rules for penalties information is missing for four Member States. The Spanish central authority reported not to have established corresponding legislation whereas a regional Spanish authority refers to a national law. SE reported to be currently developing provisions laying down the rules on penalties. Whereas a differentiation in administrative fine and criminal penalty is established in the majority of countries, the details and the height of applicable fines and penalties varies considerably Member States. Furthermore there seem to be differences as regards the activities that are punishable.

(For more details see Report on Analysis of the implementation/enforcement of Article 18, Annex VII and Article 49/59.)

3.2.2 Measures for enforcement and inspections

Deficits identified during evaluation of information

Inspection plans

5 Member States (PL, SK, ES, GR, and LU) and various regional authorities (UK-NI, all Spanish Regions, most of the German Länder and all Italian Regions) did respond to not having plans in place. No information is available for the remaining 4 Member States (BG, LV, LT, MT, and DK). From these
authorities only three reported having envisaged developing such activities. Alternative opinions and solutions, such as flexible agreements or integration into overall waste management policy with respect to waste shipment inspections have been reported by one German and one Spanish regional authority. Another Spanish regional authority, deems a plan unnecessary, since the transport authorities are responsible and already involved in the control. The Slovak Republic reported on an annual plan without specifying any targets.

For almost half (6) of the 15 Member States reporting on inspection plans, inspection periods strongly relate to the joint IMPEL TFS enforcement actions. Additional national monitoring in these cases is not foreseen.

**Electronic data transfer**

The vast majority of the MS/regional authorities which responded to the questionnaire, does not yet apply electronic notification (Art 26(4), nor electronic information transfer in relation to movement documents or Annex VII documents (Art 26(3)).

**Measures to assure arrival in case of Article 18 waste**

The vast majority of competent authorities indicate not to undertake specific measures, nor to have any administrative possibility to control that waste shipments subject to Article 18 end up in the country or facility of destination. This is justified by the fact that Article 18 does not foresee involvement of authorities, and that responsibility to comply with the requirements is on the exporter and the authority of destination.

**Inspections**

The scope and frequency of inspections varies widely from one action days to almost 20 actions throughout the year. Expressed in terms of vehicles, transport inspections range from 10-20 to 5000 (in a MS with 16 million inhabitants); expressed in number of companies from 0 to 150 inspections a year. In part inspections seem to restrict to treatment facilities whereas waste producers/collectors and transport is not addressed. Other CAs focus on notified waste.

In Italy and in Spain transport controls seem to be in the almost exclusive responsibility of environmental police, which apart from other aspects is also dealing with illegal waste shipment and disposal (namely organised activities) based on intelligence.

GR, DE-SN, 3 Spanish regions (ES-AR, ES-G, and ES-V) and IT-G reported not to execute any company controls. 3 MS (IE, EE, SE), 4 Länder (DE-HB, DE-BY, DE-HE, DE-NW), ES-B and UK-SC explained not to have data available or did not specify the number of controls.

The numbers of inspections given by Member States in part relate to inspected vehicles and in part refer to inspection days. This shows the importance of a clear indication on the correct calculation method to be applied in this context by all competent authorities and Member States in their reporting towards the EC.
Considerable difference in numbers of illegal shipments detected can be observed. Low annual figures are reported by almost all Spanish and Italian regions and by the Spanish central authority. Relative low figures are also reported by Cyprus, several German Länder, Finland, Greece, Romania and Slovenia. High numbers on the other hand are reported by AT, BE, HU, LU, NL, PL, PT, Bremen, Hessen, Bavaria and Germany as a whole (BAG results).

There is not standard system for calculation of violations, except recommendations from IMPEL TFS, so that results are difficult to compare. Differences in national definition of an illegal shipment seem to occur.

A major deficit is the lack of clarity how to count illegality. It needs to be clarified whether MS authorities should apply the (suspcion about) illegality as observed by competent authorities or the number of cases where illegality is confirmed by court ruling (in general takes years to decide)?

Should MS not better differentiate between material offense (export of hazardous waste without notification) and a formal offense (e.g. missing annex VII), both included in the category illegal shipment

Also infrastructure on national level and behaviour of economic parties can cause difficulties for enforcement. An exemplary deficit is discussed in the analysis of the treatment situation for waste electrical and electronic equipment and electronic scrap of [UBA 2010]. For WEEE several hundreds to thousands of WEEE collection points exist which makes an inventory and control difficult. In addition so-called “waste tourism” can be observed – exporters who come to the country, buy material for one or more containers and export the equipment to the country of destination, mainly to a country in Africa.

Major deficits identified by competent authorities

Lack of human resources

- The key to effective operational supervision is for all the authorities involved: municipal authorities, regional competent authorities, the Environmental Protection Agency, customs and the police to be able to set aside resources in order to work on these matters
- Lack of sufficient number of inspectors due to budgetary limitations
- Lack of resource to carry out sufficient joint inspections on an international level and to attend the necessary meetings and initiatives organised by other Member States.
- A comprehensive control of transboundary waste shipments can only be performed at focal points and on demand or in case of suspicion. Sometimes priority has to be given to company control.
- Insufficient number of staff comparing to number of notifications (shipments)
Practical obstacles/classification

- It is difficult to enforce the art 49 (2) (a) and (b), namely to verify the compliance with the environmental standards by recovery companies in the country of destination
- It is difficult to enforce physical inspection of waste
- Lack of equipment and facilities
- Various obstacles, such as the complexity of the problem area, the difficulties involved in defining what waste is and the extensive, complex legislation.
- A lot of difficulties during transport controls are related to proper classification as either amber or green or product or waste.
- In some Member States certain types of waste are considered as products disregarding Art. 28(1) of the WSR.
- The difficulty to assure that the document accompanies the shipment until the final destination. In this context namely container shipments via train and sea transport seem to cause serious problems (e.g. placement of Annex VII inside the container).

Illegal shipments of (green listed) waste

The common position of a majority of competent authorities is that the provisions in the WSR are sufficient to cope with an illegal shipment of “green listed” waste, resp. a shipment in offense to the Regulation, as long as it is possible to identify the responsible company/person. It is a majority opinion that Article 24 and 25 would also apply.

The aspect that Article 18 shipments are not covered by a financial guarantee is not regarded as a problem; respectively is regarded as a legal fact, which has to be accepted.

The major problem that competent authorities, according to feedback to the questionnaire, experience from awareness raising events and from IMPEL TFS actions, experience in relation to illegal shipments is the fact, that the responsible person cannot be identified and/or not made liable. Authorities agree that major problems occur, for local authorities/the tax payer in case the company/notifier does not exist/cannot be identified or lives outside the jurisdiction of the authority that detected the load. This is particularly bad if the responsible person lives outside the EU but already cause significant challenges inside the Union.

This risk is higher in case of Article 18 shipments, compared to shipments with notification, but is particularly high in case no waste regime is used at all.

In practice the treatment of a detected illegal transport/administrative offense in a considerable number of cases is paid by the competent authorities of the region/state were the load was detected and detained. In this context it is noteworthy that some Member States obviously have more problems in getting holds of the responsible persons than others.
3.2.3 Cooperation/collaboration

*Guidance at national or regional level to standardize waste shipment controls and facilitate work for other involved authorities such as police, customs etc*

Ten of the reporting Member States (CZ, EE, GR, HU, LU, PL, SE, SK, SI, UK), 5 German Länder (HE, SR, NR, NRW, SN), 7 of the Spanish Regions and all Italian Provinces reported to not having established national respectively regional guidance so far. Justifications were direct cooperation during control, and other means of training and information transfer such as (databases or workshops).

*Cooperation between involved authorities at national and at international level*

Article 50 does not contain any specification and does not set any target for cooperation on national level. Consequently absolute deficits cannot be observed in general, except for Spain, and Italy, where no information was provided from competent national authorities. Major deficits in cooperation at national scale were also reported for Latvia from other information source. Luxembourg reported that cooperation is not necessary as there is only one competent authority in the country.

*Cooperation at European and international scale*

Article 50 does not specify any target for international cooperation. Consequently quantitative deficits cannot be expected and observed in general. Real lack of cooperation according to current knowledge only can be stated for Italy and Spain, at least as regards the involvement of environmental authorities in international or bilateral control activities. Environmental police seems to be involved in international cooperation and exchange although information is scarce due to confidentiality issues.

For the remaining Member States qualitative deficits can be observed in the light of effective control. Deficits relate to the level of involvement and the intensity of cooperation, joint controls and participation in knowledge exchange.

Cooperation with third countries (Asia, Africa) according to reporting, so far are only initiated by the Netherlands, Portugal and Ireland.

*Major problems identified by MS*

- The fragmentation of competences concerning waste controls and waste transport controls in complicates the enforcing. It asks a lot of negotiation, transfer of dossiers and exchange of information.
- The lack of specific criteria for some type of waste (plastics, metals) for distinguishing green from amber listed waste streams
- The lack of goodwill of competent authorities in the country of dispatch
• The lack of knowledge of English between correspondents of the competent authorities (necessary for reliable communication and correspondence in return dossiers)
• Lack of knowledge on collection/storage points/loading areas for certain waste streams
• Container shipments cannot always be controlled, in particular if export declaration is performed at custom offices, outside the scope of the competent authority.
• Shortcomings in the cooperation between different regional authorities
• With regard to the shipment of waste under Article 18 cooperation with other environmental authorities (e.g. departments responsible for inspection of waste producers and authorization and supervision of waste disposal facilities) needs to be further intensified and expanded
• Collaboration with customs and police is crucial but not necessarily effective
• WSR is currently considered as low priority at the other authorities (customs and the police) involved in joint control, which means that their access for joint inspections and controls of suspected illegal waste shipments is limited, although there are not any structural obstacles to developing effective cooperation.
• Existing cooperation at present is based on the fact that a network of committed enthusiasts has been established. That is perhaps appropriate in the light of current circumstances, but such a basis for cooperation is vulnerable in the long run.

3.2.4 Insurance of ESM

Major problems identified in the context of Art. 49(2) are the verification of ESM and of the equivalency of treatment standards.

• The lack of knowledge on the treatment of waste in facilities outside the EU. There is no competence outside the Member State to enforce the requirements of the WSR. The authority in the country of origin can only ask for information and has to judge on basis of the paperwork that is provided.

• Lack of technical guidelines on environmentally sound management.

• The Guidelines on environmentally sound management Annex VIII need to be adjusted, and amended to include a more detailed list of waste.

• Guidance is needed for Green list waste contamination for export to Non-OECD Countries.

• Guidelines are needed on how to carry out enforcement actions against persons in another Member State - suspected of being engaged in the illegal shipment of waste who are present in the Member State (Art. 50)

• The lack of specific criteria for some type of waste (plastics, metals) for distinguishing green from amber listed waste streams
There is lack of clarity about what are the relevant authorities relating to non-OECD countries that responded to the questionnaire from the commission on the green list waste. Such information should be put in EC Reg. 1418/2007 and the authority of reference should actively contact EU authorities us at the end of verifications under Article. 49.

- There is lack of clarity about what are the relevant authorities relating to non-OECD countries that responded to the questionnaire from the commission on the green list waste. Such information should be put in EC Reg. 1418/2007 and the authority of reference should actively contact EU authorities at the end of verifications under Article. 49.

- It is unclear what procedures are to be applied for waste placed in column D of the reg. CE1418/2007

- Lack of knowledge on collection/storage points/loading areas for certain waste streams
4 Proposed solutions to improve implementation/enforcement of Article 18, Annex VII and Articles 49 and 50

As a consequence of the specific wording of Article 18 and the specifications on Annex VII in the WSR the following challenges occur:

- Lack of knowledge
- Lack of enforceability
- Differences in enforcement practice
- Practical challenges to apply Annex VII

The specific wording of Articles 49 and 50 in the WSR, as well as delays in implementation by competent authorities entail the following major challenges for implementation and enforcement:

- Lack of knowledge on ESM in third countries
- Lack of effective sanctions
- Highly divergent level of waste chain enforcement within the EU (planning and inspection)
- Divergent levels of cooperation/collaboration
- Deficits in prosecution of persons suspected to commit violations

4.1 Overview on Options for improvement of enforcement

Proposed options in this chapter are derived from direct answers to the questionnaire disseminated to competent authorities and industry, and from evaluation by the project team of awareness raising events, IMPEL TFS enforcement actions and the overall information provided within this project.

Proposals for improved implementation and enforcement reported by CAs and stakeholders comprise two principal approaches:

- Request/proposals for amendments of the legal provisions
- Requests/proposals for guidance

The two types of approach are identified for all relevant aspects of the Guidance addressed in this study. It is not within the scope and the objective of this study to change existing legislation. However the proposals regarding an "amendment" of the legislative wording are investigated and assessed in the light of impacts and implications and are incorporated as a guidance, where appropriate.

Authorities ask for guidance especially addressing the industry, whereas industry asks for guidance for authorities in order to ensure harmonised enforcement practices. Both parties stressed the need that guidance should be simple and pedagogic.
In this context it is to be highlighted that the German EPA has developed a detailed manual for enforcement (LAGA 25) for competent authorities specifying all aspects related to enforcement of the WSR, might in part be used as valuable input for the elaboration of a guidance document.

The description of options and proposals for solutions in this chapter is classified in the categories:

- Measures to improve control of and simultaneously facilitate shipment of “green listed” waste (Article 18 and Annex VII)
- Measures to assure environmentally sound management (Article 49)
- Measures to assure effective control (Article 50)

4.1.1 Proposals of options for implementation and enforcement of Article 18 and Annex VII

Options for improved control on shipment of “green listed” waste subject to Article 18 including prevention of illegal shipments can be allocated to the specific paragraphs of Article 18, few other Articles and to Annex VII as follows:

Table 4-1: Overview on fields for improvement as regards Article 18 and Annex VII

<table>
<thead>
<tr>
<th>Article</th>
<th>Issue</th>
<th>Options for improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 (general)</td>
<td></td>
<td>Specify which boxes have to be filled and when</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Do not allow interim recovery operations (R12/R13) to be performed under Article 18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alternatively, request additional procedures to ensure ESM (c.f.m Art. 15(e) and 16(e) for the case of notifications)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Request annex VII also for transports within MS</td>
</tr>
<tr>
<td>18(1)(a)</td>
<td>Person who arranges shipment</td>
<td>Further define and specify the notion “under jurisdiction of country of dispatch”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Further define and specify the notion “person who arranges shipment”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Restrict definition of “person who arranges shipment” to waste producer and collector</td>
</tr>
<tr>
<td>18 (1)(b)</td>
<td>Annex VII signed prior to shipment</td>
<td>none</td>
</tr>
<tr>
<td>18(2)</td>
<td>Provide contract to CA on request</td>
<td>Extend obligation to have/provide contracts to waste producer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provide model template for contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Request mandatory use of model template</td>
</tr>
<tr>
<td>18(3)</td>
<td>Information of CA</td>
<td>Recommend and specify pre-notification and/or post-notification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Request mandatory information of competent authorities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Request provision of contract together with Annex VII</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Specify procedures for information of CAs (email, fax, electronic signature, etc)</td>
</tr>
<tr>
<td>18(4)</td>
<td>Treat confidential Annex VII information</td>
<td>Define and/or specify the meaning of “treated confidential”</td>
</tr>
</tbody>
</table>
The majority of responding authorities provided suggestions for improvements. Answers have been received by 17 Member State authorities, 12 German Länder, 8 Spanish Regions, Scotland, Northern Ireland, and 6 Italian provinces. No proposals were received from SE, NL, PT, GR, CY and PL.

Suggestions range from advance information to the authorities to the request for legally binding provisions.

Only few authorities stressed that no guide is required, as no information or involvement of the authorities is envisaged. One authority highlighted that a guideline would need to stress the limitations to enforcement and control resulting from the legal deficits and legal provisions as regards “green listed” waste shipments.

In this context it is to be highlighted that the German EPA apart from the LAGA 25 document has prepared a checklist (“Fragen und Antworten zum Formblatt Versandinformationen aus Anhang VII sowie zu Artikel 18 der VVA”)\(^5\) on filling and managing of Article 18 and Annex VII for industry.

As regards Annex VII the majority of the responding parties ask for specific and detailed guidance on:

- how to complete the Annex VII document e.g. analogous to Annex 1C,
- how to circulate the Annex VII document
- how to deal with incomplete Annex VII documents and to clarify responsibilities
- how to proceed in case the documents consist only of copies

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\(^5\) [http://www.umweltdaten.de/abfallwirtschaft/gaw/FragenAntworten_FormularAnhang_VII.pdf](http://www.umweltdaten.de/abfallwirtschaft/gaw/FragenAntworten_FormularAnhang_VII.pdf)

European Commission  
Final Report  
Assessment and guidance for the implementation of EU waste legislation in Member States
Quite a number of authorities in addition asked for amendments of the legal framework in terms of more binding and more stringent requirements and to layout and content of the document.

Only few authorities stressed that no guide is required, as no information or involvement of the authorities is envisaged. On industry side, 9 companies and 6 national or international associations provided proposal for guidance to improve and render less bureaucratic enforcement. Some of the companies in addition asked to solve the commercial confidentiality problem to save business secrets.

4.1.2 Proposals of options for implementation and enforcement of Article 49 and 50

Options to improve measures to assure environmentally sound management (Article 49) and effective control of waste shipments (Article 50) could be taken in the light of the different aspects in the legal text as indicated in Table 4-2.

Table 4-2: Overview on fields for improvement as regards Article 49 and 50

<table>
<thead>
<tr>
<th>Article</th>
<th>Issue</th>
<th>Options for improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>49(2) a) and b)</td>
<td>Ensure ESM (in third countries) Assume ESM if ....demonstrate broadly equivalent standards</td>
<td>Certificate/confirmation from authority/facility in country of destination (incl. verification request) Copy of treatment license from authority/facility in country of destination Process description External auditing/certification Request of emission measurement results</td>
</tr>
<tr>
<td>49(3)</td>
<td>Ensure ESM in case of import</td>
<td>Environmental permits (IPPC, waste) Company inspections</td>
</tr>
<tr>
<td>50(1)</td>
<td>Effective, proportionate and dissuasive penalties</td>
<td>Specific penalties (administrative and criminal) for illegal waste shipment sand waste management Expanded and more specified definition of illegal shipments and administrative offenses</td>
</tr>
<tr>
<td>50(2)</td>
<td>Provide for inspections of establishments and spot checks on shipments of waste</td>
<td>National/regional inspection plans Systematic threat assessment and risk profiling Establish appropriate control infrastructure (formalised agreements, data exchange, joint task forces) Guidance and Manual for control bodies Databases (notifications, Annex VII, material exports, inspection results) Electronic notification and documentation of Annex VII Establishment of electronic system similar to customs declaration Alignment of waste movements documents to customs and international trade documents</td>
</tr>
<tr>
<td>50(3)</td>
<td>Provide for inspections at point of origin, destination, at</td>
<td>Systematic unannounced controls of waste producers, collectors, dealers and brokers</td>
</tr>
<tr>
<td>Article</td>
<td>Issue</td>
<td>Options for improvement</td>
</tr>
<tr>
<td>---------</td>
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</tr>
</tbody>
</table>
|         | borders and during shipment within the EC | Systematic unannounced controls of waste treatment facilities  
Systematic unannounced controls on major transport routes  
Systematic controls in container harbours  
Random controls on small harbours, less frequented route, namely close to border crossings (including regional crossings within MS with shared responsibilities) |
| 50(4)   | Inspection of documents, confirmation of identity and physical checking | Intelligence based selection of transports for control  
Systematic physical inspection of selected waste and material streams (e.g. textiles, paper, plastic, spare parts, tyres, EEE, second hand cars)  
Standardised forms for inspections (customs, police, environmental authorities)  
Alignment of waste controls with customs and police controls |
| 50(5)   | Bilateral and multilateral cooperation | Direct contacts of involved partners  
EU wide electronic data exchange  
Systematic verification for selected waste streams  
Systematic bilateral and or multilateral transport controls |
| 50(6)   | Identification and communication of staff responsible for cooperation | Maintain a list of contact points for every country in a form of a living document that is continually kept up-to-date |
| 50(7)   | At request of other MS take enforcement actions against persons suspected of being engaged in illegal shipment | Standardised verification forms  
Consequent controls in case of verification request  
Improved cooperation and education of public prosecutors |

### 4.2 Details on options for improvement of enforcement proposed by CAs and other Stakeholders

The proposed options in this chapter are directly derived from Member State and stakeholder contributions and hence may not be regarded as exhaustive, nor are the proposals in this chapter evaluated as regards their compliance with legal provisions. The assessment of proposed options is performed in chapter 5 to this document, and a final proposal for guidance based on the input received during the project running time as well as on assessment and evaluation performed by the project team is provided in a separate document “PROPOSAL FOR EU GUIDELINE ON APPLICATION OF ANNEX VII AND ARTICLE 18 AND 49-50 OF THE WASTE SHIPMENT REGULATION”.
4.2.1 Proposals of options for implementation and enforcement of Article 18

**Interpretation of Article 18**

- Amend Article 18 in order to ensure which sections need to be completed prior to export (e.g. as amendment to Annex 1C – on how to complete an Annex VII form).
- Introduce a "broker" list for green listed waste that companies need to sign up to if they wish to deal with green listed waste in the EU.
- Define illegal shipment in case of Art. 18 shipments (e.g. when Annex VII is incomplete).
- Amend Article 18 to outline that it is an offence not to complete the Annex VII prior to shipment.
- Change the last sentence of the §18 (2) in order to extend obligation to provide the contract upon request to the CA concerned to the waste producer as well.
- Request mandatory information of the authorities like for notified waste including copies of the contract between origin and destination (e.g. via e-mail or fax on a monthly basis, with a deadline for making objections. If no objections are made within this period this could be considered as tacit consent.
- Establish mandatory notification for waste transports currently subject to Article 18.
- Require return of Annex VII document to sender (verification of ESM).
- Issue an approval of export also for Article 18 wastes
- Ban the shipment of waste for interim recovery to non-OECD countries (R12 and R13).
- Do not permit recovery operations R12 & R13 under Annex VII but only under notification procedures.
- Do not allow any reloading to happen during transit.
- Consider mandatory electronic data exchange.
- Set the obligation on the persons responsible for arranging the shipments of green listed (non-hazardous) waste, to use / fill Annex VII document during the transport of this type of waste inside the national territory.

**Definition of actors and obligations**

- Explain and clearly define obligations and responsibilities of agents and brokers.

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6 will also be discussed within the scope of the proposed guidance, where relevant.
7 In this context it has to be noted that, any violation of a provision of the WSR is a breach of law and should be regulated in accordance with Art. 50(1) refers to the rules on penalties for such infringements.
8 In the evaluation of this proposal the magnitude of the increase of administrative burden should be kept in mind if non e-based solutions are proposed.
• Clarify the initial producer responsibility
• Specify and define the sentence “person who arranges the shipment”
• Define “the person who arranges the shipment has to be under the jurisdiction of the country of dispatch”.

**Contract and documents, record keeping**

• Contain a contract template to be helpful to ensure a greater understanding in the enforcement and business community of what is needed in this document
• Provide Guidance on record keeping (copy of signed document from recovery facility to exporter (person initiating the shipment)

**Involvement of authorities**

• Clarify how annex VII documents (fax, email) are transmitted to CAs
• Pre-notification of CA: complete the form by providing forecast details in respect of the next business month e-mailed at the end of each month to CA; Reconciliation Report for CA: A quarterly summary report which reconciles the actual details of shipments made and completed in the previous 3 months
• Transmission of information from pre-notification from CAs for relevant period to control authorities in advance to planned inspection activities
• Advises to all Green List Customers to consult with the Competent Authority of Destination regarding any further importation controls, & to check Regulation EC (No) 1418/2007 (& amendments) prior to export
• Annex VII documents or annual waste reports as information source on Article 18 waste shipments
• Mandatory provision that the waste producer is obliged to inform the competent authority if the waste did not arrive at the destination (returned documents signed in box 13) within six months from the transmission of the waste to the transporter. Arrival of the waste at the treatment has to be proven by the return of the duly signed and stamped movement documents
• Reporting of waste producer to Local Environmental Protection Agency; reporting of consignee/treatment facility to National Environment Protection Agency
• Routinely ask for the contract of a shipment when Annex VII form for a new route/destination or waste type is received.
• Database for green list waste: store information on waste type, code, quantity, destination, route, waste shipment inspection results.
• Require copies of forms after the first carrier had signed them (immediately before the doors of the containers are sealed with the original documents placed inside)
Accept the Annex VII documents sent by fax or e-mail once the documents would be completed.

Accept electronic signatures

Require signed Annex VII document completed with regard to boxes 1-12 prior to export.

Accept copies from known, reliable customer the company would accept also copies.

Accept also scanned documents provided by e-mail.

Accept copies of Annex VII documents to be returned to the waste producer once the waste itself has been recovered.

In case of export: the person who arranges the shipment has to submit the copy of the Annex VII document with the completed block 13; In case of import: the consignee has to submit the copy of the Annex VII document with the completed block 13

Cooperation and control (see also Art. 50)

Agree with Customs Department that all Annex VII documents are sent to the competent environmental authority.

Use of intelligence from other sources also for control of Article 18 shipments

Develop/use statistical tool whereby codes denoting the shipment of wastes to non-OECD countries that have not elected to receive those. Particular waste streams are flagged up, where Annex VII is not sufficient

The competent authorities during company inspections require from the exporter Annex VII documents signed by the recovery facility in box 14

Compulsory electronic export declaration for Annex VII, which could ensure traceability and allow targeted controls

Annex VII checks at green list inspections (look at invoices and payment details and bills of lading)

Where possible (scheme established) perform controls as part of producer responsibility audits including review of shipping information at points of loading and at brokers issuing evidence. 

Target enforcement activity at the exporters’ yards/records rather than at the port, while the refusal to allow exports to proceed if not accompanied by a properly completed Annex VII would certainly help drive the message home.

Require the person who arranges the shipment, to submit to the competent authority of dispatch the Annex VII filled-in/signed by the recovery facility in Block 14 in case of control

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9 Within the frame of an audit, CAs in Member States search for documents confirming that the waste indeed arrived at the designated recycling facility, e.g., confirmation of receipt of materials and/or payments.
Subject exporters to enforcement action - warning notices, enforcement and prosecution / civil penalties for repeated non-compliance. It would be rare that scrap metal shipments had to be repatriated.

Expanded control of exports.

4.2.2 Proposals of options for implementation and enforcement of Annex VII

- Supplemented Commission Regulation (EC) No 1013/2006 with specific instructions on how to complete the Annex VII document (in Annex IC or as Annex VIIA); including dates, minimum requirements etc.

- Adapt Articulate Annex VII in order to better link it to the coding system of the customs legislation (e.g. by introduction of additional fields) and support work on adaptation of customs documents/guidance in order to better integrate WSR codes.

- Align the Annex VII document to the UN layout key for trade documents, in order to be able to include information relating it to the container in which the waste is shipped.

- Specific instruction (step-by-step) on how to fill in the Annex VII document in relation to the completion of Annex IA and IB in context of the notification procedure

- List on the Annex VII document all organisations (economic actors) involved in a specific transboundary shipment of waste and require declarations between each set of parties in order to provide a complete tracking chain for the shipment.

Amend Annex VII document (add boxes, align design)


- Introduce individual numbers for each Annex VII document similar to the TFS number system.

- Insert a section for “general notes” at the end of the Annex VII document

- Issue a numbered Annex VII document by the competent authorities in order to strengthen practical enforcement and control the document. The issue should be subject to the presentation of a valid contract according to Article 18.

- Add another block in Annex VII to mark with the question: shipment with reloading in transit country -> mark Yes or no and for yes, there must be an additional field to complete with that particular country and address of place of reloading. However, it is very important that one does not abuse by using this for temporary storage of the waste.

Type of document required

- Clarify if original documents must accompany the waste shipment (IE)

- Determine minimum information that must be indicated in the Annex VII document.
Specification of content

- Clearly define the “carrier”
- Box 1: the title “person who arranges the shipment” should be replaced by “company who arranges the shipment” as the contact person is already indicated at another place in box 1.
- Box 5: The exact details of the transporter in container shipment should be replaced by “ocean carrier” not obliged to sign the document as in practice companies tend to change their shipping agents during transport.
- Box 5: Clarify the question of how the common practice of renting trucks instead of subcontracting the transport shall be taken into account
- To ensure legibility, require that the information in Annex VII is typed (or digitally processed) and not handwritten
- Keep a copy of the Annex VII document at the transfer stations.

Confidentiality aspects

- Accept two Annex VII documents for the same shipment. In this case the information about the producer should be indicated in the first document and to ensure completeness of data, information about the recovery facility should be indicated in the second one.
- Avoid using double copies of the Annex VII document (one part containing information of the producer, the other part containing the information of the destination) even though this is accepted by some MS.
- Allow "Confidential" in Box 2 and 7, when full information is provided to competent authority.
- Use two different Annex VII-forms; one non-confidential version without the producer-information accompanies the shipment; and another confidential version with all information required by the regulation has to be kept pursuant to Article 20(2) of the regulation. A Member State expressed the view that a need may exist to change the regulation if this matter is to be solved uniformly throughout the EU. The Commission confirmed that some industry- and trade stakeholders have expressed the same view to the Commission.
- Contact data of the waste generator and the treatment facility are announced to the CA of dispatch (or destination), whereas Annex VII contains only the address of producer and treatment facility. In this case the waste chain could be made transparent by the authority on request of inspectors in case of doubts.
- Accept form with omitted recovery facility or omitted producer\(^{10}\)

\(^{10}\) This option is incompatible with the verification process
Allocation load/document

- Install a place/box where to put the documents in the containers.
- Attach to the containers electronic chips containing the required information of Annex VII document.
- Clarify whether one shipment should be accompanied by one Annex VII form, or whether each container should have a different form, given that there is a chance that a shipment may be broken up during its course. (without the use of electronic forms, this may be difficult to apply for the case of a bulk vessel where several thousand containers are loaded on a ship, and possibly several Annex VII documents may exist for each container)

4.2.3 Proposals of options for implementation and enforcement of Article 50

Options listed in this chapter are Member State proposals to further improve the obligations set in Article 50 and recommendations from the recently finalised IMPEL TFS Enforcement Actions Project II. Proposals relate to a) penalties applicable for infringements, and b) measures to ensure that they are implemented; c) inspections of establishments and undertakings and spot checks on shipments of waste or on the related recovery or disposal, d) international cooperation and e) enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State at the request of another Member State.

a) Penalties

- Compile and exchange on existing fines and penalties in administrative and penal codes and prosecution practice in order to work towards a level playing field
- Intensify knowledge transfer and communication between legal services in EU Member States and between inspectors and judiciary, in order to increase understanding of occurrence, impacts and implications of illegal movement of waste and of practical aspects of inspection work and to stimulate an equal level of prosecution and penalties in Europe.
- Improve definition of illegal shipment/administrative offense for Article 18 wastes in Article 2(35). Clarify that the wording concerning Annex VII documentation includes any inconsistency between annex VII and load as well as missing information or missing document.
- Develop appropriate penalties regarding violations on the provisions of the regulation, including those of Art. 18. notwithstanding whether classified as illegal shipment according to Article 2 or not.

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11 The shipment being effected in a way which is not specified materially in the document set out in Annex VII.
b) and c) implementation and enforcement of rules and penalties

Cooperation between authorities, elaboration of enforcement tools, and extended number of physical inspection are options to improve implementation and enforcement of rules and penalties on national level.

Cooperation between authorities

- Establish police services for Environmental Crime
- Establish regional "task-force teams" would need to be formed consisting of officials of the waste authorities, police, customs, BAG, auditors, prosecutors, which can achieve the fact findings including the prosecution/punishment up to the skimming of profits faster and more efficiently
- Incorporated the regime of waste controls into the general regime of customs controls on exports, to simplify the process, to reduce the burdens on business, and to make enforcement easier.
- Agree with the Customs that during customs declaration an examination of second hand goods (e.g. EEE) takes place.
- Share information on enforcement of Annex VII in container shipment more actively at all national levels.
- Clear signal from the central authorities, to enable the issue of trans-boundary shipments of waste to be given greater priority in their own activities.

Enforcement tool

- Establish an inspection plan, strengthening the conduct of inspections in the Member States not only for those carrying out a shipment, but also for dealers and brokers, etc.)
- Establish FAQ lists, contact lists, model templates etc. (see www.abfallratgeber-bayern.de).
- Elaborate verification Form at EU level that all EU, Non OECD, OECD & EFTA Countries can use to request clarification on waste facilities, waste types etc. This could be amended to the Reg. (EC) No 1013 /2006.
- Start initiative for electronic data exchange on a European level to establish one system for the entire EU. (If every country would have its own system, compatibility would be lost). This would solve more problems than just administrative burden. Statistics would be registered, Environmental inspection would have access to all data, and confidentiality would not be an issue anymore.12

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12 The electronic system for data interchange should take into consideration all initiative already taken in several cooperative projects at European scale. For development of a harmonised approach the potential advantages of the service provided by the Semantic Interoperability Centre Europe "SEMIEU" (see http://www.semic.eu/) supporting meaningful data exchange for eGovernment projects and providing a valuable range of services, collaboration and platform for pan-European projects, should be thoroughly assessed and used when appropriate. [a more detailed assessment cannot be performed in the framework of this project.]

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• Use a similar system as for customs declaration (electronic system established)
• Introduce a central European electronic register (e.g. on MS level and internet-related) to solve most of the problems (confidentiality, administrative burden) and information needs of authorities, and to implement the obligation for reporting to such a central register prior to the shipment.
• Databases accessible for competent authorities compiling information on all types of waste exports
• Police checks of waste transports reported by a standardised form (ECO-form). Data management in database; forwarding of information to competent authority.
• Use of inspection result and waste statistic data (green and amber) of all involved authorities for tactical and strategic analysis, the annual inspection plan (number of actions, planned number of inspected units) and prioritization

**Inspection**

• Expand control (physical inspection) of waste shipments including green listed waste shipments
• Systematic company inspections to waste producers and treatment facilities
• Watch out when a trader is mentioned for destination
• Request contract also in case of green listed waste subject Article 18
• Focus efforts and inspections on waste shipments to non-OECD countries and illegal shipments
• Further promote and develop intelligence led inspections using risk profiling and threat assessment.
• Use outcomes from other waste related IMPEL, Basel, OECD and EU projects (e.g. WEEE) to identify priorities and targets

**Prosecution and policy support**

• Elaborate new strategies to achieve sufficient publicity and interest for negative effects of illegal waste shipments, for example by using press and media for showing results.
• Intensify knowledge transfer and communication between waste services, inspectors and judiciary, in order to increase understanding of occurrence, impacts and implications of illegal movement of waste and of practical aspects of inspection work in order to stimulate effective prosecution.

**d) International and bilateral cooperation**

Cooperation and knowledge exchange between competent authorities in different Member States or between member States and third countries is crucial for effective controls and prevention of illegal shipments, and can support take back as well as prosecution of offenders. Proposals for improvement comprise the following:
• Establish contacts with the authorities of countries of destination
• Perform joint actions, exchange of best practices and sharing of results via EU enforcement actions project.
• Continue and further intensify cooperation with customs and police and other regulatory authorities (e.g. transport authorities) via e.g. formal agreements in order to keep the benefits achieved.
• Expand and further strengthen bilateral cooperation and regional capacity building, and information exchange.
• Assure participation and involvement of Member States not yet sharing inspection practice and results
• Increase effectiveness of European cooperation via more collaboration on global level (e.g. via cooperation with projects under INECE)
• Intensify exchange of knowledge and expertise via electronic platforms (fora) and regular physical meetings
• Clarify what the controls are that third countries require for waste placed in column D of the reg. CE1418/2007
• Add information on the non-OECD authorities that responded to the questionnaire from the CE on the green list waste, and the type of control third countries require for waste placed in column D in Reg. (EC) No 1418/2007,
• Request that authorities of reference in non-OECD countries (Reg. (EC) No 1418/2007) should actively contact EU authorities us at the end of verifications under Article 49.
• Maintain a list of contact points for every country in a form of a living document that is continually kept up-to-date (e.g. via online up-date possibilities).
• Do verification requests for green and amber list wastes (if necessary contact companies themselves to certify that waste received and reception signed

Prosecution of an offender located in another Member State has been highlighted as major problem by a number of experts working in the field (see also chapter 3.1.4). This is largely due to limited cooperation and commitment of competent environmental authorities as well as of police and judiciary services in the concerned Member State.

According to practical experiences from the past years the following approaches are reported as the most effective instruments to improve effectiveness action and overall results:

• intensive personal contacts as well as well established formal cooperation with customs and police and other regulatory authorities within each of the involved countries
• intensified collaboration and information exchange with and within the European professional organisations of police and judiciary services such as Europol, or Eurojust
This includes active participation in European coordinated police action such as the 2010 AUGIAS project or presentation of waste related needs and targets from the police or public prosecutors perspective (speak the same language, present in a sexy way).

4.2.4 Proposals of options for implementation and enforcement of Article 49

- Provide evidence of environmentally sound management in third country via:
  - a copy of an appropriate license from the state or national regulatory authority in the destination country.
  - responses of the exporter and on information concerning the ESM of waste shared by national and regional authorities\(^{13}\)
  - verification/confimation from competent authority of destination that the facility is authorised under their National Environmental Legislation for recovery\(^{14}\)
  - a database of recognised/certified treatment facilities, brokers, traders and carriers
- Provide evidence that the waste arrives at the facility indicated on the papers by means of:
  - Annual survey (integral environmental report) on waste produced, the type of waste, the destination and the treatment from randomly selected companies for extrapolation of export figures including Article 18 wastes., to increase knowledge on destinations of “green listed” waste as a first step in assuring ESM.
  - Transport with own trucks (for guaranteed transport standard), request of weighing bills (proof for waste amount delivered), and of invoices/payments (based on IBAN, BIC or SWIFT code)
- Request return of signed Annex VII documents after arrival of load at treatment facility (Such verification is done on a case by case basis by (e.g. IE, NL)
- Request evidence on treatment standard by means of:
  - Requesting exporters to ask their customer (the first of potential actors in the transport chain) to certify that the waste would be recovered in an environmentally sound manner.
  - Independent auditing and control
  - Process description and photos of the treatment processes
  - Collaboration with audited and companies certified for EN treatment standards were established (e.g. EN 643-standards for paper waste or according to DIN/ISO environmental management standards\(^{15}\)
  - Internal assessment and evaluation of treatment standards including potential regularly site visits (self-control), are brought forward as other (even more reliable) approach to assure ESM. (A major waste management association reported that information on facilities within Europe is already assessed and evaluated according

\(^{13}\) Problem of trustworthy
\(^{14}\) Problem of missing response
\(^{15}\) May only be requested were such standards are requested in the European Union
to internal standards. This would be envisaged also for recovery facilities e.g. located in Asia for the future. Today for third countries (not located within Europe) the association would rely on certificates provided by TÜV or other institutions.

- Request information on technical treatment standards if the shipment is realised in cooperation with traders or through agents

An industrial stakeholder plead for strict application of administration and reporting requirements as this would be the best way to guarantee that professional waste organizations are involved and the risk of free riders would be minimised.
5 Impact assessment and ranking of potential solutions to overcome deficits as regards Article 18, Annex VII and Articles 49 and 50

This chapter contains an assessment of proposed options to improve implementation/enforcement of Annex VII and Article 18 and 49-50 of the Waste Shipment Regulation in all Member States, in the light of potential environmental and economic impacts and implications.

In this context it has to be stated that due to budget limitations a detailed impact assessment cannot be performed in the context of this study.

Assessment will be performed by major suggested options in the field of Article 18 and Annex VII on the one and Articles 49 and 50 on the other hand.

5.1 Proposed options for improved enforcement of Article 18 and Annex VII

5.1.1 General scope of Article 18

Options related to the broader scope of article 18 are varied and besides potential guidance (see Annex VII) focus on an amendment of the article in order to increase control.

a. Specify (in article 18) which boxes have to be filled and when (see (annex) VII)
b. Ban interim recovery operations (R12, R13) to be performed under Article 18.
c. Request additional procedures to ensure ESM (c.f. Art. 15(e) and 16(e) for the case of notifications)
d. Recommend use of annex VII also for transports within MS

Assessment and conclusions on environmental impacts

Ad a.: Currently there seems to be confusion and lack of clarity when exactly which parts of the annex are to be filled. A clear description would allow adapting requirements to daily practice and needs of industry and at the same time would help control authorities to identify and prosecute an offense of the provisions.

Ad b.: Interim recovery operations are identified as a major problem as regards tracing of the responsible person in case of illegal shipments detected. A ban to perform such activities without knowledge of the CAs could considerably improve knowledge about the waste chain and reduce the risk that exporters use this pathway to escape prosecution in case of illegal export. An alternative option might be the indication of the final destination and treatment on the Annex VII form like in case of notification.

Ad c.: The request that a recovery or disposal facility which carries out an interim recovery or disposal operation shall obtain a certificate from the subsequent non-interim recovery or disposal operation (in the country of destination), and shall promptly transmit the relevant certificate(s) to
the exporter and the competent authorities concerned (Art. 15e) or the request that the completed
non-interim recovery or disposal is certified and a signed copies of the Annex VII document
containing this certificate is sent to the exporter and to the competent authorities concerned (Art.
16e) as required for notified waste, will considerably improve the traceability of waste and can
confirm that the waste arrived at the facility and in the country it was intended for. In combination
with reliable information on treatment standards this measure would ensure full traceability and
could hence replace a ban of interim treatment subject to Article 18. The measure should be
combined with an indication of subsequent treatments on (attached to) the Annex VII form or with a
pre-notification of CAs on the final destination. This would have the additional benefit to reduce the
risk of unintentionally illegal shipments to final destinations where notification would be required.

Ad d.: To request annex VII also in case of inland transports could be a means of improved control on
waste shipments and might reduce the risk of illegal disposal/recovery in non authorised facilities, if
no other system for waste transport on national level exists (as indicated as possibility in Article 33
(3). In this context it should be noted that MS are requested following Article 33 of the WSR to
establish an appropriate system for supervision and control of waste transports within their national
territory, in coherence with the system established for transports within the EU and on global level
and to notify the Commission thereof. In addition the new WFD 2008/98/EC requires a tracing of
hazardous waste transports (Art 17) and record keeping (Art 35). In case the national system requires
tracing and documentation also for non-hazardous waste with information similar to Annex VII, the
option will not provide any additional benefit. In case origin, destination, waste type, quantity and
accompanying paper was not required at national scale for green listed waste destined to recovery
(can be exempted from permitting and reporting obligation pursuant to Art 24 and Art 35), there
would be added value of such an amendment as regards traceability. Whether there would be any
environmental benefit could be questioned, because regular treatment is assumed to not negatively
affect the environment in the EU, and the obligation would not prevent any illegal treatment.

Assessment and conclusions on economic impacts

Ad a.: Clarity on requirements could reduce efforts for industry, limit stand-still and delays, and on
the other hand would reduce need for justification for authorities and enable setting of precise fines.
If any impact will occur, a reduction in administrative and/or economic burden, and a reduction of
administrative offenses is expected, as the annex in general is only accepted as complete if fully
filled-in in the majority of cases today.

Ad b.: Interim recovery operations tend to be economically advantageous for exporters as these
allow for an optimisation of the entire treatment process in case the selected non-interim facility is
not deemed to be the right choice for pre-treatment activities. Waste consolidation in interim
facilities in addition allows to optimize the transport and to make subsequent treatment more
efficient (e.g., fully loaded vs. half-empty trucks heading directly to a non-interim facility). Certain
sorting operations can also be performed more efficiently in designated facilities chosen from a
higher market share. The freedom to choose a facility on the basis of treatment operation can
positively contribute in the cost optimisation for the overall waste treatment. A banning of interim
recovery operations (R12, R13) to be performed under Article 18 would eliminate the
aforementioned potential economic advantages without adding additional costs. The introduction of
a notification procedure for such activities would not eliminate the economic advantage but would not be economically attractive either due to the additional costs involved with this procedure, e.g., costs due to the financial guarantee, which can be expected to be higher than the potential gains.

Ad c: Asking for confirmation of the final treatment and return of the Annex VII document contributes to the burden to the final treatment facility. The additional effort (and related costs) however, can be regarded as negligible in comparison to transport costs and the knowledge gain if fax or email can be used.

Ad d.: To require annex VII also in the case of waste transports within a Member State would introduce an additional administrative burden for the industry, in the order of estimated 4 working hours (per shipment) as information should be readily available on national level. The use of Annex VII is expected to entail minimal additional burden and costs if it is used instead of currently used documents used for the reporting on waste treatment on national level.

5.1.2 Person who arranges shipment (article 18(1)(a))

The three proposals to improve and facilitate enforcement of article 18(1)(a) are:

- Further define and specify the notion “under jurisdiction of country of dispatch”
- Further define and specify the notion “person who arranges shipment”
- Restrict definition of “person who arranges shipment” to waste producer and collector

Assessment and conclusions on environmental impacts

A more precise definition of “person who arranges shipment” and “under jurisdiction of country of dispatch” would allow to better control trade with Article 18 waste and would increase the chance that it is in the hand of professional business knowing and respecting the legal requirements for export. The measure is expected to be more effective if established as amendment of the existing legislation.

The option would be without effect in case of import into the Community or in case of illegal shipments detected in a MS acting as transit country in a shipment from a non EU country to a non EU country, because to requirement would not be enforceable in that case.

Assessment and conclusions on economic impacts

Article 18 (1) is clear as regards the necessity that a person who arranges waste shipment under article 18 must be subject to the administrative and penal code in the country of dispatch, in order to be able to get hold of this person/legal body in case needed. The current enforcement practice however, seem to accept or at least observe that other persons (not subject to jurisdiction in the country of dispatch) arrange shipments. If it was clearly defined and enforced by all Member States that only a person with registered active business in the country of dispatch was allowed to arrange shipments under Article 18, and how this under jurisdiction was defined, this would a) help control
authorities to classify other behaviour as illegality, and b) would allow authorities to do enforcement actions on the person in question at least in case of export from the EU.

This would improve the chance to lay treatment costs or potential take back actions on the exporter instead of being paid by the control authority or the tax payer, if the corresponding rules for penalties were set in national law.

As mentioned above, the option would be without effect in case of import into the Community or in case of illegal shipments detected in a MS acting as transit country in a shipment from a non EU country to a non EU country.

5.1.3 Provide contract to CA on request (article 18 (2))

a. Extend obligation to have/provide contracts to waste producer
b. Provide model template for contract
c. Require mandatory use of model template

Assessment and conclusions on environmental impacts

Ad a.: Currently a contract including an obligation to organise take-back or alternative recovery is only required between the person who arranges the shipment and the consignee in the country of destination. As both can be brokers or traders, this bears a certain risk, that the load ends up in an inappropriate treatment facility other than foreseen. The fact that the waste commonly has a positive market value was used as argument for a minimum probability of such a risk, but practical experience of control bodies and NGO indicates the opposite. Recovery of green listed waste can seriously damage the environment if the facilities in third countries of Asia and Africa do not operate in an environmentally sound manner. Extension of the contract to the waste producer would not change this risk as the treatment facility would still not be involved.

Ad b and c: Environmental impacts of waste transports depend predominantly on potential emissions from waste storage, treatment or illegal disposal instead of recovery. The legal text as such does not contain any information about the environmental standards to require for the recovery operation or any other aspects to take into consideration. A model template would hence be an appropriate tool to define minimum requirements and assure enforceability of the take back or alternative treatment obligation in case of irregularities. This effect would be stronger the more actors would make use of the form and thus would be fostered by a mandatory use.

Assessment and conclusions on economic impacts

Ad a.: Illegal shipment of waste under article 18 in general occur, when the waste shipped does not correspond to the description in the accompanying papers or if a notification procedure was required in the specific case. The person who arranged the shipments (or alternatively the consignee) would then be required to organise and bear the costs of an alternative treatment (take-back is rarely performed). In this situation control authorities are repeatedly confronted with the fact, that they cannot get hold of the liable “persons” as they have left the country, do not exist, are insolvent. Due
to lack of an explicit indirect liability of the waste producer - as set in the case of notified shipments – it in general is very hard to impose the costs on the “polluter”. Costs remain on the control authority or the tax payer. This situation would change if the obligation and the liability were extended to the waste producer. This seems to be logic and fair as the producer also has part of the profit from the intended export. Given the worst case of a hazardous waste shipped with Annex VII, the economic impact of such an improved control could account for >€ 500 per tonne of waste. For a standard 50 tonnes truck this could be assumed to be in the dimension of € 25,000.

Ad b and c: The availability of a standard contract for waste shipments subject to Article 18 can be expected to reduce the administrative effort for involved parties and hence would even have a positive economic impact. Contractual conditions might influence the negotiated price for the waste recovery. A mandatory use of a contract template containing certain environmental provisions is therefore expected to potentially reduce the revenue for the exporter. Differences in prices achieved for green list waste in EU and OECD countries versus third countries can give an indication about the potential effect.

5.1.4 Information of CA (article 18(3))

a. Recommend and specify pre-notification and/or post-notification

b. Require mandatory information of competent authorities

c. Require provision of contract together with Annex VII

d. Specify procedures for information of CAs (email, fax, electronic signature, etc)

Assessment and conclusions on environmental impacts

Lack of knowledge on the final destination and on treatment conditions in the countries of destination (namely in third countries) is one of the major problems CAs are facing with respect to Article 18 shipment in the light of the article 49 obligation to assure ESM also outside OECD countries. Information about the intended treatment and destination would hence be a valuable tool to fill this gap and to give the possibility to react in advance if needed (e.g. an export ban which was overseen, a destination which proved to not be reliable etc.). It can be questioned whether such information can prevent any inappropriate treatment and whether the potential benefit is worth the additional administrative effort. There will be no benefit in case economic operators take serious their task (which the fast majority certainly does), and sending will not directly prevent intentional illegal behaviour (objects will be shipped as products in these cases). The measure however, can be expected to have a considerable indirect benefit, as authorities with this additional information can better plan and target their inspection activities (see proposals for Article 50). In this context information in advance has by far a more important effect. The effect will be enhanced by additional information such as ad-post information in intervals, or the provision of the contract in case it contains more details on the treatment applied.
Assessment and conclusions on economic impacts

Annex VII and contract have to be filled in and be effective before the shipment starts, so that mailing/faxing of the document to the CA will not entail extra efforts to exporters. The extra burden is clearly on the CAs, which needs to process and manage the additional documents. (Based on export figures of >70 million tonnes of non-hazardous waste within and outside the EU, an assumed average load of vehicles of 50 tonnes, and an assumed equal distribution of exports by number of inhabitants, the annual quantity of documents can be expected to be in the dimension of 3,000 to 35,000 per CA, depending on the level of diversification of responsibilities. A number of CAs stated that such a task could not be performed. On the other hand there are sufficient authorities showing the opposite namely in countries strongly relying on export of waste for recovery. Given the principal obligation of CAs to ensure ESM also for green listed waste, the extra effort seems to be justified. The use of electronic tools for data transfer (including direct transfer into databases) can further limit the extra work load.

5.1.5 Treat confidential Annex VII information (article 18(4))

- Define and/or specify the meaning of “treated confidential”.
  - 1. refers to storage of information at CAs
  - 2. refers to filling of Annex VII document (blank boxes, double forms, etc)

Assessment and conclusions on environmental impacts

The Annex VII was introduced in order to improve control on the complete waste chain also in case of waste recovery and is regarded as one of the major tools for assurance of ESM in that case. Confidential storage of provided information at CAs does not in any way effect the mentioned objective nor has it any positive effect on the environment.

Confidentiality in the meaning of leaving blank or blackening fields in the Annex VII accompanying the waste transport however, reduces the tracing possibilities for control authorities, and hence might significantly increases the risk of inappropriate treatment or dissimulation of an intended illegal transport. This also applies, if two separate documents are transported with the load, as they can easily be separated and reallocated if needed.

The risk does not occur, when complete information is provided beforehand to CAs which can be contacted (at any time) in case of control. The second option thus can be applied without negative effect if combined with information of CAs (art. 18(3)) prior to waste shipments. Accepting partly filled Annex VII documents tends to increase the involvement of traders and brokers, what according to practical experience reported by CAs is a risk for irregularities and illegalities per se.
Assessment and conclusions on economic impacts

Astonishingly not many complaints were received from industry as regards the requirement to completely fill in the Annex VII document. The majority of economic parties seem to have arranged with the requirements. Single stakeholders even insisted on a strict enforcement of the requirement. One the other hand this might be due to the fact, that current enforcement practice in many countries is not very strict and controls are not intense. The full traceability of the transport chain according to information received is a clear disadvantage for traders and brokers, because producers and treatment facilities will have the possibility to get into direct contact. This factor does not influence the overall prices achieved. Economic disadvantages for one actor will be compensated by advantages for another one.

5.1.6 Electronic data exchange for green list waste shipments (article 26(3))

a. Electronic Annex VII
b. Electronic customs declaration for Article 18

Assessment and conclusions on environmental impacts

Credible and reliable information on destinations applying appropriate treatment standards are the major parameter for ESM. Any tool that can support such information transfer and traceability is hence entailing environmental benefit. Electronic data exchange (if appropriately secured) can facilitate information of CAs and customs risk profiling and thus can be regarded as beneficiary in indirect terms. It should be combined with the mentioned other measures to become effective. At the same time it could help solving the problem of accompanying documents in e.g. container shipment given that competent customs, police or environmental officers can access the document during control. Essential would be a coordinated approach allowing reading and processing throughout all MS.

Assessment and conclusions on economic impacts

Purchase and installation of appropriate hardware and software tools defines as well as the necessary training of staff significant investments. On the other hand, such investments will save considerable resources in the long run and will speed up processes. A detailed cost-benefit analysis would be required to calculate pay back periods. Based on available information regarding similar investments for electronic data interchange systems, a rough estimate of the period of amortisation is expected to be less than three years. Economic benefits of € 44 million/year in administrative burden have been estimated due to the use of electronic data exchange systems.

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5.1.7 Definition of Illegal shipment (article 2(35))

- Improve definition of illegal shipment/administrative offense for Article 18 wastes

Assessment and conclusions on environmental impacts

Efficient prosecution of Article 18 offenses and illegal shipments in relation to article 18, is a major deficit reported by many involved CAs. Additional specification of illegal shipment and administrative offense in connection with Article 18 offers the possibility to establish more severe penalties. On the other hand according to article 50(1), the violation of any provision of the WSR should be subject to the rules of penalties in a MS, and MS are free to determine what an appropriate penalty is and to choose an upper level of the penalty provided these are effective, proportionate and dissuasive. (In practice a certain overlap can be observed between administrative fines and criminal penalties). Penalties, if severe enough could have a preventive character if combined with a sufficient number of controls. The risk of being more severely fined would also reduce the incentive to ship contaminated waste under Article 18 or to ship it as a product. From the environmental point of view, illegalities and penalties should focus on the quality and type of waste more than on procedural details of the annex unless there is a suspicion that this is used to dissimulate illegal behaviour.

Assessment and conclusions on economic impacts

Improved definition of illegal shipments/administrative offenses could facilitate successful prosecution and judicial sentencing of violations. This would have direct implications on the treatment costs (in the dimension of €200/tonne for non-hazardous and €600/tonne for hazardous waste) to be borne by CAs. The positive effect on revenues for CAs however, can only be expected to be realised when court rulings follow the interpretation that expert knowledge on proper classification and verification of ESM can be required from economic operators and that responsibilities to assure this can be claimed.

5.1.8 Annex VII

Clear filling instructions

a. Amend annex IC for clear filling instructions
b. Clarify how to circulate the Annex VII document
c. Clarify how to deal with incomplete Annex VII documents and to clarify responsibilities
d. Define the type of documents required to accompany transport (original, copy)
e. Clarify how to proceed in case the documents consist only of copies
f. Specify how to act in case of loads divided in parts, in case of container shipment etc. (allocation document/transport unit)
g. Add boxes
h. Align to customs and international trade documents

i. Allow double document, blank boxes, boxes filled with confidential, etc

**Assessment and conclusions on environmental impacts**

Ad a./b./c.: An incoherent handling of Annex VII documents has repeatedly been reported as a factor causing confusion and lack of clarity when exactly which parts of the annex are to be filled. A clear description which actor would have to fill which parts of the document at what stage of the procedure would certainly help industry to act compliantly and at the same time would help control authorities to clearly identify responsibilities of all involved actors as well as identify and prosecute administrative offenses. Such option will not prevent any illegal behaviour but could facilitate prosecution, without imposing inappropriate burdens to exporters. The measure might be preventive when combined with sufficient number of controls. Otherwise there is no expected benefit.

Ad d./e./f.: In the legislation it is clearly stated that originales have to accompany the transport, but in daily practice this requirement is reported to cause problems namely in container or train shipment and in case of re-loading and separation of loads to different vehicles. Copies might increase the risk of being used for other transports than intended, but it can be questioned how important such a risk really is. In case of transport controls the crucial element from the environmental point of view would be the fact, that the waste corresponds in type and quality to the documentation, that the transporter is the one indicated, and that a credible origin, treatment and destination are indicated. The remaining risk is that several transports are started with the same document; however, in this context it could be argued that the signature and the indicated contract remain valid also in case of copy. In case of a company control the essential would be that the document (copy or original) bears original signatures (of consignee and/or treatment facility) certifying acceptance and treatment. A clarification in which cases or whether generally copies could be accepted, and how to proceed in case of loads divided in parts, could prevent unnecessary fining and blocking of transports of correct material, in cases where it was impossible for the exporter to provide an original. The wording of WSR clearly allows both: the understanding that the obligation to carry the Annex VII document is related to the transport unit or that it is related to the entire shipment. This leads to the situation that in case of discontinued shipments, a specific document has to be signed for every single unit (e.g. containers on a ship). If this administrative burden should be avoided, the consequence for shipments spread on diverse transport means (e.g., leaving a container ship to be distributed to diverse trucks) is to allow copies for the subsequent transport.

Ad g./h.: The Annex VII currently does not have any numbering, no possibility to allocate it to a certain transport (container), no information on reloading or final treatment in case of interim recovery codes in box 8. Nor is the document in line with the UN key for trade documents. An alignment of Annex VII Document with customs and international trade documents is expected to leading to a better possibility to integrate waste information with customs and transporters information, facilitating risk profiling and traceability. The introduction of additional boxes to allocate the paper to a specific transport even if not physically fixed on or into the transport is expected to constitute an appropriate tool to assure traceability and to improve the chance that the document arrives at its destination. A numbering of documents has similar effects and would be particularly
interesting when combined with information of CAs and/or acceptance of copies. An additional box to specify intended reloading, adding final treatments or additional comments would be additional instruments to get a clearer picture of the transport chain, and would allow reacting more flexible to unforeseen changes in e.g. routing transporter etc.

Ad i.: Allowing double documents, blank boxes or boxes filled with “confidential information” reduces the tracing possibilities for control authorities, and by this significantly increases the risk of inappropriate treatment or dissimulation of an intended illegal transport. This also applies, if two separate documents are transported with the load, as they can easily be separated and reallocated if needed; an effect which could be avoided if the CA would obtain the information in advance (see consideration above 5.1.5).

Assessment and conclusions on economic impacts

A clear specification of filling requirements, additional fields to fill in, alignment with other documents needed for the same purpose etc., is not expected to add additional administrative burden to exporters. On the other side it might reduce the number of reclamations in case of control, which would entail considerable economic benefits to the exporter (less stand still times).

For CAs and control authorities this type of measures could reduce work and administrative procedures by improved clarity. It could further support risk profiling and targeted controls, thus increasing the chance to identify illegal transports. In this context, more clear description might increase the chance to impose the liability of potential take-backs or alternative treatment to the involved parties, which could reduce the financial burden on CAs.

5.2 Proposed options for improved enforcement of Article 49 and 50

5.2.1 Ensure ESM (in third countries) (article 49(2) a) and b))

a. Certificate/confirmation from authority/facility in country of destination (incl. verification request)

b. Copy of treatment license from authority/facility in country of destination

c. Process description

d. External auditing/certification

e. Request of emission measurement results

Assessment and conclusions on environmental impacts

Ad a-b.: Verifying ESM in third countries is a complicated task for EU authorities, both in the context of prior notification and in the context of control. The more intensively the situation is verified in third countries and the more evidence is required at detailed level, the more the authority is set into the position to take a reasonable decision in favour of the environment. Confirmation from authority
in country of destination and copy of treatment license are the approaches currently most widely
used for notified waste. To know whether the waste shipments are really processed in a facility that
is authorized to operate in the country of destination (Art 37.4), in fact is the absolute priority in this
case. When there are doubts extra measures as indicated in c-e should be taken.

For Article 18 wastes the majority of authorities currently do not collect any information at all. In that
case the task is to the exporter, but there is no specification on how to do it in the WSR.
Recommendation to use the parameter a and b in case of Article 18 could already entail considerable
harmonisation of current practice and would result in similar level of knowledge as for notified
waste. It is important to keep in mind, that especially Interim recovery operations (R12/R13) in third
countries and final recovery in another third country make it impossible to verify whether final
treatment is ESM. Exporters use these logistic hubs for legitimate reasons, but also abuse this
possibility to disguise non ESM activities (see corresponding paragraph).

Ad c- e: Requiring process description or external or own auditing as reported by a number of
industrial stakeholders/authorities could add a remarkable benefit to the level of environmental
protection and the level of verification. This could be even expanded by asking for actual emission
measurements, which would allow direct comparison to EU standards, wherever available and entail
the request of an official certification issued by an accredited auditor. In order to assure a sufficiently
harmonised approach it would be important to combine such a recommendation with the
development of benchmark standards for recovery operations at EU level if these are not yet in
place, and to specify the minimum criteria for equivalency.

The problems of process information or certification are the limited reliability observed by involved
authorities in a number of cases, in particular in third countries, where reported documents in
considerable number of cases prove to be false, and/or the determination of a credible auditor that
can enjoy acceptance from both countries of dispatch and destination.

A thorough elaboration of this issue would go beyond the scope of this report, and would need
intense discussion of practical experiences and potential solutions with all involved parties.

Corresponding work and discussions are currently performed in IMPEL TFS and should be integrated
as soon as available. According to the IMPEL TFS working group dealing with this issue, the most
crucial parameter for verification is the collaboration with the competent authorities and their
awareness raising about the risks of inappropriate treatment. This means that process description,
monitoring data and or audit certificates should be approved by the competent authority in the
country of destination, ideally being a part of the national permit.

For acceptance of private auditors the establishment of an accreditation scheme from Basel
Convention and OECD could be considered as an option to be discussed.

In addition it should be considered to generally apply similar requirements as specified in extended
producer responsibility (EPR) legislation such as WEEE and Packaging Directives, in which exporters
have to proof that the waste is treated according to European standards. Germany has developed an
accreditation system for exports of packaging waste, which could be used as example.
Several third countries (e.g. China, India) have set up own certification systems to improve the quality of imported waste. These countries have informed the European Commission about this in verbal notes. It should be investigated whether a connection with these systems is possible to prevent double certificates.

Accredited world widely operating survey and inspection bureaus (e.g. SGS, Bureau Veritas, TüV) could be credible auditors. ISO17020 could be used to secure the quality of the inspections.

Assessment and conclusions on economic impacts

Ad a-c.: The request of a confirmation from authority in country of destination also in case of shipments subject to article 18 can be done by email or fax, and hence does not entail relevant costs. The request of a translated copy of the treatment license, of a process description, or of emission measurements entails some costs for the consignee/treatment facility, which in the light of overall costs however, can be considered negligible. However, contacting authorities in third countries costs a lot of time at the moment for European authorities.

European wide databases with (pre-) authorized facilities in EU and third countries could assist authorities. The establishment of such databases could be a task for a waste implementation agency.

Ad d-e: An external audit by a certified expert will cost in a dimension of 500 – 1500 €. Requesting emission measurements typically does not cost a lot (just a small administrative effort). Higher costs, however, need to be considered if emission measurements have to be performed because no reliable data are available. Such costs start at around 1.000 € and can go up to 5.000 €, depending on the scope of required parameter.

5.2.2 Ensure ESM (in case of imports into EU) (article 49(3))

a. Environmental permits (IPPC, waste)

b. Company inspections

Assessment and conclusions on environmental impacts

ESM verification in facilities located in the EU in case of import of wastes is an obligation for the CA. This verification is related to the standards of European waste legislation and, where applicable, also other Community environmental standards such as IPPC can be taken into account. Verifying permits and verifying the compliance with permitted standards within the companies is an important element in achieving the goal of ensuring the application of ESM. The new WSR even specifies the minimum intervals for control. Particularly mentioning these aspects in a guideline document is not expected to entail a major environmental benefit.
Assessment and conclusions on economic impacts

No changes to current situation expected.

5.2.3 Effective, proportionate and dissuasive penalties (article 50(1))

a. Specific penalties (administrative and criminal) for illegal waste shipments and waste management
b. Expanded and more specified definition of illegal shipments and administrative offenses

Assessment and conclusions on environmental impacts

Efficient prosecution, both criminal and administrative, is reported as a major problem repeatedly. The introduction of penalties for breaching and the consequent sanctioning of perpetrations are crucial elements for the enforcement of EU environmental legislation and a direct obligation for Member States arising from the Treaties to comply with EU acquis. From an environmental perspective, sanctioning of adverse behaviour is a necessary element to set incentives to act compliantly. The clearer the sanctions are and the more they specifically address precise infringements, the more a dissuasive effect can be assumed. Specific sanctions also may draw the awareness of enforcement authorities to the specific issue of waste shipments. Penalties, however, only have a preventive character (positive environmental effect) if combined with a sufficient number of controls.

Assessment and conclusions on economic impacts

Economic impacts of penalties depend on the height and the frequency of execution (current range <€500 to €2,000,000). In any case it is positive provided that public prosecutors and courts accept and follow the objectives of the WSR in their procedures. More frequent sentences instead of very severe penalties should definitively be a preferred solution.

5.2.4 Provide for inspections of establishments and spot checks on shipments of waste (article 50(2))

a. National/regional inspection plans
b. Systematic threat assessment and risk profiling
c. Establish appropriate control infrastructure (formalised agreements, data exchange, joint task forces)
d. Guidance and Manual for control bodies
e. Databases (notations, Annex VII, material exports, inspection results)
f. Electronic notification and documentation of Annex VII
g. Establishment of electronic system similar to customs declaration

h. Alignment of waste movements documents to customs and international trade documents

**Assessment and conclusions on environmental impacts**

Intentionally illegal waste shipments of materials that can cause harm to the environment or the human health when disposed of or recovered without protection standards, is the major problem in the area of internal market and global trade. Therefore any of the above mentioned proposals that help to put and direct resources can be expected to be associated with environmental benefit.

Based on control practice gained, profound knowledge of market pressures, of threats and risks existing at regional, national and EU level, fast information transfer, well trained and sufficiently empowered staff and appropriate infrastructure (equipment, inspection sites, etc) are the crucial elements for effective control. In this context all of the options mentioned above are regarded as of high benefit for the environment.

National/regional plans can contribute to the necessary capacity planning in the light of an appropriate number of controls. It is considered beneficiary to introduce a recommendation on an appropriate number of controls into the guidance document. Planning however, may not be misunderstood as a rigid framework which should be kept flexible with only a minimum level set. Ad hoc planning and cooperation on request can have the same impact as an official plan.

Electronic data storage and transfer systems, and alignment of transport documents with customs and international trade documents can have a high value, if harmonised, compatible and readily accessible for all involved authorities for inspection planning, threat assessment and risk profiling.

**Assessment and conclusions on economic impacts**

All options are clearly associated with costs for Member States in a dimension of € 40,000 - € 80,000/year for an additional inspector and one-time investment costs for a soft and hardware in the dimension of up to € 10,000 for one inspectorate/control body.

The development of an electronic data storage and transfer system is costly but can be performed preferably in EU scale. Alignment of documents is a complicated legislative process but not associated with considerable costs. The same applies for the development of guidance and manuals, namely when existing documents are used and adapted.

The costs are balanced by potential revenues from fines or penalties in a dimension of €1,000-€100,000 (broad variety between MS and type of violation) per additional illegal shipment identified. That means the annual investments would turn out economically neutral if 10 average offenses of the WSR could be identified and fined per year per inspectorate due to one additional inspector.
Given a registered annual export of major waste streams and relevant product categories within and from the European Union in the dimension of 280 Million tonnes in total (thereof >85 Million outside the EU), the following rough assumptions can be made for an overview estimation of potential revenues from detected illegal shipments per year: If 1% of all shipments are considered as illegal, this results in about 3 million t per year or about 60.000 illegal shipments. With reasonable averages for the fines and penalties an amount of € 60 million to € 600 million potential revenues per year could be estimated for EU 27.

5.2.5 Provide for inspections at point of origin, destination, at borders and during shipment within the EC (article 50(3))

- Systematic unannounced controls of waste producers, collectors
- Systematic unannounced controls of waste treatment facilities
- Systematic unannounced controls on major transport routes
- Systematic controls in container harbours
- Random controls on small harbours, less frequented route, namely close to border crossings (including regional crossings within MS with shared responsibilities)

Assessment and conclusions on environmental impacts

Lack of resources is often mentioned as a major problem to detect illegal shipments. However, the perception has evolved that using intelligence, systematic and targeted unannounced controls lead to an enhanced possibility of detecting illegal shipments as an outcome. This type of control may lead to identify criminal structures and to prosecute perpetrators.

In this context it is important to take into account that Article 34 of the new WFD requires systematic and periodic controls of establishments and undertakings involved in waste management and that guidance on how to plan/perform such inspections has already been developed for the environmental aspect in general. Because the guidance is not focussing on waste and even less on waste shipments, and because the legal text regarding inspection and record keeping is in part vague and excluding non-hazardous waste, an additional specification of inspection practice can be assumed to entail environmental benefit.

According to control practice from past years and recent projects, harbour controls are more efficient than road controls, and controls of waste producers and collectors can also be a good means to stop illegal shipments of waste. In terms of balanced burdens and in order to prevent uncontrolled intra-European traffic also road controls are important and beneficiary from a preventive point of view. Road controls in addition can be easily integrated into existing routine controls for other purposes. Appropriate inspection sites, simultaneous actions at several points (to close escape

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17 Registered annual export of waste subject to general information procedures of minimum 75 Million tonnes (40 Million outside the EU), an additional registered export of hazardous waste of roughly 6 Million tonnes, and a registered export of relevant product categories of >200 Million tonnes in total (>45 Million outside the EU); see chapter 5.3
routes), the composition of control teams and use of intelligence are important for the level of effectiveness reached.

As transporters, exporters and particularly organised crime are well connected and immediately react to established controls, the flexibility and unpredictability of controls, as well as the systematic use of intelligence is essential for the level of benefit. A combined use of all options should be recommended in the guidance.

Assessment and conclusions on economic impacts

Preparation and execution of inspections (physical controls) are clearly associated with considerable costs for Member States. These costs are related namely to the required work force needed, and can be assumed to be in a dimension of € 800 – 1600/ for each inspection day (assumption: team of four inspectors). Additional costs for travel of inspectors and laboratory analysis can be considered to be in a dimension of € 200/per inspection day as best estimate.

The costs are balanced by potential revenues from fines or penalties in a dimension of €1,000 - €100,000 per additional illegal shipment identified. That means an inspection day would turn out better than economically neutral if 1 average offense of the WSR could be identified and fined.

Given a registered annual export of major waste streams\(^{18}\) and relevant product categories within and from the European Union in the dimension of 280 Million tonnes in total (thereof >85 Million outside the EU), the following rough assumptions can be made for an overview estimation of potential revenues from detected illegal shipments per year: If 1% of all shipments are considered as illegal as a conservative estimation, this results in about 3 million t per year or about 60.000 illegal shipments. With reasonable averages for the fines and penalties an amount of € 60 million to € 600 million potential revenue per year can be estimated for EU 27 via optimized enforcement.

5.2.6 Inspection of documents, confirmation of identity and physical checking (article 50(4))

  
a. Intelligence based selection of transports for control

  
b. Systematic physical inspection of selected waste and material streams (e.g. textiles, paper, plastic, spare parts, tyres, EEE, second hand cars)

  
c. Standardised forms for inspections (customs, police, environmental authorities)

  
d. Alignment of waste controls with customs and police controls

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\(^{18}\) Registered annual export of waste subject to general information procedures of minimum 75 Million tonnes (40 Million outside the EU), an additional registered export of hazardous waste of roughly 6 Million tonnes, and a registered export of relevant product categories of >200 Million tonnes in total (>45 Million outside the EU); see chapter 5.3
**Assessment and conclusions on environmental impacts**

See above. Same effects as discussed in the two chapters above.

Using intelligence and systematic approaches when executing controls results in enhanced possibility of higher hit rates. By this, current incentives for illegal shipments may be decreased. A side-effect is that the awareness of enforcers for waste shipment related crimes is raised and by this, there is a possibility of decreasing administrative barriers in co-operation between environmental and enforcement authorities.

**Assessment and conclusions on economic impacts**

See above. Same effects as discussed in the two chapters above.

5.2.7 Bilateral and multilateral cooperation (article 50(5))

a. Direct contacts of involved partners
b. EU wide electronic data exchange
c. Systematic verification for selected waste streams
d. Systematic bilateral and or multilateral transport controls

**Assessment and conclusions on environmental impacts**

Illegal waste shipment is an EU wide problem, which requires EU wide standards and equivalent level of enforcement intensity. Lack of international co-operation is one element that makes waste shipment a relatively safe field for organised crime. In enhancing the co-operation at bilateral or multilateral level, one important driving factor is decreased. Using electronic tools such as databases and electronic submission systems control planning much more efficient and additionally serve as useful input for analysis within threat assessments. Hence any tool that improves cooperation and information exchange across the borders supports effectiveness of control and facilitates prosecution and take-back if necessary. Therefore there is a clear positive effect. Details on arguments and effects are similar to the ones explained in the chapters above.

**Assessment and conclusions on economic impacts**

International cooperation and collaboration is largely performed via email, telephone and fax, which is not associated with remarkable costs. Verification is associated with higher administrative efforts (preparation of dossiers, inspections, etc). However, it does not require much additional effort once the human resources necessary for a systematic control (see chapters above) have been established. Coordinated activities like joint controls can be integrated into the national control activities, and hence do not have to cause additional costs. For exchanges there are budgets available on European level in dedicated projects, in a way that this does not cause major additional costs.
5.2.8 Identification and communication of staff responsible for cooperation (article 50(6))

Maintain a list of contact points for every country in a form of a living document that is continually kept up-to-date (e.g. via online up-date possibilities)

Assessment and conclusions on environmental impacts

A valid regularly up-dated list of contact data of the competent and responsible experts is an essential prerequisite for a smooth international collaboration and hence entailing a benefit for the environment.

Assessment and conclusions on economic impacts

Managing a list on an electronic platform accessible to CAs is not associated with significant costs, even more if the up-date can be done by MS themselves if needed.

5.2.9 At request of other MS take enforcement actions against persons suspected of being engaged in illegal shipment (article 50(7))

- Standardised verification forms
- Consequent controls in case of verification request
- Improved cooperation and education of public prosecutors

Assessment and conclusions on environmental impacts

The co-operation of MS authorities competent for sanctioning criminal and administrative infringements is often referred to as a weak point in the entire procedure of controlling waste shipments and persecuting offenses. Every tool which leads to higher awareness, better co-operation and simplified administrative exchanges may lead to a more effective prosecution and, by this, enhances the necessary dissuasiveness of sanctions. Consequently all the mentioned options (namely option b and c) can be expected to have a positive environmental impact. Option a) has no direct effect but supports, facilitates and speeds up the work for the involved authorities.

Assessment and conclusions on economic impacts

Compared to other expenses, costs for development of standardised form can be considered negligible. Costs for consequent controls and more frequent verification requests (see chapter 5.2.5). Potential revenues in case of more frequent successful prosecution can be expected to be in the dimension of €10,000-several €100,000 per case.
5.3 Economic impacts and associated risks at European scale

Impacts and implications as discussed above have to be further considered in the light of green list waste shipments to and particularly from the EU. Based on official statistical data (see chapter 5.4.), exports of major Annex III waste streams in 2009 add a dimension of 70 Million tonnes to the annual 6 Million tonnes exports of notified hazardous waste.

The percentage of wastes officially exported as products is difficult to assess, due to lack of data, but results from inspection activities can give an indication of realistic amounts. According to the interim report on the IMPEL TFS enforcement project II more than 10% of the detected illegal shipments (administrative offenses) were due to a missing annex VII. By waste category WEEE, ELV, waste metals, plastic, paper the false declaration of loads as products was even higher.

Taking into account the fact that not all of the claimed irregularities have been (intentional) false declarations and not all will be accepted as illegal shipment by courts, a best case share of 1% waste shipments in the related customs product categories seems to be a reasonable estimate. With such a best estimate a minimum of 760,000 tonnes of falsely declared products could be expected to have left the EU in 2009. (With an estimate of 5% this would already account for roughly 4 Million tonnes of waste, having been illegally exported out of the EU in 2009).

With a low fine of €1,000 per case this would result in an unused economic potential for Member States in the dimension of €760 Million to €4 Billion. With a more realistic average penalty of €10,000 this would amount to a potential of €7.6 to €40 Billion. This sum does not include the additional potential due to fines of illegal shipments within the EU.
5.4 Background data to green list waste exports at European scale

Reporting on green listed waste is not required by the Member States, as neither the Basel Convention nor the Annex IX questionnaire includes questions on such wastes. For that reason, it is difficult to get information and data about the export of green listed waste.

Following Annex III of the WSR, the following materials are classified as major non-hazardous waste streams:

- **Metal and metal-alloy wastes** in metallic, non-dispersible form, like gold, precious metals, aluminium, nickel or zinc scrap, clean uncontaminated scrap containing alloys in bulk finished form, mixed ferrous metals, waste batteries, **electrical and electronic assemblies**, coated waste metal cables, spent catalysts, precious metal and alloy wastes, **end-of-life vehicles** etc.

- Wastes containing principally inorganic constituents, which may contain metals and organic materials, as mining, glass and ceramic wastes, waste gypsum, fly ashes and others

- Wastes containing principally organic constitutes, which ain contain metals and inorganic constitutes, as **solid plastic wastes, paper, paperboard and paper products wastes**, textile, rubber, cork and wood wastes, wastes from agro-food industry, edible fats and oils, **waste pneumatic tyres** and others

- Waste which may contain either inorganic or organic constitutes, such as wastes from paints, wastes from production, formulation and use of resins, latex, plasticisers, glue/adhesives, single use cameras if not contaminated

In addition metal scrap together with mixed non-ferrous metals (heavy shredder fraction), disperse copper and copper alloy residues or slag from precious metal and copper production together with solid residues from smelting and refining processes containing namely zinc or aluminium (see entries in Annex IIIA) can be shipped under Article 18 procedures.

The waste groups marked in bolded letters, are of high concern, as export rates and the economic value is high, exports are especially addressing countries outside the EU and export rate to countries in Asia and Africa have been increasing.

**EEA Information**

In general [EEA 2009] states, that the global market for hazard non-hazardous waste materials emerged, This in particular is effected by increasing quantities of paper, plastics and metal waste shipped every year to the Far East, particularly to China. The report include data for the period from 1995 to 2007, showing that the amounts of waste exported to Asia have increased by the factor ten for waste paper, a factor of eleven for plastics and a factor of five for metals. Shipped waste has also increased within the EU, but at much lower level. The increase of shipments of paper, plastic and metal wastes according to the report is driven by:

• The increasing demand from Asian economies for secondary raw material

• The low transport costs, especially for ship transportation from Europe to Asia

• Lower energy consumption for the production based on secondary raw material (e.g. for paper 50%, for aluminium 95% less energy use) [EEA 2009]

Data availability about illegal shipments for non-hazardous waste is very vague. Following the latest report from the European Environment Agency [EEA 2009] a minor part of illegal waste shipments is related to non-hazardous waste. It mainly concerns waste shipments to non-OECD countries for recovery.

*Information from Waste Statistic Regulation*

EU Member States are obliged to report data on the generation of waste stream under the Waste Statistics Regulation\(^\text{19}\), laid down in Annex I. Included are e.g. discarded vehicles (code 08.1); metallic waste (code 06), plastic wastes (code 07.4). Data is available in EIONET\(^\text{20}\). However, only data for the generation of waste are available, not indicating the quantities for export or import.

*Information from EU trade statistics*

To get more recent information about the shipment of wastes which do not require a notification, the EU trade statistic is the only publically available source of information on EU level\(^\text{21}\).

The European trade statistic is based on the foreign trade statistics provided by the national statistical offices. Data compilation is exclusively based on the Harmonised Commodity Description and Coding System (HS code) managed by the World Customs Organisation. The HS code uses a 6 digit numerical code system classifying all merchandises. The Combined Nomenclature further divides the codes into 8 digits (HS 8).

The combined custom nomenclature is not harmonised with the WSR waste codes, so that in part waste exports cannot be specified as such, but only e determined as part of a product group. For some waste streams (e.g. paper) allocation is feasible, while for others a clear allocation is rather difficult (e.g. metals).


\(^{21}\) The EU trade statistic is part of COMEXT, the database for external trade statistics of EUROSTAT, available at: [http://epp.eurostat.ec.europa.eu/newxtweb/](http://epp.eurostat.ec.europa.eu/newxtweb/)
The following information was extracted from the EU trade statistics, as a basis for impact assessment:

- Data for exports into the EU (cross-border trading of goods between EU Member and countries outside the EU), out of the EU (cross-border trading of goods between EU Member States) and from the EU to China based on EU 27 for most relevant green list waste streams WEEE, plastic and paper ELV, waste tyres, and metal) and the corresponding product groups

For the selection of appropriate customs codes, the transposition table for WSR and customs codes elaborated by Dutch authorities [VROM 2008] and provided for the IMPEL TFS enforcement actions II project was used.

5.4.1 Waste electrical and electronic assemblies (GC010 and GC020)

Referring to [EEA 2009] waste of electrical and electronic equipment (WEEE) is a rapidly growing waste stream as European citizens acquire more and more electrical and electronic goods and frequently exchange appliances for new ones. WEEE contains usually hazardous substances, e.g. heavy metals and at the same time valuable materials such as precious metals, which make it attractive as a secondary resource.

In order to get an indication on export of WEEE, [EEA 2009] evaluated available data on exported colour televisions sets. According to these data, 15,000 tonnes of colour television sets were exported from the EU to African countries in 2005. Whether these televisions were functioning TV sets or were destined for scrapping can only be assumed. The total export of used computers, mobile phones, printers, CD players etc. — of which an unknown quantity may be waste — to these regions is expected to be significantly higher.

**Evaluation of European Trade Statistics**

The applicable product code for electronic and electrical equipment is (customs code 85) including electrical machinery and equipment and parts thereof, sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles. The evaluation of WEEE exports is based on the codes listed in the pertinent correspondents’ guideline\(^\text{22}\). The applicable code for WEEE exports is customs code 8548 (waste and scrap of primary cells, primary batteries and electric accumulators, spent primary cells, spent primary batteries and spent electric accumulators, electrical parts of machinery or apparatus, which are not specified elsewhere in chapter 85).

Export results 2009

In total about 18 million tonnes of electrical machinery and equipment (HS 85) have been exported from EU 27 in 2009.

According to customs declaration (official export of waste) about 257,000 t (1.5 %) of that electrical equipment can be allocated to code 8548.

In addition to code 8548, WEEE tend to be allocated to customs codes for aluminium scrap (7602), copper scrap (7804), tin scrap 8002 and other. Furthermore exporters tend to declare broken EEE (WEEE) as second hand products under a product code. Therefore the figures can be interpreted as minimal numbers of the officially declared export of WEEE.

Economic aspects of exports

The overall export of EEE (HS 85) from EU Member States amounts to about 326 billion €.

The economic value of WEEE is highest when exporting to non-EU countries. In 2009 electronic waste and scrap (HS code 8548) was worth more than €10,000/tonne when exporting to countries outside the EU and only about €2,700 when exporting to a country inside EU 27. Prices for export to China are also comparable low (4,200 €/t in 2009).

5.4.2 Paper, paperboard and paper products (B3020)

Entry B3020 is described in the WSR as:

Waste and scrap of paper or paperboard of:

- unbleached paper or paperboard or of corrugated paper or paperboard
- other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass
- paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)
- Other, including but not limited to a) laminated paperboard; b) unsorted scrap

Note: Unless an entry exists in Annex IIIA to the WSR, the different "green-listed" paper wastes indented under B3020 may not be shipped mixed together in one load but should be kept separately even if listed as one code. (See C-259/05)
Evaluation of European Trade Statistics

The product code for paper is customs code 48 (paper and paperboard; articles of paper pulp, of paper or of paperboard).

For waste paper the corresponding costumes code is 47 applied for pulp of wood, waste and scrap of paper including mechanical and chemical woodpulp, pulps of fiberous cellulosic material and waste and scrap of paper or paperboard [VROM 2008, ETC/RWM 2008].

Export results 2009

Paper products (code 48): exports amount of 71 million tonnes, with three quarters exported inside the EU. The exports to countries outside the EU hence account for roughly 17 million tonnes. Exports to China making the largest share of this quantity.

Waste paper (code 47): In total 32 million tonnes have been exported, of which about 15 million have been exported outside the EU; going mostly to China (about 10 million tonnes). Within code 47 about 24 million tonnes (70 %) are allocated to code 4707 - Recovered (waste and scrap) paper and paperboard.

Table 5-1: Statistical export data for wastes of paper and paperboard in 2009

<table>
<thead>
<tr>
<th>HS code</th>
<th>Description</th>
<th>Share* [%]</th>
<th>Export total [mio t]</th>
<th>Export within EU [mio t]</th>
<th>Exported outside EU (including China) [mio t]</th>
<th>Exported to China [mio t]</th>
</tr>
</thead>
<tbody>
<tr>
<td>4707</td>
<td>Waste of paper and paperboard made mainly of:</td>
<td>100</td>
<td>23,8</td>
<td>10,5</td>
<td>13,2</td>
<td>9,2</td>
</tr>
<tr>
<td>470710</td>
<td>unbleached Kraft paper, corrugated paper or paperboard</td>
<td>48</td>
<td>11,5</td>
<td>3,2</td>
<td>8,2</td>
<td>6,3</td>
</tr>
<tr>
<td>470790</td>
<td>Unsorted paper and scrap</td>
<td>24</td>
<td>5,7</td>
<td>3,0</td>
<td>2,7</td>
<td>1,8</td>
</tr>
<tr>
<td>470730</td>
<td>mechanical pulp</td>
<td>23</td>
<td>5,4</td>
<td>3,5</td>
<td>1,9</td>
<td>1,0</td>
</tr>
<tr>
<td>470720</td>
<td>bleached chemical pulp</td>
<td>5</td>
<td>1,2</td>
<td>0,8</td>
<td>0,4</td>
<td>0,14</td>
</tr>
</tbody>
</table>

* referring to waste and scrap of paper or paperboard (HS code 4707)

Economic aspects of exports in 2009

The prices for new paper (code 48) is ranges from 910 €/t to 950 €/t when exporting inside and outside EU. Prices for exports to China are lower (650 €/t).

The economic value of the exported code 47 waste is about 7 billion Euro. Exports of waste paper and paperboard out off the EU values about 80 €/t. Inside the EU prices are somewhat lower. The prices paid amount for roughly 70 €/tonne. Only for bleached chemical pulp and sorted recovered paper prices within the EU are higher than for export to third countries.
5.4.3 Waste end-of-life motor vehicles, containing neither liquids nor other hazardous components (B1250)

Data on ELV have to be reported under the Waste Statistics Regulation within the code 08.1 (discarded vehicles); however in EIONET\(^{23}\) only data for the generation of end-of-life vehicles are available, not indicating the quantities for export. Following these data, Germany is the main generator of used vehicles with more than 3 million tonnes a year, followed by Italy, Spain, France and the UK, all generating more than 2 million tonnes per year. Data however is only available for EU 15 and the most recent data presented is of the year 2000.

_Evaluation of European Trade Statistics_

Customs code 87 comprises all types of vehicles other than railway or tramway rolling stock including busses, tractors and works trucks. [VROM 2008] suggests codes 8701 until 870911 as corresponding codes for ELV.

A more detailed specification can be retrieved from code 8703 covering motor cars and other motor vehicles designed for the transport of less than 10 persons:

- 870321 – vehicles with less than 1,000 m\(^3\)
- 870322 – vehicles between 1,000 and 1,500 m\(^3\)
- 870323 – vehicles between 1,500 and 3,000 m\(^3\)
- 870324 – vehicles with more than 3,000 m\(^3\)

And motor cars and other vehicles using compression-ignition internal combustion piston engine "diesel or semi-diesel engine", classified as:

- 870331 – vehicles with less than 1,500 m\(^3\)
- 870332 – vehicles between 1,500 and 2,500 m\(^3\) (excluded because comprising also motor homes)
- 870333 – vehicles with more than 2,500 m\(^3\) (excluded because comprising also motor homes)
- 870390 – others

Comparing the data for new and used cars in the above listed categories, the following can be summarised

Export results 2009

New cars: Total exports of 13 million tonnes, with nearly 3.5 million tonnes to non-EU countries. (China 1.3 million)

Used vehicles: About 1.5 million tonnes (11.5 % compared to new vehicles), with exports to countries outside the EU accounting for about 1 million tonnes (66 %). China is not a priority destination, counting for less than 0.1 % of the exports to countries outside EU. It is important to note that the data on vehicle exports describe only the stream of used products and not in terms of waste.

The study of [ETC/RWM 2008] therefore includes data from the European Automobile Manufacturers Association (ACEA) providing regular updates of data on deregistration of vehicles and treated ELV. The data is based on EU-15 and Norway and available only until the year 2004. The data from ACEA show that there is a major gap between the de-registration figures for cars and the treatment figures for ELVs. In 2004 this gap is 3.7 million tonnes (11.4 million tonnes de-registered, 7.7 million of treated ELVs). For this amount, treatment possibilities are shredding without pre-treatment, illegal treatment and abandonment and export as used car.

Economic aspects of exports in 2009

Exports of used vehicles account for about € 9.5 billion. One tonne of used vehicles values about € 6,200. Prices range from an average of €12,000/t inside the EU to €3,000/t in case of export outside the EU.

5.4.4 Solid plastic waste (B3010)

Evaluation of European Trade Statistics

The product code for plastics is customs code 39 (plastics and its articles of all kinds, e.g. primary polymers and ethylene, including finished products such as bathing tubes or bottom tiles made of plastics).

The most appropriate code for waste plastic is customs code 3915, (waste, parings and scrap of plastics). This code is applicable for the first entry in B3010 (scrap plastic of non-halogenated polymers etc.). For the other B3010 entries in practice various other customs codes (e.g. code 3904 or 3906 to 3909) are applied. As the data evaluation is only provided for code 3915, the picture of exports of waste plastics might not be complete.

Export results 2009

Products: In total 73 million tonnes of plastic products were exported, with roughly 19 million tonnes exported to non-EU countries (China share 17%).

Waste plastics (3915): About 4.5 million tonnes (6 % compared to the total amount of exported plastic products). About 3.3 million were exported to countries outside the EU (74 %), with nearly half the amount going to China.
Economic aspects of exports in 2009

Plastic products (code 39) achieved an overall export value of 132 billion €, with specific prices inside the EU of about 1,800 €/t in 2009 and lowest prices (about 1,000 €/t in 2009) when exporting to China. Waste plastics (3915) value about 1.12 billion €, with prices per tonne of € 300/tonne inside the EU and of 230 €/t in case of exports to non-EU countries.

5.4.5 Waste pneumatic tyres, excluding those destined for Annex IVA operations (B3140)

B3140 includes waste pneumatic tyres, excluding those destined for disposal without energy recovery or material recovery possibilities.

According to recent reports [ETC/RWM 2008] waste tyres are one of the waste streams, often exported as second hand goods. Illegal shipments are then often caused by the different interpretation between waste and product.

Evaluation of European Trade Statistics

The code in the European trade statistics corresponding best to potential exports of waste tyres is customs code 40122090 (used pneumatic tyres of rubber, excluding those for civil aircraft); however, latest data (28 million tyres) are from 2005. Alternatively 40121100 pneumatic tyres of rubber, including also aircraft tyres, could be used. Other potential codes for customs declaration are customs code 40111000 (new tyres), and customs code 40121100 (retreated pneumatic tyres used for motor cars, incl. station wagons and racing cars). These codes are exclusively allocated to the use of the tyres for cars, not including other vehicles like buses etc.

Export results 2009

Code 40122000: For used tyres latest corresponding data are only available for pneumatic tyres of rubber, including also aircraft tyres. Following these data, about 21.6 million tyres (206,300 t) are exported in total.

Code 40121100: 2.5 million retreated tyres (about 26,000 tonnes) have officially been exported with 975,000 items to third countries.

Code 40111000: 288 million tyres (about 1.8 million tonnes).

Table 5-2: Export of new, retreated and used tyres from EU member States in 2009

<table>
<thead>
<tr>
<th>HS code</th>
<th>Description</th>
<th>Export outside EU [items]</th>
<th>Exported inside EU [items]</th>
</tr>
</thead>
<tbody>
<tr>
<td>40111000</td>
<td>New pneumatic tyres of rubber</td>
<td>37.562.853</td>
<td>250.633.731</td>
</tr>
<tr>
<td>40122000</td>
<td>Used pneumatic tyres of rubber</td>
<td>16.509.384</td>
<td>5.096.324</td>
</tr>
<tr>
<td>40121100</td>
<td>Retreated pneumatic tyres of rubber</td>
<td>1.545.967</td>
<td>975.225</td>
</tr>
</tbody>
</table>
Economic aspects of exports in 2009

Used tyres: The export accounts to about € 150 million with exports to non-EU countries having an economic value of about € 63 million. Prices are higher for exports inside the EU (17 €/tyre) than for exports to third countries (~5 €/tyre). Retreated tyres value about 19 € when exported inside EU and 9 € when exported to non-EU countries.

5.4.6 Metal and metal-alloy wastes (B1010)

B1010 comprises metal and metal-alloy wastes in metallic, non-metallic dispersible form. According to a recent report [ETC/RWM 2008] the main categories of waste metals exported are waste iron and steel, waste copper, waste aluminium and waste nickel.

Evaluation of European Trade Statistics

The relevant customs codes, corresponding to the main export categories for waste metals are (7204) for iron and steel scrap, 740400 for copper scrap, 750300 for nickel scrap and 760200 for aluminium scrap [VROM 2008]. Looking at the amounts exported also lead (7802000) and zinc wastes (7902000) might be relevant.

Export results 2009

For the 6 major metal scrap codes in total more than 45 million tonnes were exported, of which 40 % were imported out off the EU. China is a major export country a share of 6 %.

Table 5-3: Export of main metal wastes in 2009

<table>
<thead>
<tr>
<th>HS code</th>
<th>Description</th>
<th>Export third countries [t]</th>
<th>Exported inside EU [t]</th>
</tr>
</thead>
<tbody>
<tr>
<td>7204</td>
<td>Ferrous waste and scrap; remelting scrap ingots of iron or steel (excl. slag, scale and other waste from the production of iron or)</td>
<td>15,668,327</td>
<td>24,224,756</td>
</tr>
<tr>
<td>7404000</td>
<td>waste and scrap, of copper (excl. ingots or other similar unwrought shapes, of remelted copper waste and scrap, ashes and</td>
<td>1,174,184</td>
<td>1,139,149</td>
</tr>
<tr>
<td>7503000</td>
<td>waste and scrap, of nickel (excl. ingots or other similar unwrought shapes, of remelted nickel waste and scrap, ashes and residues containing nickel and waste and scrap of primary cells, primary batteries and electric accumulators)</td>
<td>16,002</td>
<td>40,711</td>
</tr>
<tr>
<td>7602000</td>
<td>waste and scrap, of aluminium (excl. slags, scale and the like from iron and steel production, containing recoverable aluminium in the form of silicates, ingots or other similar unwrought shapes, of remelted waste and scrap, of aluminium, ashes and residues from aluminium production)</td>
<td>1,126,743</td>
<td>1,737,949</td>
</tr>
<tr>
<td>7802000</td>
<td>lead waste and scrap (excl. ashes and residues from lead production &quot;heading no 2620&quot;, and ingots or other similar unwrought shapes, of remelted waste and scrap, of lead &quot;heading no 7801&quot; and waste and scrap of primary cells, primary batteries et electric accumulators)</td>
<td>45,293</td>
<td>122,504</td>
</tr>
<tr>
<td>7902000</td>
<td>waste and scrap of zinc (excl. ash abd residues from zinc production ‘heading 2620’, ingots and other similar unwrought shapes,</td>
<td>111,114</td>
<td>102,913</td>
</tr>
</tbody>
</table>
Economic aspects of exports in 2009

The total export value of metal scrap (including the 6 metals mentioned above) is about €17 billion (about 379 €/t). The economic value is the same for exports inside and outside EU; for China however prices are higher (about 860 €/t).

Only for copper the economic value is higher when transported within the EU instead of being exported out of the EU (2,300 €/t versus 1,600 €/t). All other metals are more valuable when exported outside the EU. The highest economic value is reached for nickel scrap (4,700 €/t out of EU and 2,500 inside EU). Lowest prices are reached for ferrous metals being about 230 €/t for both inside and outside EU transports.
6   Annex

Table 6-1: Overview on deficits as identified during information exchange seminars related to the WSR through 2007 - 2009

<table>
<thead>
<tr>
<th>MS</th>
<th>Deficits identified in the context of information exchange events</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT</td>
<td>Common understanding of responsibilities in case of illegal shipments</td>
</tr>
<tr>
<td></td>
<td>• Insufficient competences for transit authorities in case of illegal shipments</td>
</tr>
<tr>
<td></td>
<td>• Systematic (risk based) planning of shipment inspections not realised</td>
</tr>
<tr>
<td></td>
<td>• Company inspections only performed in case of suspicion</td>
</tr>
<tr>
<td></td>
<td>• Illegal shipments will mostly be detected by other countries and not within country of dispatch</td>
</tr>
<tr>
<td></td>
<td>• Remaining deficits in awareness and lack of knowledge at regional and local level</td>
</tr>
<tr>
<td></td>
<td>• Cooperation networks not fully established in a number of Federal Provinces (Bundesländer)</td>
</tr>
<tr>
<td></td>
<td>• Partial antagonism of waste shipment requirements with free movement of goods</td>
</tr>
<tr>
<td></td>
<td>• Low detection rate during road inspections</td>
</tr>
<tr>
<td></td>
<td>• Involvement of traders and dealers</td>
</tr>
<tr>
<td></td>
<td>• Mandatory waste labelling on trucks would facilitate selection</td>
</tr>
<tr>
<td></td>
<td>• Lack of full competence of police services in waste sector</td>
</tr>
<tr>
<td>BE</td>
<td>Lack of legislative rules and clarity in classification of waste/product</td>
</tr>
<tr>
<td></td>
<td>• Participation of Custom services could be improved, Custom tends to focus on transports with higher financial impact</td>
</tr>
<tr>
<td></td>
<td>• Horizontal structure of Belgium administration with permitting of waste shipments 100% under regional responsibility, whereas transit of waste is under sole responsibility of federal government; this easily entails deficits in information transfer and complicates coordination between the regions (low level of information exchange and coordination between the regions)</td>
</tr>
<tr>
<td></td>
<td>• Problems in collaboration with other MS; waste shipments that are supposed to be illegal should generally be tackled earlier; few language problems</td>
</tr>
<tr>
<td></td>
<td>• Lack of communication with non EU countries, e.g. Chinese authorities</td>
</tr>
<tr>
<td></td>
<td>• Deficits in rules on cooperation in case of illegal shipments and request for take-back</td>
</tr>
<tr>
<td></td>
<td>• Deficits in clarity with respect to procedural aspects (notification or green list procedure) in case of export of “green listed” wastes to third countries (one country requires notification neighbouring country accepts “green list” procedure)</td>
</tr>
<tr>
<td></td>
<td>• Big difficulties in identification of responsible waste owner due to large net of intermediates such as brokers, dealers</td>
</tr>
<tr>
<td></td>
<td>• Problem of non European dealers travelling and buying waste throughout the entire EU and shipping it via large ports; when illegal transport is detected, no possibility to make liable; person normally returned already to country of origin, no permanent residence in EU; however repeated re-immigration with dealer’s visa, resulting in repeated cycles of illegal shipments</td>
</tr>
<tr>
<td></td>
<td>• Deficits in current specification who is liable (who has to pay disposal / storage) in case of illegal shipments</td>
</tr>
<tr>
<td></td>
<td>• Difficulties in fulfilling the requirement to check final fate of waste in country of destination outside EU; no confirmation on accomplished treatment as required; in addition notifiers often wait until short time period before the envisaged transportation date to choose recovery site; sometimes, the site is changed during transport</td>
</tr>
<tr>
<td></td>
<td>• Custom code and waste code are not always congruent, e.g. one custom code number applies to several waste entries within the EC Shipment Regulation</td>
</tr>
<tr>
<td>MS</td>
<td>Deficits identified in the context of information exchange events</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>• Current lack of financial guarantee in case of illegal shipments entraining important disposal/storing costs for administration in typical transit countries such as Belgium; existing penalties not sufficient</td>
</tr>
<tr>
<td></td>
<td>• Lack of labelling of waste transports as important tool for effective control and prosecution of illegal waste transports by the police</td>
</tr>
<tr>
<td>CY</td>
<td>Problems are experienced with correct classification of hazardous wastes (countries of destination partly require a different coding)</td>
</tr>
<tr>
<td></td>
<td>• Problems are experienced with calculation of financial guarantees (in case of general notifications should the guarantee be required for the total quantity or only for the actual transport?)</td>
</tr>
<tr>
<td></td>
<td>• Due to the specific political situation in Cyprus since 1974, imports from the Northern part of Cyprus to the South may officially not be regarded as imports from a third country. However, these imports are often assumed to not stem from the northern part of Cyprus but enter the territory from other countries, mainly Turkey.</td>
</tr>
<tr>
<td></td>
<td>• Lack of knowledge and control on waste movements to and from British Military Bases in Cyprus; wastes (kitchens, refrigerators, boots, uniforms, PCB containing transformers) from these bases are sold as second hand goods on Cypriot territory</td>
</tr>
<tr>
<td></td>
<td>• Frequently inexistent destination addresses are used with freight imports in order to get rid of waste loads. Unlike other product cargoes which have not been cleared within 40 to 50 days, imports containing waste cannot be sold by public auctions and have to be stored at the customs. This will need an amendment in the legislation.</td>
</tr>
<tr>
<td>CZ</td>
<td>Illegal waste shipments into the Czech Republic; pretended waste transfers</td>
</tr>
<tr>
<td></td>
<td>• Logistic problems by the joining the Schengen area, due to end of border controls</td>
</tr>
<tr>
<td></td>
<td>o Lack of appropriate locations for inspections and controls due to restitution of customs premises.</td>
</tr>
<tr>
<td></td>
<td>o Full access to data bases at European level (infractions, major waste streams, names and contact data of offending bodies, etc)</td>
</tr>
<tr>
<td></td>
<td>• Knowledge transfer (Manual on waste appearance)</td>
</tr>
<tr>
<td></td>
<td>• Deficits in co-operation with other MS, in particular:</td>
</tr>
<tr>
<td></td>
<td>o Lack of support in effective controls of waste transports on the other side of the borders</td>
</tr>
<tr>
<td></td>
<td>o Difficulties in the sector of police and judicial co-operation in criminal matters (particular problem to prosecute institutions seated in other MS)</td>
</tr>
<tr>
<td></td>
<td>o No timely reaction by other MS’ authorities on request or even no reaction at all</td>
</tr>
<tr>
<td></td>
<td>o Language barrier (submission of documents in German and not in English)</td>
</tr>
<tr>
<td></td>
<td>o Deficit in data exchange (e.g. data on administrative and criminal convictions / prosecuted institutions and/or persons)</td>
</tr>
<tr>
<td></td>
<td>o Notification obligation for “green” listed waste (e.g. transport to Poland)</td>
</tr>
<tr>
<td></td>
<td>• Lack of man power and resources namely as concerns night/weekend availability of environmental inspectors.</td>
</tr>
<tr>
<td></td>
<td>• Problems remain with a inconsistent jurisdiction of Czech courts which not always sufficiently considers environmental impacts;</td>
</tr>
<tr>
<td>DE</td>
<td>Big ports such as the port of Hamburg are for logistical reasons the bottleneck for shipments and therefore predestined for control actions to prevent illegal shipments. But it is not feasible to conduct controls only at the ports. Controls on the whole transport way are needed.</td>
</tr>
<tr>
<td></td>
<td>• The custom services and the police including the water protection police are restricted and limited in their actions, e.g. by a restricted time detaining a cargo or by limitation in the data exchange between the authorities. Data from the custom cannot be used in general, but can be required in the case of justified suspicion of a certain transport.</td>
</tr>
<tr>
<td>MS</td>
<td>Deficits identified in the context of information exchange events</td>
</tr>
<tr>
<td>----</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>• As most problematic issues is the distinction between used products and waste e.g. used electronically devises and electronic waste or used cars and end-of-life vehicles and the distinction between hazardous and non-hazardous waste e.g. cable scrap (waste identification code B1115 or A1190).</td>
</tr>
<tr>
<td></td>
<td>• The coding system used by the custom services does include information about ongoing transports and about the load, e.g. it specifies product classes (e.g. automobiles) but does not include information on the final destination and the properties of the load, e.g. product / used good / waste.</td>
</tr>
<tr>
<td>EE</td>
<td>Need for amendment of Estonian Waste Act (e.g. articles on tax frauds and environmental violation to adapt it to needs of Shipment Regulation)</td>
</tr>
<tr>
<td></td>
<td>• Control of shipment of waste currently not included in work plan of environmental inspectorates</td>
</tr>
<tr>
<td></td>
<td>• The existence of concurring classification systems (Basel, EWC, customs declaration system) complicates correct allocation and identification of waste types</td>
</tr>
<tr>
<td></td>
<td>• Limited possibility for custom offices to detain cargo (maximum three days) without justified suspicion (general problem in EU)</td>
</tr>
<tr>
<td></td>
<td>• No possibility for environmental authority to stop transports, open containers and detain transports (general problem within some countries)</td>
</tr>
<tr>
<td></td>
<td>• Lack of preciseness in waste definition within the WFD major reason for classification problems related to shipment of waste (classification goods – waste)</td>
</tr>
<tr>
<td></td>
<td>• Existences of large number of intermediate companies which can issue movement documents in the name of others (e.g. producer and consignee) complicate the tracing of transport routes and ownership</td>
</tr>
<tr>
<td></td>
<td>• How to determine environmental standard in third country of destination?</td>
</tr>
<tr>
<td></td>
<td>• Customs do not have insight into production processes/standards, so they need education and information from permit authorities’ human resources. knowledge, experiences</td>
</tr>
<tr>
<td>ES</td>
<td>• Missing controlling activities in harbours as regards non-food cargo</td>
</tr>
<tr>
<td></td>
<td>• Cooperation with other member states and third countries is occasionally difficult – deficits in information transfer, addressing of the wrong contact persons / authorities, significant delays in information exchange</td>
</tr>
<tr>
<td></td>
<td>• Notification process takes significant time; companies would appreciate if the process could be accelerated</td>
</tr>
<tr>
<td></td>
<td>• Identification of producers might be difficult in case of multiple producers</td>
</tr>
<tr>
<td></td>
<td>• The fact that Spanish legislation classifies importers/traders as “producer“ might cause difficulties with liability (seen as a European problem)</td>
</tr>
<tr>
<td></td>
<td>• High administrative burden for waste shipments within EU; Target: Waste shipment controls within the EU should be simplified (ideally as simple as within a Member State)</td>
</tr>
<tr>
<td></td>
<td>• Fixation of routing and actual date of shipment in movement documents is not conform to needs of practical transport (maritime transports change routes commonly; terrestrial transport needs flexibility in routing due to varying traffic conditions)</td>
</tr>
<tr>
<td></td>
<td>• The required validity of the financial guarantee (until certification of final treatment) entails high financial burdens (e.g. various guarantees deposited at cross-cutting periods of time)</td>
</tr>
<tr>
<td></td>
<td>• Requirements regarding detail and height of financial guarantees not consistent throughout EU or even at national level</td>
</tr>
<tr>
<td></td>
<td>• Extension of notification or re-issuing of notification after 1 year imposes significant administrative burdens, Target: facilitated procedure for renewal of notifications</td>
</tr>
<tr>
<td></td>
<td>• Difficulties in interpretation of notification and information requirements.</td>
</tr>
<tr>
<td>MS</td>
<td>Deficits identified in the context of information exchange events</td>
</tr>
<tr>
<td>----</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Target: Manuals on waste classification and on how to interpret the Shipment Regulation would be appreciated / are necessary</td>
</tr>
<tr>
<td></td>
<td>• No involvement of regional authorities in notification of shipments to third countries; no knowledge about shipments at local level</td>
</tr>
<tr>
<td></td>
<td>• No information about interaction/information exchange between customs authorities and permitting authorities (environment authorities)</td>
</tr>
<tr>
<td></td>
<td>• No information on type and extent of customs control for non-food cargo</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FI</th>
<th>Classification problems and interpretation issues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Transport routes</td>
</tr>
<tr>
<td></td>
<td>• Financial guarantee</td>
</tr>
<tr>
<td></td>
<td>• Problems with “grey area”: industrial raw material/by-products; used products exported for continued use (particular ELV and WEEE)</td>
</tr>
<tr>
<td></td>
<td>• Particular problems with amber listed waste: Intentional/unintentional misclassification at facility level; ignorance of hazardous properties</td>
</tr>
<tr>
<td></td>
<td>• No joint control actions; enforcement actions yet to improve</td>
</tr>
<tr>
<td></td>
<td>• “Penalty policy”; current policy does not set out major incentives to act legally compliant</td>
</tr>
<tr>
<td></td>
<td>• Particular problems with shipments to non OECD countries / collaboration with Russian authorities</td>
</tr>
<tr>
<td></td>
<td>• Trickling flow of information from other authorities towards SYKE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FR</th>
<th>Lack of electronic exchange of notification documents between involved authorities extremely complicates the meeting of deadlines or even makes it impossible to cope with them</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Deficits in transferral of copies of acknowledgement of receipt to other competent authorities</td>
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<td>• The fact that annexes in the Regulation have already been changed currently concurrent documents are circulating within the EU which not completely correspond to each other, and which may cause problems at customs control leading to a potential classification as illegal.</td>
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<td>• Lack of correspondence between substance/product codes in Regulation 1013/2006 and customs product codes (this would be important both on European and international level, control bodies in third countries mainly being customs services)</td>
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<td>• Difficulties for customs to determine the final destination of a merchandise as well as lack of information on envisaged treatment</td>
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<tr>
<th>GR</th>
<th>• Administrative capacity at the YPEHODE is not sufficient to carry out controls or to join such controlling actions, as the staff is working on a high amount of notification procedures.</th>
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<td>• The Port Authority is basically checking the papers provided relying on the information of the competent authority. Physical checks are conducted seldom, as only a couple of hours are given for such control and more and trained staff would be needed. Collaboration with the custom or the police on a daily working basis does not seem to exist.</td>
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<td>• Greece is still depended on exports, as treatment facilities for hazardous waste and some specific waste streams are missing.</td>
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<td>• Regarding non-hazardous waste, concerns were expressed for the export to OECD countries and the difficulties with classification (waste or by-product, hazardous or non-hazardous).</td>
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<td>• It was expressed that there exist administrative difficulties, primarily due to limited resources (human, technical, financial) to effectively monitor the implementation of the Waste Shipment Regulation</td>
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<td>• The terminology and the calculation of the insurance contract or the relevant financial guarantee seem to be problematic.</td>
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|    | • Some cases of difficulties with the classification of waste were reported, as e.g. the case of the
<table>
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<tr>
<th>MS</th>
<th>Deficits identified in the context of information exchange events</th>
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<tbody>
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<td>waste from rice production (rice husk ash) not being sure whether it needs to be classified as waste or as by-product.</td>
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</table>
| HU | • Interpretation issues (e.g. interpretation of Financial guarantee, especially Art. 40 and Art. 59(1a))  
   • Shared responsibility/liability between competent authorities  
   • Language of notifications (in case of transit application: which language should be used within the notifications?) à still unclear situation; the question who is responsible for translations has to be clarified |
| IT | Cooperation and communication with other MS is highly complicated by the fact that English and French are seldom used in the communication.  
   • Severe lack of treatment capacity (especially disposal) in Italy  
   • Substances which under Italian legislation are regarded as secondary raw material and product may be classified as waste in other MS, resulting in “illegal” shipment; as this is not intended industry should be released from liability (FISE)  
   • The shipment regulation does not contain provisions as concerns numbers of inspections to be made |
| LV | Low political priority and in times not enough human capacities to keep the deadlines as introduced by the Waste Shipment Regulation  
   • Comparability poor communication between all involved authorities; low interlinkage of information (e.g., no common data bases are in place)  
   • Specific environmental expertise is not in place at enforcement authorities; specialized units are not in place and not planned  
   • Reasonable legislation in place (e.g. on cooperation of authorities, on sanctions for legal persons) but in many cases not applied in practice  
   • Customs rather focus on ingoing merchandise and on classic suspicious goods such as drugs and weapons  
   • Comparably overall number of controls, particularly in case of transit constellations within internal market  
   • Existing of different understanding and interpretations within Member States of transitional rules (e.g. for financial guarantee)  
   • Existing of different understanding and interpretations within Member States of language in which notification has to be submitted (see Article 8(1) and 27 of Waste Shipment Regulation)  
   • Statement of company representative that in several cases national authorities and courts would not respect European legislation and European court of Justice |
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| PT | • Deficits in registration of brokers, poor control on management of residues, problems with enforcement of responsibility of producers (IGAOT)  
• The APA data bases currently is not open to customs and police  
• Identification of appropriate classification codes for waste mixtures (Annex IIIA) (APA)  
• Lack of knowledge on origin, BAT in countries of destination, 100% recycling for waste mixtures (IGAOT)  
• Knowledge on and traceability of final treatment facilities and control on final treatment certificate in case of intermediate operations (APA, IGAOT)  
• Work is complicated and harmonisation is hampered by the fact that guidelines are not binding  
• Public prosecutors seem to be not always sufficiently aware that customs can detain cargo only for a limited time (Customs)  
• In case the protest of a cargo owner was up-held there is nobody to cover costs. Customs cannot be made liable for these costs (Customs)  
• It is to be clarified who is responsible for the storage of an illegal cargo and how the financial guarantee can be used (Customs)  
• It is extremely difficult to call to account brokers/to hold brokers responsible; here juridical support is needed (Customs)  
• Exporters/importers pretend to not knowing legal requirements (Customs)  
• Attempts to classify goods in different tariff headings (Customs)  
• Attempts to falsify ports of destination (declare authorised port, but call at another one) (Customs)  
• Prosecution of foreign offenders is too difficult  
• Triangulation: fake consignee in the EU final destination third country e.g. Hongkong (Customs)  
• Too high administrative burdens for transport within the EU (industry) |
| SE | Absence of penalties for waste shipment; intended action not fineable, only system in place for smuggling (urgent need)  
• Illegal shipments will generally be detected by other countries and not within country of dispatch  
• Important awareness deficits and knowledge lack at regional and local level  
• Cooperation networks not yet established in the majority of counties  
• Lack of specific guideline for inspections related to shipment of waste  
• Major awareness deficits within police administration  
• Establishment of transport control unit in police dealing also with illegal waste transports  
• Lack of inspections; • Lack of knowledge on extend of illegal transports  
• Need for national strategy for inspections and enforcement (to be developed by MoE?)  
• Need for electronic waste documentation system, following the example of NO (industry)  
• No satisfying solution for coverage of destruction costs in case of detection of illegal shipment  
• Under current legal conditions police can only check for traffic safety but cannot investigate for environmental issues. If this is required the legal framework would need to be changed (e.g. illegal waste import/export regarded as environmental crime)  
• Lack of legal framework on waste issues/environmental issues in police code (coast guards and road police only look for safety risks; don’t know about and look at waste issues  
• Only 2 scanners in SE; generally not yet used for detection of illegal waste transports  
• Increased administrative effort and increased level of complexity due to entry into force of new regulation  
• Classification system highly complex, simplification needed  
• WEEE are stolen from collection sites and illegally exported |
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