



Brussels, 17.2.2025
COM(2025) 43 final

2025/0024 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the seventeenth Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal with regard to certain amendments of Articles and Annexes in that Convention.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the Union's position at the Conference of the Parties to the Basel Convention, with respect to the European Union's proposal to amend Annex IV of this Convention and to the Russian Federation's proposal to amend Article 6 of this Convention. The next meeting is scheduled to take place in Geneva from 28 April to 9 May 2025 (17th meeting of the Conference of the Parties). The two proposals mentioned above were already discussed at the 15th and 16th meeting of the Conference of the Parties, in June 2022 and May 2023. The position of the Union on these proposals for the 15th and 16th meeting of the Conference of the Parties was defined by Council Decisions (EU) 2020/1829 of 24 November 2020¹, (EU) 2022/1025 of 2 June 2022² and (EU) 2023/1007 of 25 April 2023³. A new Council Decision is needed for the next meeting of the Conference of Parties on these proposals.

2. CONTEXT OF THE PROPOSAL

2.1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ('the Convention') was adopted on 22 March 1989 and entered into force in 1992. The European Union, as well as its Member States, are Parties to the Convention⁴. The Convention has 191 Parties.

The Convention's cornerstone is a control system for the export, import and transit of certain types of waste, through the procedure of "prior informed consent". Exports of waste subject to the Convention shall be notified in advance to the competent authorities of the States of import and transit. The notifications shall be made in writing and shall contain the declarations and information specified in Annex V A to the Convention. A waste export may only proceed if and when all States concerned have given their written consent (Article 6 of the Convention).

The Convention's control system applies to hazardous waste defined in Article 1 and listed in Annex VIII to the Convention, as well as to waste listed in Annex II, which contains waste collected from households, residues arising from the incineration of household waste, certain

¹ Council Decision (EU) 2020/1829 of 24 November 2020 on the submission, on behalf of the European Union, of proposals to amend Annex IV and certain entries in Annexes II and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal for consideration at the fifteenth meeting of the Conference of the Parties, and on the position to be adopted on behalf of the European Union at that meeting as regards proposals by other Parties to that Convention to amend Annex IV and certain entries in Annexes II, VIII and IX to that Convention (OJ L 409, 4.12.2020, p. 28–33).

² Council Decision (EU) 2022/1025 of 2 June 2022 on the position to be taken on behalf of the European Union at the fifteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal with regard to certain amendments to paragraph 2 of Article 6 of that Convention (OJ L 172, 29.6.2022, p. 11–12).

³ Council Decision (EU) 2023/1007 of 25 April 2023 on the position to be taken on behalf of the European Union at the sixteenth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal with regard to certain amendments of Articles and Annexes in that Convention (OJ L 136, 24.5.2023, p. 57–58).

⁴ Council Decision 93/98/EEC concerning the conclusion, on behalf of the Community, of the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal, OJ L 39, 16.2.1993, p. 1.

plastic wastes and non-hazardous e-waste. The Convention also lists waste entries in Annex IX which do not fall within its scope and control system unless such waste contains a material belonging to a category in Annex I to an extent causing it to exhibit a hazardous characteristic listed in Annex III.

2.2. The Conference of the Parties

The Conference of the Parties to the Basel Convention is the principal decision-making body of the Convention. It has powers to amend the Annexes to the Convention and it meets every two years.

2.3. The proposed amendments to the Convention

Proposed amendment of Annex IV of the Convention by the Union

The review of Annexes I, III and IV and related aspects of Annex IX to the Convention was initiated by the 12th meeting of the Conference of the Parties (COP-12) by its decision BC-12/1⁵.

The 13th meeting of the Conference of the Parties (COP-13) decided to establish an expert working group (EWG) for the review of the above annexes.

The EWG has issued a number of recommendations and options for Parties to consider if they wish to submit proposals for COP consideration so as to amend and clarify the descriptions of disposal operations listed in Annex IV to the Convention. The proposals will, if adopted, result in improved legal clarity and therefore facilitate controls of shipments of waste and the prevention of illegal shipments. They will also support the environmentally sound management of waste at global level and contribute to the transition towards a global circular economy.

Following Council Decision (EU) 2020/1829, a proposal for the amendment of Annex IV was tabled on behalf of the Union on 3 December 2020, for discussion at COP-15. The proposal aims to improve the implementation of the Basel Convention, in particular through changes to the definitions of waste management operations and wastes to be controlled, contained in the Annexes of the Convention. The proposal was discussed at COP-15 and COP-16 of the Convention, in June 2022 and May 2023. During the discussions, many Parties expressed concerns regarding certain elements of the proposal. This is the case notably for specific new operations, such as the inclusion of “preparing for re-use” as a new waste management operation, the introduction in Annex IV of operations occurring prior to submission to other operations (“interim operations”) and the introduction of a “catch-all” clause for operations not covered by other operations listed therein. Therefore, additional discussion at the 17th meeting of the Conference of the Parties will be needed to progress on this proposal.

If amendments to Annex IV to the Convention are agreed by the COP, they will have to be implemented in the EU Waste Framework Directive 2008/98/EC⁶ (the list of waste management operations corresponding to Annex IV to the Convention) and possibly Regulation (EU) 2024/1157⁷.

⁵ More information is available on the website of the Basel Convention, see <http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesI,III,IVandrelatedaspectsofAnnexes/tabid/6269/Default.aspx>

⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

⁷ Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006; OJ L, 2024/1157, 30.4.2024.

Proposed amendment of Article 6(2) of the Convention by the Russian Federation

The Russian Federation tabled a proposal for consideration at the 15th meeting of the Conference of the Parties, designed to amend the first sentence of Article 6(2) of the Convention (“the envisaged act”)⁸. This proposal was again put on the agenda during the 16th meeting of the Conference of the Parties.

Discussions on the Russian Federation’s proposal took place at the 15th and 16th meetings of the Conference of the Parties. In accordance with the Council Decisions (EU) 2022/1025 of 2 June 2022 and (EU) 2023/1007 of 25 April 2023, the Union did not support this proposal (see the section on the position to be taken on the Union’s behalf below for further information). Several like-minded Parties also did not support the Russian Federation’s proposal. However, other Parties expressed support for the proposal.

As a result of these discussions, the Conference of the Parties decided to postpone the consideration of the Russian proposal first to COP16 and then, at that meeting, to COP17.

The Russian Federation issued an updated proposal for the amendment of Article 6(2) of the Convention in October 2024, not altering the core of its proposal but changing the timeline from 30 to 90 days.

The first sentence of Article 6(2) of the Convention reads as follows: “*The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information*”.

The Russian Federation proposes to change this sentence through the addition of a time limit of 90 days within which a country of import should respond to the notifier (to consent to the planned shipment, deny its permission to this shipment, or to request additional information). In addition, the proposal consists of replacing the “,” between “*conditions*” and “*denying*” with “*or*”.

The Convention is implemented in the Union through Regulations (EC) No 1013/2006⁹ and (EU) 2024/1157¹⁰ on shipments of waste (“the WSR” hereafter¹¹). Any modifications to the Convention would come into effect in the EU after they have been implemented through amendments to this Regulation.

The current rules applying to the Union and its Member States already foresee a 30-day deadline for the importing country to respond to the notifier (see Article 8 of Regulation (EC) 1013/2006). This also applies to other OECD countries, as per the OECD Decision¹².

For the Union, the only practical consequence of the changes linked to the Russian Federation’s proposal would relate to the procedure for the export of notified waste from and to non-OECD countries. As export of waste listed under Annex VIII and Annex II to the Convention to non-OECD countries is banned under the WSR, the change triggered by the Russian proposal would only relate to “unlisted waste”, which, under Article 3(1)(b)(iii) and

⁸ The proposal is available on the website of the Basel Convention, see <http://www.basel.int/TheConvention/Communications/tabid/1596/Default.aspx>

⁹ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 12.7.2006, p. 1).

¹⁰ Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 (OJ L, 2024/1157, 30.4.2024, ELI: <http://data.europa.eu/eli/reg/2024/1157/oj>).

¹¹ Regulation (EU) 2024/1157 has entered into force on 20 May 2024, but most provisions will start to apply in 2026. Until that time, Regulation (EC) 1013/2006 remains applicable.

¹² Decision on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0266>

(iv) of the WSR, is subject to the procedure of “prior informed consent”. The amendment proposed by the Russian Federation would mean that, for these cases, the importing country would have to respond within 90 days to the notifier of a shipment from the Union destined to a non-OECD country.

Procedures for the amendments of the Convention

The procedure for amending the Convention is governed by Article 17 of the Convention. Any such amendment must be adopted at a meeting of the Conference of the Parties. An amendment becomes binding on those Parties that deposit their instruments of ratification, approval, formal confirmation or acceptance in accordance with Article 17(5) of the Convention, which provides the following: “*Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments*”. There is therefore a need for a ratification, approval, formal confirmation or acceptance by three quarters of the Parties to the Convention (i.e. 144 Parties) for any amendment to the Convention to enter into force.

So far, the body of the Convention has been amended once, through the addition of Article 4A and a subsequent addition of Annex VII (“the Basel Ban amendment”) to the Convention. This amendment was agreed by the Conference of the Parties at its third meeting in 1995 and it entered into force in 2019, for those Parties that have ratified it.

The procedure for amending the Annexes to the Convention is governed by Article 18 of the Convention and is less burdensome. An amendment to an annex becomes effective for all Parties to the Convention which do not submit a notification indicating that it is unable to accept the amendment within six months from the date of the communication of the adoption.

3. POSITION TO BE TAKEN ON THE UNION’S BEHALF

Proposed amendment of Annex IV of the Convention by the Union

In line with Council Decision (EU) 2020/1829 of 24 November 2020, the Union submitted a proposal to amend Annex IV and certain entries in Annexes II and IX to the Convention, which contain *inter alia* the following elements:

- Inclusion of (1) a general introduction clearly distinguishing the terms “final disposal” and “recovery”, and (2) clarifications that all waste management operations that occur or might occur in practice are covered regardless of their legal status and whether they are considered to be environmentally sound, and that also operations occurring prior to submission to other operations (“interim operations”) are covered.
- Inclusion of captions and introductory texts explaining what is meant by non-recovery operations (Annex IVA) and recovery operations (Annex IVB), and
- clarifications on existing operations and introduction of new operations in Annex IV, which would aim, *inter alia*, to update and clarify the descriptions of operations in

line with scientific, technical and other developments occurred since the Convention was adopted in 1989, and ensure, by the introduction of catch-all provisions, that all operations not specifically mentioned are covered by the Convention's requirements.

The proposal has the following objectives:

- Ensure that the appropriate control mechanisms of the Convention are fully applicable and would therefore, if adopted, improve controls of shipments of waste and facilitate the prevention of illegal shipments,
- Improve legal clarity and a common understanding and interpretation of the waste management operations by Parties, and
- Support the environmentally sound management of waste at global level and contribute to the transition towards a global circular economy.

The Union should continue to support the above-mentioned objectives, but, in consideration of the opposition expressed at COP-15 and COP-16 by many Parties, in particular with regard to the inclusion of new operations, for example, on preparing for reuse and catch-all operations, the Union should display flexibility, including deferring the discussion on the most contentious topics and seeking an agreement on the remaining aspects of the proposal.

If amendments of the relevant annexes are proposed by other Parties, which could achieve the same objectives as those behind the Union's proposal, the Union should show openness to consider these proposals and such proposals could in principle be supported by the Union.

The proposed position is in line with the EU's aim to lead efforts to drive the global transition to a circular economy. A Union position is needed given that the field covered by the proposed amendments to the Basel Convention fall within exclusive Union competence. Indeed, the subject-matter of the proposed amendments to the Basel Convention falls within the scope of Union legislation, namely the EU Waste Framework Directive 2008/98/EC¹³ (notably Annexes I and II to the Directive) and Regulation (EU) 2024/1157. Therefore, the proposed amendments risk affecting common rules or altering their scope within the meaning of Article 3(2) TFEU, and thus fall within the exclusive competence of the Union.

Proposed amendment of Article 6(2) of the Convention by the Russian Federation

The European Union should not support the amendment of Article 6(2) of the Convention proposed by the Russian Federation. This position is in line with the position agreed on for COP-15 by Council Decision (EU) 2022/1025 of 2 June 2022, and for COP-16 by Council Decision (EU) 2023/1007 of 25 April 2023.

The first part of the amendment (90-day time limit for the importing country to respond to the notifier) would not bring any major advantage for the Union and its Member States, as the EU rules, in line with the OECD Decision, already impose a time limit of 30 days for importing EU Member States to respond to the notifier.

The second part of the amendment (replacing a comma with "or") does not seem necessary and would create legal uncertainty. The current formulation is sufficiently clear in that the importing country can react in three different manners when responding to the notifier (consenting to the movement, denying the permission to this movement, or requesting additional information). There is therefore no need to amend this sentence.

¹³ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

The process relating to amending the Convention is very burdensome and time consuming, especially as it requires each Party to proceed with its internal ratification process and a threshold of three quarters of all Parties to ratify it before the amendment enters into force. This amendment might also in the end have a limited impact, as amendments are only binding on those who have ratified them. The proposed amendment therefore does not address properly any priority of the Union and its Member States for a better effectiveness of the Convention, while launching a lengthy and burdensome process within the Convention and for its Parties.

While not supporting the proposed amendments, the Union should continue stressing that Parties should promote a better functioning of the prior informed consent procedure within the framework of the Basel Convention. This could include the establishment of other time limits for responses to notifiers, notably for transit countries, as well as encouraging the use of electronic data interchange systems or incorporating the concept of “pre-consented facilities”, which stems from the OECD Decision on transboundary movements of waste, into the Basel Convention framework. There are a number of processes ongoing in the Convention already on these issues, including one launched on the improvement of the prior informed consent procedure launched at COP-15 at the initiative of the Union. The Union should underline the importance of this process as a solution to a number of issues pertaining to the implementation of the Convention and invite all Parties to participate in this process.

The proposed position is in line with the EU’s aim to lead efforts to drive the global transition to a circular economy. A Union position is needed given that the field covered by the proposed amendments to the Basel Convention falls within the exclusive Union competence. Indeed, the subject-matter of the proposed amendments to the Basel Convention falls within the scope of Union legislation, namely Regulation (EU) 2024/1157, in particular its Article 9. Therefore, the proposed amendments risk affecting common rules or altering their scope within the meaning of Article 3(2) TFEU, and thus fall within the exclusive competence of the Union.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘*the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’¹⁴.

4.1.2. Application to the present case

The Conference of the Parties to the Basel Convention is a body set up by the Convention.

¹⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The acts which the Conference of the Parties is called upon to adopt constitute acts having legal effects. If adopted, the envisaged acts would be binding under international law in accordance with Article 18 of the Convention and capable of decisively influencing the content of EU legislation, namely Regulation (EU)2024/1157 on shipments of waste and Directive 2008/98/EC on waste. This Regulation implements the Convention by, *inter alia*, laying down the procedures for exports from and imports to the Union, as well as shipments between Member States.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relates to the protection of the environment. Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the seventeenth Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal with regard to certain amendments of Articles and Annexes in that Convention.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ('the Convention') entered into force in 1992 and was concluded by the Union by Council Decision 93/98/EEC concerning the conclusion, on behalf of the Community, of the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal¹⁵.
- (2) Pursuant to Article 15(5)(b) of the Convention, the Conference of the Parties shall consider and adopt, as required, amendments to the Convention.
- (3) The Conference of the Parties, during its 15th meeting in June 2022 and its 16th meeting in May 2023, considered a proposal for amendments of Article 6(2) of the Convention submitted by the Russian Federation. The Conference of the Parties decided to defer the consideration of this proposal to the following meeting of the Conference of the Parties.
- (4) The Russian Federation submitted a slightly amended proposal in October 2024 for discussion at the 17th meeting of the Conference of the Parties, in April-May 2025. That proposal aims to establish a 90-day time limit for an importing country to respond to the notifier of a shipment of waste and to include other changes presented as editorial.
- (5) A proposal to amend Annex IV and certain entries in Annexes II and IX to the Convention was submitted on the Union's behalf and discussed by the Conference of the Parties during its 15th meeting in June 2022. The proposal aims, *inter alia*, to amend and clarify the descriptions of disposal operations listed in Annex IV to the Convention and, in particular, to: include a general introduction clearly distinguishing the terms 'non-recovery' and 'recovery'; include introductory texts explaining what is meant by 'non-recovery operations' (Annex IVA) and 'recovery operations' (Annex IVB); update and clarify the descriptions of operations in line with scientific, technical and other developments which have occurred since the Convention was adopted in

¹⁵ OJ L 39, 16.2.1993, p. 1.

1989; and ensure, through the introduction of catch-all provisions, that all operations not specifically mentioned are covered by the Convention's requirements. The Conference of the Parties decided to further consider this proposal at the following meeting of the Conference of the Parties.

- (6) It is appropriate to establish the position to be taken on the Union's behalf at the 17th meeting of the Conference of the Parties on those proposals, given that, being amendments to the text and Annexes of the Convention, they have legal effects. If adopted by the Conference of the Parties, the envisaged acts will be binding on the Union and capable of decisively impacting Union law, namely calling for amendments to Directive 2008/98/EC¹⁶ and to Regulation (EU) 2024/1157¹⁷.
- (7) With regard to the proposals to amend Article 6(2) of the Convention submitted by the Russian Federation, the Union should not support them, since they would not help addressing the problems that the Union considers as priorities for the functioning of the Basel Convention. In addition, amendments to the body of the Convention text require a lengthy and burdensome process to enter into force, and it seems disproportionate to launch such process for an amendment which has very little to no added-value. The Union should rather continue supporting initiatives designed to improve the functioning of the procedure of 'prior informed consent', as currently ongoing under the Convention, safeguarding that they remain in line with broad Union policies and objectives and do not require an amendment to the Convention.
- (8) With regard to the proposal to amend Annex IV and certain entries in Annexes II and IX, the Union should continue to support its adoption. With a view to reach consensus on this proposal, the Union should also display flexibility, in particular with regard to the proposed measures that are unlikely to gather sufficient support for their adoption at the upcoming Conference of Parties. This includes, for example, deferring the discussion on the most contentious topics (such as preparing for reuse and catch-all operations), seeking an agreement on the remaining aspects of the proposal and supporting possible amendments by other Parties, provided that they could achieve the same objectives as those behind the Union's proposals concerning Annex IV to the Convention.

HAS ADOPTED THIS DECISION:

Article 1

- 1. The position to be taken on the Union's behalf at the 17th meeting of the Conference of the Parties to the Basel Convention is the following:
 - (a) the Union shall not support the amendments to Article 6(2) of the Convention, as submitted by the Russian Federation. The Union shall support initiatives designed to improve the functioning of the procedure of 'prior informed consent', on the condition that they are in line with broad Union policies and objectives and do not require amending the Convention.

¹⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

¹⁷ Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, OJ L, 2024/1157, 30.4.2024

- (b) the Union shall continue supporting the adoption of the amendments to Annex IV and to certain entries in Annexes II and IX of the Convention. If needed in order to ensure that consensus is found on an amendment of Annex IV, the Union may show flexibility and agree to depart from the proposal tabled at CoP15, as long as the amendment contributes to increase legal clarity of the Annex and to the implementation of the control mechanisms of the Convention, and does not undermine the EU legal regime on the management and shipments of waste.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the 17th Conference of the Parties, by representatives of the Union, in consultation with the Member States, during on-the-spot coordination meetings.

Done at Brussels,

*For the Council
The President*