COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0139 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Shipments of Waste

(presented by the Commission
pursuant to Article 250 (2) of the EC Treaty)

2003/0139 (COD)

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1. BACKGROUND

Transmission of the proposal to the Council and to the European Parliament [COM(2003)379 final – 2003/0139(COD)] in accordance with Article 175(1) of the EC Treaty: 30 June 2003.

Opinion of the European Economic and Social Committee: Opinion was adopted 28 January 2004.

Opinion of the Committee of the Regions: No opinion will be issued.

On 19 November 2003 the European Parliament voted in First Reading on the amendments tabled on the proposal for a Regulation of the European Parliament and of the Council on Shipments of Waste [COM(2003) 379 final of 30 June 2003].

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal has four main objectives:

- Implementing the OECD Council Decision C(2001)107 of 14 June 2001 in Community legislation.
- Addressing the problems encountered in the application, administration and enforcement of the 1993 Regulation and establishing greater legal clarity.
- Pursuing global harmonisation in the area of transboundary shipments of waste.
- Enhancing the structure of the Articles of the Regulation

In order to achieve these objectives, the revision amends various sections and aspects of Council Regulation (EEC) No 259/93. These include:

- Changes to its structure
- Changes and clarifications as regards definitions, and clarification of its scope (Title I)
- Changes and clarifications as regards the procedures applicable to shipments of waste (Title II-VI):

– between Member States (Title II)

– within Member States (Title III)

– for exports out of and imports into the Community (Titles IV, V and VI)

- Changes in other provisions of the Regulation (Title VII).

3. COMMISION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 19 November 2003 the European Parliament adopted 103 amendments to the proposal.

The Commission rejects the majority of these amendments since they pursue national solutions to certain waste management problems in relation to waste destined for recovery. This is not coherent with the Commissions overall objectives – namely harmonisation at Community level. The Commission's response to this issue is thus a longer term solution at EU level. In addition they would restrict shipments of waste extensively.

The Commission does not accept the amendments that entail changes to the specific entries of the lists of waste as annexed to the proposal. Not because the Commission disagrees on substance but rather because it is not the appropriate context. Changes to the lists of waste should be done in the legislation where they originate from. In addition these changes would go against one of the main objectives of the proposal, namely international harmonisation in the field of lists of waste.

However a number of amendments are acceptable to the Commission because they improve or clarify the Commission's proposal.

The Commission's detailed position on the amendments of the European Parliament is as follows:

3.1. Amendments accepted fully by the Commission

Amendments 2, 3, 107, 108, 110, 109, 6, 7 and 8 regarding additional recitals can be supported as they add relevant references to resolutions and strategies regarding waste management or add factual information.

Amendments 10, 12, 15, 22, 24, 29, 30 31, 39, 57, 67, 100 101, 103 and 126 regarding technical clarifications can be accepted.

Amendment 113, adding an explicit reference to "territorial waters" to be included in the definition of "country of transit" can be supported as a clarification.

Amendment 122 allowing the competent authorities to derogate from the requirement of establishing a financial guarantee in cases where a shipment is carried out by "a public-law entity, a municipal undertaking, a company run on its own account by a public-law entity", can be supported, since the scope has been narrowed substantively and the open ended reference to "or any other undertaking" as suggested in amendment 25 has been deleted.

Amendment 125 regarding less strict procedures in relation to shipments of waste under "regional municipal waste management cooperation" can also be accepted as the scope has been clarified substantively compared to amendment 60.

Amendment 115 allowing objections to shipments destined for disposal because a member State "wishes to exercise its right pursuant to Article 4(1) of the Basle Convention to prohibit the import of hazardous wastes, or of wastes listed in Annex II of the Basle Convention" can

be supported. However Member states already have extended power to object to shipments for disposal – the principles of self-sufficiency and proximity applies – so in reality the amendment does not add to these powers.

Amendment 81 allowing objections to shipments for recovery of mixed household waste can be supported.

Amendment 53 that delete the entire article regarding pre-consented recovery facilities can be accepted. The scheme is supposed to provide some bureaucratic relief in relation to the handling of notifications destined for pre-consented facilities. It can however be argued that the benefits are very limited since the authorities have to assess other elements of the notification anyway and therefore still may object to waste destined for a pre-consented facility.

Amendment 56 that limits the scope of Article 20 – regarding prior information in relation to shipments of waste destined for laboratory analysis as described in Article 3(4) - to only hazardous waste, can be accepted as an appropriate limitation of the scope of the article.

Amendments 75, 76, 77 that add certain internationally agreed guidelines to Annex IX can also be accepted. The ILO and IMO guidelines on ship-recycling and the OECD guidelines on PC's are added. The different parts of the Annex should however be re-numbered to contain four parts with equal footing, namely four parts listing Basel Convention guidelines, IMO guidelines, OCED guidelines and ILO guidelines respectively. Amendment 74 regarding clarification of the scope of the application of the guidelines can also be accepted.

3.2. Amendments accepted in principle by the Commission

Amendment 93 regarding the addition to the definition of "country of transit" can in principle be supported. However it is considered that ports are in any case part of the country of transit (as they are not explicitly exempted).

Amendment 59 establishing that the Commission could establish maximum levels for administrative costs charged to the notifier can in principle be supported.

Amendment 61 regarding assessment of environmentally sound management in relation to exports of waste to outside the Community can in principle be accepted.

Amendment 69 and 70 regarding the ranking of the lists of waste contained in Annex V (related to the ban on export of hazardous waste) to the effect that the EU hazardous waste list prevails over the Basel non-hazardous waste list (both listed in the Annex) can in principle be accepted.

Amendments 84 and 88 that clarify that ending of a shipment requires that the waste has been finally treated in the country of destination can be accepted in principle. However, it is considered that such a clarification is already provided for in Article (5)6.

Amendment 92 regarding clarification of the definition of "country of dispatch" can in principle be supported since it may prove useful in relation to shipments on the high seas. However, it should be supplemented by a paragraph prioritising the different options for which country is to be considered the dispatch country in the case of conflict. The Commission therefore propose that Article 2, point 15 reads like this:

> "*country of dispatch* means any country from which a shipment of waste is planned to be initiated or is initiated; in the case of waste ships or vessels, country of dispatch

may also include port states, states with jurisdiction over the owner or holder and flag states and in that order of priority".

Amendment 25 regarding possible derogations from the requirement of establishing a financial guarantee in relation to certain public entities can be accepted in principle provided the scope is narrowed. See above regarding amendment 122.

Amendment 60 regarding less stringent procedures in relation to specific geographical circumstances can in principle be supported if the scope is narrowed substantively. Amendment 125 regarding the same issue is re-drafted to this effect and can therefore be supported fully (see above).

Amendment 66 regarding public access to notifications can in principle be supported. It is however, considered that the obligations should be established in a separate article and should contain a reference to the respect of rules of confidentiality as established in national and/or Community legislation. The Commission therefore proposes a new Article 53 bis that reads like this (paragraph 2 added):

"1. The competent authority of the exporting or importing Member State shall make publicly available by appropriate means, such as the Internet, all notifications of shipments it has consented to, and all related documents, at the latest 7 days after consent is given.

2. In carrying out it's obligations under paragraph 1, Member States shall treat information submitted in relation to notifications confidentially in accordance with Community and national legislation."

3.3. Amendments accepted in part by the Commission

The first part of amendment 58 stressing co-operation and harmonisation between competent authorities in the case of electronic data exchange might be a useful addition. However, part two splitting the carrying out of the data exchange between the competent authority of dispatch and destination does not appear justified.

3.4. Amendments not accepted by the Commission

Amendment 1 and 83 that suggests changing of the legal base from environment and trade (175 and 133) to only environment (175) cannot be accepted.

Amendments 4, 5 and 111 regarding additional recitals cannot be accepted for formal reasons, primarily because it violates the Commissions right of initiative. Similarly as regards other amendments, namely amendment 112, 20, part two of 114, 28, and 46.

Amendment 9 regarding exclusion of imports into the Community of (military) waste generated during an out-of-area operation by part of the armed forces of a Member State from the region concerned to that MS cannot be accepted. It is considered that the concerns behind this amendment are taken care of in Article 2, point (11) (iii) – by allowing the competent authority in cases where no designation is made to be also the "regulatory authority of the country or region as appropriate". This will allow the military authority to act as competent authority. Thus there is no need for exclusion. Similarly amendments 62, 63, 64 and 65 on the same issues cannot be accepted.

Amendment 11 regarding deletion of Article 1(6) that allows for a possible exclusion of animal by-products from the scope of the Regulation cannot be accepted. To ease the administrative burden of applying two procedural regimes and to the extent veterinary legislation establish similar or stricter procedural provision for animal by-product waste, such waste should be excluded.

Amendments 13 and 14 that re-define "recovery" and "disposal" as only covering final operations cannot be accepted. The definition of the Waste Framework Directive 75/442/EEC, as amended, should be adhered to. Similarly, amendment 21 that bans shipments of waste destined for interim operations and consequential changes in relation to the contract in amendment 26, financial guarantee in amendments 27 and 85, consent in part two of amendment 87, objections in amendments 34 and 41 and special provisions regarding interim operations in amendment 91 cannot be accepted.

Amendments 16 and 79 may be based on a misunderstanding since municipal/unsorted household waste is already subject to the prior written notification and consent procedure.

Amendment 17 and 18 propose to make non hazardous waste as listed in Annex III subject to prior written notification but not consent. Such a requirement is not considered justified and will conflict with the OECD Decision and cannot be accepted. Similarly, amendment 55 that requires prior information of the competent authorities cannot be accepted. (Attention should also be paid to Article 19(5) in this context).

Amendment 105 deleting the obligation to provide a copy of the contract upon request by the competent authorities concerned in relation to shipments of non-hazardous waste for recovery (for the person who arranges the shipment) cannot be accepted. For control purposes it is essential that a contract can be requested. It must be stressed that confidential information in the contract is protected, since this may be the real concern behind the amendment.

Amendment 19 adding shipments destined for "research/experimental purposes" as shipments excluded from the notification procedure cannot be accepted. Such shipments pose the same risk as all other waste shipments and should follow normal procedures. Consequently, amendment 94 regarding increases of the amounts of waste that can be shipped for laboratory analysis without notification from a maximum of 25 kg to 30 times 25 kg cannot be accepted.

Part one of amendment 114 that – in addition to waste containing POPs – establishes that also shipments of waste consisting of, containing or contaminated with asbestos - are subject to the same provisions as shipments of waste destined for disposal. The Article should be limited to the substances as agreed under the Stockholm Convention only.

Amendments 95 and 98 that suggest allowing tacit consent from all competent authorities (and not just those of transit) in relation to shipments of waste destined for recovery cannot be accepted for several reasons; primarily because it conflicts with the Basel Convention. Further a precautionary approach in relation to in particular shipments of hazardous waste has to be safeguarded. In addition, it violates the objective of simplifications since it will re-establish three procedures instead of the proposed two and therefore will mean that different rules for intra-OECD and intra-EU shipments will apply. Lastly, written consent provides more clarity and easier enforcement.

Amendment 23 adds that the notification and movement documents can be issued under specific regulation introduced by Member States cannot be accepted. The issuing of the notification and movement documents should be with the competent authority of dispatch

only and harmonisation in this field is needed. The question of production of the forms is a different issue which needs no specific regulation.

Amendments 96 and 97 establish that the financial guarantee is only required to be established and legally binding when the shipment starts, instead of at the time of notification and cannot be accepted. For enforcement and efficiency purposes, it is important that proof of the legally binding character of the guarantee is established already at the time of the notification. Application, however, is only required at the time of actual shipment.

Part one of amendments 86 and 87 limits the validity of a written and tacit consent from one calendar year to 180 days and cannot be accepted. It conflicts with the OECD Decision and will go counter to the objective of simplifying the procedures as it will become necessary to apply different time-limits for intra-OECD and intra-EU shipments.

Part two of amendments 86 and 87 deletes the possibility of having consent expire only after two years when an interim facility is involved in the shipment and cannot be accepted. The amendments are to be seen in the context of and as a consequence of the amendments banning interim treatment. The Commission cannot accept those amendments and consequently not amendments 86 and 87 either. In addition it conflicts with the OECD Decision and will go counter to the objective of simplifying the procedures as it will become necessary to apply different time-limits for intra-OECD and intra-EU shipments.

Amendments 32 and 33 regarding subsequent control and conformity check of the notification should be covered by Article 53 on enforcement, and cannot be supported.

Amendments 35 and 80 regarding further reasons that can justify an objection to a shipment of waste destined for disposal cannot be accepted. Amendment 37 that deletes the reference to self-sufficiency at Community level and thus only refers to the national level also has to be rejected. Cooperation between neighbouring and/or small countries thus still needs to be encouraged, notably through a reference to self-sufficiency at Community level. Amendment 38 adds that a shipment can be objected to on the basis of national legislation if no obligations in relation to disposal exists at Community level. Such a provision might be misused and might distort the internal market and has to be rejected.

Amendments 116 and 117 regarding further reasons that can justify an objection to a shipment of waste destined for recovery cannot be accepted as it will violate the OECD Decision and possibly also the EC Treaty. Amendment 42 cannot be accepted. Amendments 43 and 44 regarding reference to municipal/unsorted household waste and proximity and self-sufficiency cannot be accepted. The principles of self-sufficiency and proximity currently apply only to shipments destined for disposal and not to shipments destined for recovery; that should not be changed. (amendment 81, however, can be accepted as it is re-drafted, see above). Amendments 45, 49, 82, 89, 90, 118, 120, 123, 124 and 119 regarding the establishment of certain criteria in relation to recovery cannot be accepted. Such criteria could be one among several deemed relevant for the distinction between recovery and disposal in general and in the context of the Waste Framework Directive 75/442/EEC and they should not be established in the context of this Regulation. Amendments 47 and 48 that add that shipment can be objected to on the basis of national legislation if no obligations in relation to recovery or recycling exists at Community level are also not acceptable. They pursue national solutions to certain waste management problems in relation to waste destined for recovery. This is not coherent with the Commissions overall objective for waste management policy – namely harmonisation at Community level. The Commission's response to this issue is thus a longer term solution at EU level, whose main elements are firstly, the establishment of standards at EU level through the extension of the IPPC-Directive and secondly, the

establishment of guidelines regarding sham (fake)recovery and clearer distinctions between the different recovery and disposal operations

Amendment 40 and 50 delete the possibility that the competent authorities concerned can agree with the notifier not to require a new notification in the case where problems in relation to objections have not been solved within a certain time limit. To insist on a notification if all parties concerned agree differently does not appear necessary or justified; and the amendment cannot be accepted.

Amendment 51 and 52 cannot be accepted since it is considered a repetition of Article 14(7) that establishes that all other provision of the Regulation also apply to general notifications.

Amendment 99 regarding a simplified procedure in relation to take-back schemes cannot be accepted as the scope is to imprecise.

Amendment 54 that shortens the deadline for issuing certificate of final treatment to 7 and 180 days instead of 30 and one calendar year (following completion and receipt of the notified waste respectively) cannot be accepted. It conflicts with the OECD Decision and will go against the objective of simplifying the procedures as different time-limits for intra-OECD and intra-EU shipments will have to be applied if the amendment is accepted.

Amendment 102 that amends the proposal to the effect that if the competent authorities of dispatch and destination disagree on the classification of the waste treatment operation notified as being disposal or recovery, the opinion of the authorities of destination shall prevail, cannot be accepted. The Commission proposal establishes that the provisions regarding disposal shall apply in such cases. A precautionary approach in the choice of procedures in the case of disagreement needs to be safeguarded. Also it should be noted that the European Court of Justice has confirmed that both authorities are competent in classifying the treatment as recovery or disposal.

Amendment 121 that adds a further condition in relation to imports into the Community of waste for recovery to the effect that in relation to hazardous waste, the competent authority of dispatch outside the Community shall present a duly motivated request beforehand stating that "they do not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to treat of the waste in an environmentally sound manner" cannot be accepted. In relation to OECD countries such a provision will violate the OECD Decision. In relation to non-Basel Convention Parties that are not OECD countries, that requirement already applies. In relation to Basel Convention Parties that are not OECD countries it might be considered. However, it can be argued that the treatment in the Community is in most cases "superior" from an environmental perspective. Further restrictions are therefore not considered justified on environmental grounds.

Amendments 78, 106, 68, 71, 72 and 73 are all related to changes to the specific entries of the lists of waste as annexed to the proposal and cannot be accepted. Not because the Commission disagrees on substance, but rather because it is not the right context. Changes to the lists of waste should be done in the legislation where they originate from (The Basel Convention, the OECD Decision and the EU waste list). Further, it will go against one of the main objectives of the proposal, namely international harmonisation in the field of lists of waste.

3.5. Amended proposal

Having regard to Article 250(2) of the EC Treaty, the Commission modifies its proposal as indicated above.