



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation of the European
Parliament and of the Council on Shipments of Waste**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003)379 final – 2003/139(COD)):	30 June 2003.
Date of the opinion of the European Parliament, first reading:	19 November 2003.
Date of the opinion of the European Economic and Social Committee:	28 January 2004.
Date of transmission of the amended proposal:	9 March 2004.
Date of adoption of the common position:	24 June 2005.

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); and for exports out of and imports into the Community (Titles IV, V and VI).
- Changes in other provisions of the Regulation (Title VII).

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

In its amended proposal the Commission accepted in full, in part or in principle 43 of the 103 amendments proposed by the European Parliament at its first reading. 41 amendments have now been incorporated, either verbatim or in substance in the common position.

The Commission cannot accept the common position with regard to a number of issues. The most important of these issues include the following:

The Commission maintains that its proposed joint legal base for this regulation (below the “Regulation”), i.e. environment and trade (Articles 175 and 133 of the EC Treaty), is correct and cannot accept a single legal base as proposed by Council (Article 175 of the EC Treaty).

Furthermore, the Commission cannot support the common position with regard to the possibility for Member States to object to shipments of waste destined for recovery on the grounds of “lower treatment standards” in the country of destination. The Commission considers that such a provision would create barriers in the European waste recycling and recovery market while not improving the environmental standards of waste management in the EU.

The Council has changed Article 1(6) to totally exclude animal by-products from the scope of the Regulation (Article 1(3)(d)). The Commission considers it to be preferable to bring forward its review of the relationship between this Regulation and regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption, so that the results of this review are made public before the entry into force of the Regulation. This would take care of the concerns expressed by some Member States in terms of risks for procedural duplication and allow the Commission to maintain its proposal.

3.2 Detailed comments

3.2.1 *Parliamentary amendments accepted by the Commission in full, in part or in principle and incorporated in the common position*

Amendments 8 and 108 regarding the recitals have been incorporated.

Amendment 9 regarding the exclusion from the scope of the Regulation of waste generated by the armed forces of a Member State in certain situations has been incorporated in part in Article 1(3)(g).

Amendment 10 concerning the provisions applicable to Annex III waste intended for recovery has been considered. The entire paragraph (Article 1(5)) as proposed by the Commission has been deleted in order to avoid confusion by singling out certain provisions. Incorporated in principle.

Amendment 12 refers to mixtures of waste for which no single entry exists. Incorporated in Article 2(3).

Amendments 13 and 14 concerning certain operations constituting interim recovery and interim disposal have been accepted in principle and reflected in Article 2(5) and 2(7). The definitions in Directive 75/442/EEC on waste have, however, been adhered to.

Amendments 15 and 22 provide a definition of notifier which has been incorporated in Article 2(15).

Amendment 113 concerning the definition of 'country of transit' has been accepted and reflected in Article 2(24).

Amendment 79 to subject shipments of mixed municipal waste (waste entry 20 03 01) collected from private households to prior notification and consent has been incorporated in Article 3(5). Amendment 81 has been accepted in part and principle and reflected in Article 3(5).

Amendment 24 to enable all competent authorities to require additional information and documentation within a certain time-period has been incorporated in part in Article 4(3) and Article 8(1).

Amendments 96 and 97 concerning at what time the financial guarantee shall be established and evidence or equivalent insurance of this shall be supplied has been accepted in part and principle in Article 4(5) and Article 6(2).

Amendments 29 and 30 regarding requests for information and documentation and the acknowledgment and transmission of notifications within a certain time-limit have been accepted in part and principle in Article 7(2) and Article 8(1-2).

Amendment 115 concerning extended power to Member States to object to shipments of waste for disposal can be supported. Incorporated in Article 11(1)(e).

Amendment 45 concerning objections to shipments of waste for recovery on the basis that the planned shipment is destined for disposal and not for recovery has been accepted. Incorporated in Article 12(1)(h).

Amendment 52 setting out the procedures that apply to a general notification has been accepted in principle and reflected in Article 4.

Amendment 100 concerning information from the notifier to the competent authorities and the consignee has been accepted. Incorporated in Article 16(b) and Article 17(1).

Amendment 84rev. concerning completion of recovery or disposal has been accepted in principle and reflected in Article 16(e).

Amendment 57 emphasising the need for cooperation between authorities in relation to all cases of illegal shipment by adding ‘in particular’ in cases where responsibility cannot be imputed to either the notifier or the consignee has been accepted. Incorporated in Article 23(5).

Amendment 58 and 101 concerning electronic exchange of data has been accepted. Incorporated in Article 25(4) and 58(1)(f).

Amendment 60 concerning border-area agreements has been accepted. Incorporated in Article 29.

Amendment 61 concerning environmentally sound management has been accepted in principle. Incorporated in Article 48(2).

Amendments 62-65 concerning situations of crisis or war have been accepted. Incorporated in Article 40(1)(d), 41(2)(b), 42(1)(e) and 43(2)(c).

Amendment 103 concerning the amendment of the annexes of the Regulation has been accepted. Incorporated in Article 57(1).

Amendment 28 concerning a method for calculating the financial guarantee has been accepted in part in the recitals.

Amendments 82 and 46 concerning guidelines for the application of the provision on so-called ‘sham recovery’ have been accepted in part. Incorporated in Article 58(1)(b).

Amendment 75, 76 and 77 concerning the annexes have been accepted. Incorporated in Annex VIII, parts II-IV.

3.2.2 Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

Amendments 2-7, 107, 109 and 110-111 regarding the recitals have not been considered relevant for the proposal and have therefore not been accepted. In addition, amendments 4-5 have not been accepted since they would violate the Commission’s right of initiative.

Amendment 11 regarding deletion of Article 1(6) that allows a possible exclusion of animal by-products from the scope of the Regulation has been rejected. The Commission considers it important to maintain this provision in order to avoid duplication and resulting unnecessary burden for operators due to the concurrent application of this Regulation and regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption. The Commission thus prefers to maintain its proposal and bring forward its review of the relationship between the two regulations so that the results of the review are made public before the entry into force of the Regulation (cf. 3.2.5 concerning additional changes made by the Council to the proposal).

Amendment 112 concerning an obligation for the Commission to establish guidelines cannot be accepted primarily because it violates the Commission’s right of initiative.

Amendments 17 and 18 propose to make non-hazardous waste as listed in Annex III subject to prior written notification. This cannot be accepted since it would conflict with the OECD Decision.

Amendment 19 adding shipments destined for “research purposes” to the 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.

Amendment 20 concerning an obligation to establish limit values within a certain time-limit cannot be accepted due to the fact that it would violate the Commission’s right of initiative. In addition, a specific provision regarding shipments of waste consisting, containing or contaminated with the chemicals listed in Annex A, B and C of the Stockholm Convention of 22 May 2001 on persistent organic pollutants (POPs) has not been considered necessary to maintain in the proposal due to the adoption of a specific regulation on this subject (Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC, Official Journal L 158 , 30/04/2004, p.7-49).

Amendment 44, concerning objections to shipments of waste for recovery based on the principles of self-sufficiency and proximity, would create barriers in the European waste recycling and recovery market while not improving the environmental standards of waste management in the EU. It can therefore not be accepted.

Amendments 21, 26-27, 34, 41, 85rev. and 91rev. with regard to interim operations cannot be accepted. The Commission has not considered it appropriate to prohibit such operations. Instead they should be regulated so that competent authorities could keep track of the waste throughout the shipment and until completion of recovery and disposal.

Amendments 86rev., 87rev. and 88rev. conflicts with the time-limits under the OECD Decision and can therefore not be accepted.

Amendments 32 and 33 regarding subsequent control and conformity check of the notification should be covered by Article 49 on enforcement, and cannot be supported.

Amendment 35 adds further grounds of objections to shipments of waste for disposal that 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. Co-operation between neighbouring and or/small countries still needs to be encouraged, notably through a reference to self-sufficiency at Community level. Amendment 38 adds that a shipment of waste for disposal can be objected to on the basis of national legislation if no obligations in relation to disposal exist at Community level. Such a provision might be misused and can therefore not be accepted.

Amendment 80 concerning mixed municipal waste collected from private households has not been incorporated, but it should be noted that the Article 3(5) envisages that such waste will be treated, in all cases, as if destined for disposal.

Amendments 116-117 adds further grounds of objections to shipments of waste for disposal which are not compatible with the OECD Decision. In addition, amendment 116 would create a barrier to the internal market in waste for recovery. It can therefore not be accepted.

Amendment 49 regarding certain criteria in relation to recovery cannot be accepted. However, a provision concerning the adoption of guidelines for the application of the provision on so-called ‘sham recovery’ has been incorporated in Article 58(1)(b).

Amendments 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 is considered not to be needed (cf. Article 4, first sentence and Article 9)..

Amendment 99 regarding the application of the general notification procedure to take-back schemes cannot be accepted as the scope is too imprecise.

Amendment 54 concerning time-periods for certificates of recovery or disposal cannot be accepted as it is not consistent with OECD timeframes.

Amendment 55 concerning prior information for green waste to the competent authorities cannot be accepted since accompanying the shipment with the listed information is considered sufficient. This corresponds to the situation under the OECD Decision.

Amendment 105 deleting the obligation for the person who arranges the shipment to provide a copy of the contract upon request by the competent authority concerned in relation to shipments of non-hazardous waste for recovery 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 concern behind the amendment.

Amendment 121, which 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 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 further restrictions would not be considered justified on environmental grounds. The amendment is therefore rejected.

Amendment 67 concerning the Act of Accession has not been incorporated since this act is not to be changed via a committee procedure (see new Article 62).

Amendments 68, 71-73, 78 and 106 are all related to changes to the specific entries of the lists of waste as annexed to the proposal and cannot be accepted. This is not because the Commission disagrees on substance, but rather because it does not consider this to be the right context for such amendments. Changes to the lists of waste should be made in the legislation from which they originate (the Basel Convention, the OECD Decision and the EU waste list). Further, such amendments contradict one of the main objectives of the proposal, namely international harmonisation in the field of lists of waste.

3.2.3 *Parliamentary amendments accepted by the Council but rejected by the Commission*

Amendment 1 and 83rev. proposing a change of the legal base from environment and trade (175 and 133 of the EC Treaty) to only environment (Article 175 of the EC Treaty) were accepted by the Council but are rejected by the Commission. The primary objective of the proposed regulation is protection of the environment. However, since the provisions of Titles IV, V and VI on exports out of, imports into and transit through the Community to and from third countries, are also rules on international trade, the legal basis as regards those specific provisions is Article 133 of the EC Treaty. Therefore, the Commission maintains that its proposed joint legal base for the Regulation, i.e. environment and trade (Articles 175 and 133 of the EC Treaty), is correct and cannot accept a single legal base.

Amendments 42, 47 and 48 concerning objections to shipments of waste for recovery based on national standards or national obligations cannot be accepted by the Commission. The Commission considers that such a provision would create barriers in the European waste recycling and recovery market while not improving the environmental standards of waste management in the EU. The Commission recalls that it proposed solutions to the potential problem of standards dumping in its Communication COM(2003) 301 final “*Towards a thematic strategy on the prevention and recycling of waste*”, focusing on the development of European waste management standards. Furthermore, the Commission warns that Article 12(1)(c) is both vague and complex, may lead to an increase in illegal shipping of waste and is likely to result in a number of court cases.

3.2.4 *Parliamentary amendments accepted by the Commission but not integrated in the common position*

Amendment 92 regarding clarification of the definition of ‘country of dispatch’, has been supported in principle by the Commission since this may prove useful in relation to shipments on the high seas. However, the Commission considers that this provision should be supplemented by a paragraph prioritising the different options for which country is to be considered the dispatch country in the case of dispute.

Amendment 126 which adds to the competent authority of dispatch “specific regulations introduced by and in the Member State of dispatch” was accepted by the Commission in its amended proposal, however, has since been considered to be superfluous and has been rejected on grounds of, *inter alia*, simplification.

Amendment 122 concerning derogations for certain public undertakings was accepted by the Commission in its amended proposal, however, has since been considered incompatible with the Basel Convention. It has therefore been rejected.

Amendment 31 states that the competent authorities of destination and transit shall signify their written consent by issuing a written decision to the other competent authorities and to the notifier. This was accepted by the Commission in its amended proposal, however, has since been considered unnecessary. It has therefore been rejected on grounds of, *inter alia*, simplification.

Amendment 53 which deletes the entire article regarding pre-consented recovery facilities has been supported by the Commission on the basis that the benefits of the article are limited since the authorities have to assess other elements of the notifications anyway and therefore still may object to waste destined for a pre-consented facility.

Amendment 56 limiting the scope of Article 20 in the Commission's proposal has not been incorporated.

Amendment 59 which provides for the Commission to establish maximum levels for administrative costs charged to the notifier has been supported in principle by the Commission.

Amendment 74 regarding clarification of the scope of guidelines has been supported by the Commission.

Amendment 39 inserting 'a specific' before 'hazardous waste' has been supported in principle by the Commission.

Amendment 66 regarding public access to notifications has been supported in principle by the Commission provided the obligations are established in a separate article and contain a reference to the respect of rules of confidentiality as established in national and/or Community legislation.

Amendments 69 and 70 regarding the ranking of the lists of waste contained in Annex V (related to the ban on the 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) has been supported in principle by the Commission.

3.2.5 *Additional changes made by the Council to the Proposal*

The Council has made a number of additional changes to the proposal. The most important of these changes is that Article 1(3)(d) totally excludes animal by-products from the scope of the Regulation. The Commission cannot support the common position in this regard and considers it preferable to bring forward its review of the relationship between this Regulation and Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption, so that the results of this review are made public before the entry into force of the Regulation. Therefore the Commission considers that its proposed version of Article 1(6) should remain unchanged.

4. CONCLUSION

The common position represents to a large extent a significant step forward in improving the clarity of the Regulation and enhancing its provisions in line with the objectives to be achieved as set out by the Commission's proposal. However, the Commission cannot accept the common position with regard to a number of issues of which the most important are set out in the statement annexed herewith. They include the legal base for the Regulation, the possibility for Member States to object to shipments of waste destined for recovery and the total exclusion of animal by-products from the scope of the Regulation.

5. STATEMENT BY THE COMMISSION

The Commission notes that there is unanimity in the Council to replace the joint legal base proposed by the Commission, namely Articles 133 and 175(1) of the Treaty, by a single legal basis including only Article 175(1) of the Treaty. The Commission considers that its Proposal included the correct legal basis and reserves its right to make use of the legal means at its disposal.

The Commission also notes that in Article 12(1)(c) the Council allows Member States to raise objections and block shipments of waste destined for recovery on the grounds of "*lower treatment standards*" in the country of destination. The Commission considers that this provision will create barriers in the European waste recycling and recovery market while not improving the environmental standards of waste management in the EU. The Commission recalls that it proposed solutions to the potential problem of standards dumping in its Communication COM(2003) 301 final "*Towards a thematic strategy on the prevention and recycling of waste*", focusing on the development of European waste management standards. Furthermore, the Commission warns that Article 12(1)(c) is both vague and complex, may lead to an increase in illegal shipping of waste and is likely to result in a number of court cases.

Finally, the Commission notes that the Council excludes from the scope of the Regulation "shipments which are subject to the approval requirements of Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption". In light of the differences between these two Regulations with regard to procedural provisions the Commission considers it to be preferable to bring forward its review of the relationship between the Regulations so that the results of this review are made public before the entry into force of the Waste Shipment Regulation. This would take care of the concerns expressed by some Member States in terms of risks for procedural duplication and allow the Commission to maintain its proposal.