



Brussels, 11.7.2013
COM(2013) 516 final

2013/0239 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 1013/2006 on shipments of waste

{SWD(2013) 267 final}

{SWD(2013) 268 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Waste Shipment Regulation (Regulation (EC) No 1013/2006¹, "WSR") lays down requirements for shipments of waste both within the EU and between the EU and third countries, in order to protect the environment. The WSR has stricter rules for hazardous waste than for non-hazardous waste.

All exports of hazardous waste to countries outside the OECD and all exports of waste for disposal outside the EU/EFTA are prohibited (Articles 34 and 36 of the WSR). The WSR's ban on exports of hazardous waste outside the OECD implements the UN Basel Convention's export ban from 1995. Non-hazardous waste can be exported for recovery outside the OECD provided the waste will be managed in an environmentally sound manner, i.e. in a way which is broadly equivalent to rules applied in the EU².

Within the EU, all shipments of waste for recovery shall be entitled to free movement.³ For non-hazardous waste, such shipments are not subject to any prior notification and only have to fulfil general information provisions (Titles II-IV of the WSR). Shipments of hazardous waste for recovery and shipments of waste for disposal are both subject to prior written notification and consent. However, as regards shipments of waste for recovery, the competent authorities may only oppose a shipment based on the environmental grounds set out by the WSR (Article 12).

Specific obligations are laid down concerning a duty to take back waste shipments which are found to be illegal or which cannot be completed as envisaged (Articles 22-25 of the WSR).

Article 50 of the WSR contains a general provision on enforcement stipulating that Member States shall provide for inspections of establishments and undertakings in accordance with the inspection requirements in Directive 2008/98/EC (Waste Framework Directive), and that Member States may check transports by road, in ports etc. or at a later stage when the waste has already arrived at a recovery or disposal facility. Controls are otherwise left to Member States' discretion. The WSR does not contain any specific provisions on how inspections shall be carried out: it only stipulates that "Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste."

As a result of this general formulation of inspection requirements in the WSR, there are large differences between Member States. Some have developed thorough, well-functioning inspection systems targeting either waste shipments in ports or at the sites of waste producers and collectors, while others have significant problems with enforcement and lack adequate structures and resources to control waste streams and carry out inspections. This situation leads to 'port hopping', i.e. exporters of illegal waste choose to send their waste through Member States with the least controls. If enforcement in one Member State is stepped up, illegal exporters move their exports to another Member State. Effectively preventing illegal

¹ Regulation (EC) no 1013/2006 of the European Parliament and of the Council on shipments of waste, OJ L 190, 12.7.2006, p.1.

² Articles 18, 49 and Annex VII of the WSR. See also Commission Regulation (EC) No 674/2012 of 23 July 2012 amending Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste to certain non-OECD countries.

³ Mixed municipal waste collected from private households, including where such collection also covers waste from other producers (waste entry 20 03 01), are subject to the same provisions as waste for disposal, Article 3(5) of the WSR. Incoming shipments to incinerators classified as recovery are subject to specific rules, Article 16 of Directive 2008/98/EC ("the Waste Framework Directive").

waste shipments can therefore only be achieved if sufficient controls are carried out in all Member States.

The most problematic illegal waste shipments are those concerning hazardous waste and waste which is illegally sent for dumping or sub-standard treatment. The dumping or substandard treatment of waste often has severe impacts on the environment and human health for populations surrounding the disposal/treatment area. Leaks from discarded waste also harm soils and water streams, and produce air pollution, through emissions of e.g. heavy metals and persistent organic pollutants. If recycling standards and capacity in the countries of destination are not adequate, potential environmental and health hazards are simply being exported to other parts of the world. This also contributes to global warming and ozone depletion.

This legislative proposal will support and steer Member States' inspections in order to target the problematic and high-risk waste streams described above. Risk assessments shall be carried out by Member States, covering specific waste streams and sources of illegal shipments, and considering intelligence-based data, such as police investigations and analyses of criminal activities. Every year priorities for inspections shall be selected based on these risk assessments and published in the annual inspection plans. These plans shall be made available to the public. Inspectors shall take the inspection plans into account and require evidence from suspected illegal waste exporters according to the relevant provisions in the proposal.

Illegal waste shipments are a serious and frequent problem. The export bans for hazardous waste and waste for disposal under the WSR are often circumvented. Exports of hazardous waste are often labelled as second-hand goods and waste for disposal as waste going to recovery. This is confirmed by the joint inspections carried out by the "network for the implementation and enforcement of environmental law, trans-frontier shipments of waste-cluster" (IMPEL-tfs) and supported by the Commission; this revealed very high rates of non-compliance with the WSR due to illegal waste shipments. As part of the joint inspections during the period October 2008-November 2010, 22 Member States checked and reported on transports by road and in ports (over 20,000 transport inspections and over a hundred company inspections).⁴ Taking into account the total number of inspected waste shipments from and within the EU during the period (3,454) and the number of violations (863), the overall non-compliance rate can be estimated to be 25%.

In 2011 a study estimated the tonnage of illegal shipments as a proportion of the total amount of waste shipments within and out of the EU.⁵ The study concluded that if only 1% of all waste shipments were illegal, the total tonnage of illegal waste shipments would amount to 2,8 million tonnes per year.

Illegal waste shipments out of the EU frequently stem from uncontrolled collection, storage and sorting facilities, where illegal operators get hold of the waste and ship it illegally to developing countries. A 2011 Europol study⁶ concluded that intermediate storage sites are often used to disguise the ultimate destinations of waste and to frustrate law enforcement efforts to identify source companies.

The ports in the north-western part of the EU (Antwerp, Hamburg, Le Havre and Rotterdam) play an important role in the export of waste (e-waste, end-of-life vehicles, plastics, paper and various types of hazardous waste) to countries in Africa and Asia. As many of these ports see

⁴ IMPEL's detailed report from the joint inspections is available on: <http://impel.eu/wp-content/uploads/2012/01/IMPEL-TFS-EA-II-Project-Final-report-adopted-v1-4.pdf>.

⁵ Assessment and guidance for the implementation of EU waste legislation in Member States, BiPRO, 16 November 2011, <http://ec.europa.eu/environment/waste/shipments/reports.htm>.

⁶ Europol's 'EU organised crime assessment', 28 April 2011, p. 30. <https://www.europol.europa.eu/>.

large tonnages of waste (both lawfully and illegally) shipped out of the EU, they have more frequent controls and, for this reason, probably detect more illegal waste shipments.

Effective enforcement and inspections of waste shipments would not only help prevent the serious environmental and health impacts stemming from illegal waste shipments, but also save high costs and result in direct economic benefits for Member States and industry. Financial benefits stemming from better enforcement include avoided clean-up and repatriation costs. For instance, a recent study showed that stricter enforcement in the port of Rotterdam resulted in increased quality and quantity of waste recycled, as waste was routed via legal channels to facilities with better treatment techniques. Reinforced inspections in the port of Rotterdam also led to the creation of 22 jobs – in customs, inspections and waste treatment plants⁷.

Council conclusions of 3 June 2010 invited the Commission, *inter alia*, to consider strengthening EU requirements on inspections and spot checks carried out under the WSR. In response to this, the Commission has assessed the issue in more detail and has prepared an ex ante impact assessment, in line with its guidelines on impact assessments.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

On 25 January 2011, the Commission launched an on-line stakeholder consultation via its EUROPA website in line with the minimum standards for consultation. The consultation was open to all stakeholders for eleven weeks, accessible via the single access point on the internet.⁸ During the consultation, 65 contributions were received from 18 Member State authorities, one EEA country authority, 25 industry organisations, five private companies, two public organisations, three NGOs and 11 individuals⁹. The stakeholders expressed wide support in favour of EU legislative requirements on waste shipment inspections (90% of respondents).

During a 2012 public consultation on burdensome legislative acts for SMEs, a concern was raised that the WSR has not led to the creation of a common market for waste utilisation and recycling due to differences in implementation and interpretation across Member State, and that more should be done to ensure uniform implementation of the WSR with more focus on hazardous waste and less on unproblematic waste. Another concern raised was that there should be further simplification of procedures to move waste between Member States, leaving the inspection and evaluation of waste treatment facilities to the authorities of the receiving Member State.

This legislative proposal on waste shipment inspections aims to help ensure more uniform implementation of the WSR through establishing minimum inspection requirements throughout the EU with a focus on problematic waste streams.¹⁰ Under the WSR, there already is a simplified procedure for shipments of waste for recovery compared to shipments of waste for disposal. However, the lack of harmonised inspection procedures undermines a

⁷ Study 'Implementation of EU waste legislation for green growth', BioIntelligence Service, 2011, <http://ec.europa.eu/environment/waste/studies/pdf/study%2012%20FINAL%20REPORT.pdf>.

⁸ The stakeholder consultation was partly based on two studies, 'Inspection requirements for waste shipments', final report 12 August 2009, Biointelligence <http://ec.europa.eu/environment/waste/shipments/reports.htm>; and 'Environmental, social and economic impact assessment of possible requirements and criteria for waste shipment inspections, controls and on-the-spot-checks', final report 4 June 2010, Biointelligence SA <http://ec.europa.eu/environment/waste/shipments/reports.htm>.

⁹ <http://ec.europa.eu/environment/waste/shipments/news.htm>.

¹⁰ See also the Commission's Communication on the follow-up to the 'TOP10' consultation of SMEs on EU regulation.

proper functioning of the internal market with respect to waste shipments. A proper functioning of the internal market requires that inspections of waste shipments are carried out effectively throughout the EU. The current lack of a level playing field due to wide disparities in enforcement practices puts law-abiding businesses at an economic disadvantage. The high rates of illegal waste shipments undermine the legitimate waste treatment and disposal industries. If the WSR was applied properly throughout the EU, this would reinforce confidence and trust in the waste shipment system among economic operators. Companies in the recycling and waste management sector would find incentives to invest and create new jobs.

The *inspection* of waste treatment facilities is a task for the authorities in the Member State where they are located. However, it is necessary for the competent authority in the Member State of dispatch to be able to *evaluate* how the waste will be managed by the facility in the receiving Member State. For example, the dispatch authority may after having examined the nature of the waste conclude that it cannot be managed in accordance with Articles 11-12 of the WSR by the facility in the receiving Member State. This evaluation has to be made *before* the shipment leaves the dispatch country, otherwise illegal shipments cannot be prevented. If the shipment is illegal, the dispatch country may have to pay the bill for, *inter alia*, taking the waste back. The *evaluation* of waste treatment facilities cannot therefore be left solely to the authorities of the receiving Member State.

The Commission's ex ante impact assessment on this legislative proposal examined several options to strengthen inspections and enforcement of the WSR. The EU "network for the implementation and enforcement of environmental law, trans-frontier shipments of waste-cluster" (IMPEL-tfs), authorities in Member States and various groups of stakeholders were closely involved in the preparation of studies that were conducted to support the assessment.

The assessment concluded that a combination of EU legislative requirements and guidance would be the most effective option to address the problems related to illegal waste shipments. This option would also have the lowest net costs and the most positive economic, social and environmental impacts. It would result in significant cost savings for clean-up and repatriation as well as indirect cost savings for Member States where waste transits. Industry would also benefit from harmonisation of legislation. Higher quantities of waste routed through legal channels would lead to optimised processes, better sorting techniques and better waste quality. A legal requirement to reinforce inspections could also create new jobs and avoid relocation of jobs outside the EU.

Costs for Member States that lack adequate inspection systems (e.g. for hiring staff, and upgrading infrastructure and inspections) have been estimated as part of the impact assessment. These costs would be around €1 million/year for the whole EU, but could be outweighed by the economic and social benefits and/or financed by collected fines. According to the impact assessment, the additional inspections required would break even if less than 1% of all the yearly inspections would result in average fines.

The impact assessment found that inspection planning is the most important of the proposed legislative measures. The second most important contributor to solving the problem would be the possibility for competent authorities in Member States to require evidence from suspected illegal waste exporters in order to check the legality of shipments, and then in descending order, controls of upstream facilities and training for authorities.

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1(3)(b) of this proposal amends Article 50 of the WSR by introducing requirements for inspection planning for waste shipments.

Article 1(3)(c) introduces in Article 50, the possibility for the competent authorities in Member States to require evidence from suspected illegal waste exporters in order to check the legality of shipments. Such evidence may concern whether the substance or object is "waste" or not, whether the shipment is destined for recovery or disposal, or the nature of the specific waste treatment methods and standards applied by the facility in the country of destination, with a view to assessing compliance with Article 49 of the WSR.

Article 1(2) and 1(4) align the WSR with Article 290 of the Treaty on the Functioning of the European Union in line with the Commission's commitment to review provisions attached to the regulatory procedure in each instrument it intends to modify.

Article 2 of this proposal stipulates that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal and apply from [*1 January xxxx or 1 July xxxx which ever date occurs first provided this date is at least six months from the entry into force of the Regulation*].

4. BUDGETARY IMPLICATION

Not applicable.

5. OPTIONAL ELEMENTS

Not applicable.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192 (1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹³ lays down requirements for shipments of waste both within the Union and between the Member States and third countries, in order to protect the environment. However, gaps have been identified in the enforcement and inspections carried out by the competent authorities in Member States due to, *inter alia*, a lack of clear provisions in the Regulation on these matters.
- (2) Adequate planning of waste shipment inspections is necessary to establish the capacity needed for waste shipment inspections and effectively prevent illegal shipments. The provisions on enforcement and inspections in Article 50 of Regulation (EC) No 1013/2006 should therefore be strengthened with a view to ensuring regular and consistent planning of inspections. Planning should include a number of key elements, including risk assessments, strategies, objectives, priorities, numbers and types of planned inspections, assignment of tasks, means of cooperation between authorities and provisions on training of inspectors.
- (3) Diverging rules exist throughout the Union as regards the possibility for competent authorities in Member States to require evidence from waste exporters in order to check the legality of shipments. Such evidence may concern whether the substance or object is "waste" within the meaning of Regulation (EC) No 1013/2006 or whether the waste will be shipped to environmentally sound facilities according to Article 49 of the Regulation. Article 50 of the Regulation should therefore provide the possibility for competent authorities in Member States to require evidence from suspected illegal waste exporters in order to check the legality of shipments.

¹¹ OJ C , , p. .

¹² OJ C , , p. .

¹³ OJ L 190, 12.7.2006, p.1.

- (4) Illegal waste shipments frequently stem from uncontrolled collection, storage and sorting facilities. Inspection requirements should therefore be introduced for such waste sites.
- (5) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred on the Commission under Regulation (EC) 1013/2006 should be aligned to Article 290 of the Treaty.
- (6) The power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission with the objective to adopt technical and organisational requirements for the practical implementation of electronic data interchange. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (7) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (8) The Commission may adopt guidelines for the application of Article 12(1)(g) of the Regulation; guidelines on the application of Article 15 of the Regulation; guidelines for the cooperation of competent authorities with regard to illegal shipments; further guidance concerning the use of languages; further clarification of the procedural requirements of Title II of the Regulation as regards their application to exports, imports and transit of waste from, to and through the Community.
- (9) Regulation (EC) No 1013/2006 should therefore be amended accordingly.
- (10) This Regulation should apply from 1 January [xxxx] or 1 July [xxxx] whichever date occurs first provided this date is at least six months from the entry into force of the Regulation, in order to allow sufficient time for Member States and businesses to prepare for the application of the measures required under Article 50 of the Regulation.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1013/2006 is amended as follows:

(1) in Article 2, the following paragraph 36 is added:

'36. 're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived.

(2) in Article 26, the following paragraph 5 is added

'5. The Commission shall be empowered to adopt delegated acts in accordance with Article 59 concerning technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information.'

(3) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall, by way of measures for the enforcement of this Regulation, provide, *inter alia*, for inspections of establishments and undertakings in accordance with Article 34 of Directive 2008/98/EC of the

European Parliament and of the Council of 19 November 2008 on waste¹⁴, and for spot checks on shipments of waste or on the related recovery or disposal.'

(b) the following paragraph 2a is inserted:

- '2a. Member States shall ensure that their competent authorities establish plans for inspections aimed at checking compliance with this Regulation. The plans shall cover the entire geographical area of the Member State concerned and shall apply to all waste shipment inspections carried out pursuant to paragraph 2, including inspections of establishments and undertakings, road- and railway transports and consignments in ports. Those plans shall include the following:
- (a) strategy and objectives for waste shipment inspections referring to the necessary human, financial and other resources;
 - (b) a risk assessment covering specific waste streams and sources of illegal shipments, and considering intelligence-based data, such as police investigations and analyses of criminal activities;
 - (c) priorities and a description of how these priorities have been selected based on the strategies, objectives and risk assessment;
 - (d) information on the numbers and types of planned inspections concerning waste sites, road and railway transports and consignments in ports;
 - (e) an assignment of tasks to each authority involved in waste shipment inspections;
 - (f) means of cooperation between different authorities involved in inspections; and
 - (g) an assessment of the need for training of inspectors on technical or legal matters relating to waste management and waste shipments and provisions on regular training programmes.

The plans shall be reviewed at least annually and, where appropriate, updated. The review shall evaluate to which extent the objectives and other elements of the plans have been implemented.

The plans shall be made publicly available by the competent authority in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹⁵.'

(c) the following paragraphs 4a and 4b are inserted:

- '4a. In order to ascertain that a shipment does not contain waste within the meaning of Article 2(1), the competent authority may:
- (i) verify that appropriate protection of the shipment against damage during transportation, loading and unloading has been foreseen; and
 - (ii) in cases of a suspected illegal shipment, require the person in charge of the shipment to submit a copy of the invoice and contract relating to the sale or transfer of ownership of the substance or object, which states that

¹⁴ OJ L 312, 22.11.2008, p.3.

¹⁵ OJ L 41, 14.2.2003, p. 26.

it is destined for re-use within the meaning of Article 2(36) and to prove that it is fully functional.

- 4b. In order to ascertain that a shipment is destined for recovery operations which are in accordance with Article 49, the competent authority may in cases of a suspected illegal shipment require the person in charge of the shipment to submit a contract, letter or other document signed by the recovery facility specifying the waste treatment methods, technologies and standards applied by the recovery facility in the country of destination.'

(4) Articles 59 and 59a are replaced by the following:

Article 59

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 26(5) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of power referred to in Article 26(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 26(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 59a

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 39 of Directive 2008/98/EC.

That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.'

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from [1 January xxxx or 1 July xxxx

which ever date occurs first provided this date is at least six months from the entry into force of the Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*