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P6\_TA(2005)0393

**Waste shipments \*\*\*II****European Parliament legislative resolution on the Council common position for adopting a regulation of the European Parliament and of the Council on shipments of waste (15311/4/2004 — C6-0223/2005 — 2003/0139(COD))**

(Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (15311/4/2004 — C6-0223/2005),
- having regard to its position at first reading<sup>(1)</sup> on the Commission proposal to Parliament and the Council (COM(2003)0379)<sup>(2)</sup>,
- having regard to the amended Commission proposal (COM(2004)0172)<sup>(3)</sup>,
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 62 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A6-0287/2005),

1. Approves the common position as amended;
2. Instructs its President to forward its position to the Council and Commission.

<sup>(1)</sup> OJ C 87 E, 7.4.2004, p. 281.

<sup>(2)</sup> Not yet published in OJ.

<sup>(3)</sup> Not yet published in OJ.

P6\_TC2-COD(2003)0139

**Position of the European Parliament adopted at second reading on 25 October 2005 with a view to the adoption of Regulation (EC) No .../2006 of the European Parliament and of the Council on shipments of waste**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(2)</sup>,

<sup>(1)</sup> OJ C 108, 30.4.2004, p. 58.

<sup>(2)</sup> Opinion of the European Parliament of 19 November 2003 (OJ C 87 E, 7.4.2004, p. 281), Council common position of 24 June 2005 (OJ C 206 E, 23.8.2005, p. 1) and position of the European Parliament of 25 October 2005 (not yet published in the Official Journal).

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Whereas:

- (1) The main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental.
- (2) Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community<sup>(1)</sup> has already been significantly amended on several occasions and requires further amendment. It is necessary, in particular, to incorporate in that Regulation the content of Commission Decision 94/774/EC of 24 November 1994 concerning the standard consignment note referred to in Council Regulation (EEC) No 259/93<sup>(2)</sup> and of Commission Decision 1999/412/EC of 3 June 1999 concerning a questionnaire for the reporting obligation of Member States pursuant to Article 41(2) of Council Regulation (EEC) No 259/93<sup>(3)</sup>. Regulation (EEC) No 259/93 should therefore be replaced in the interests of clarity.
- (3) Council Decision 93/98/EEC<sup>(4)</sup> concerned 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<sup>(5)</sup>, to which the Community has been a Party since 1994. By adapting Regulation (EEC) No 259/93, the Council has established rules to curtail and to control such movements designed, inter alia, to make the existing Community system for the supervision and control of waste movements comply with the requirements of the Basel Convention.
- (4) Council Decision 97/640/EC<sup>(6)</sup> concerned the approval, on behalf of the Community, of the amendment to the Basel Convention, as laid down in Decision III/1 of the Conference of the Parties. By that amendment, all exports of hazardous waste destined for disposal from countries listed in Annex VII to the Convention to countries not listed therein were prohibited, as were, with effect from 1 January 1998, all such exports of the hazardous waste referred to in Article 1(1)(a) of the Convention and destined for recovery. Regulation (EEC) No 259/93 was amended accordingly by Council Regulation (EC) No 120/97<sup>(7)</sup>.
- (5) In view of the fact that the Community has approved Decision C(2001)107/Final of the OECD Council of 14 June 2001 concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations (OECD Decision), in order to harmonise waste lists with the Basel Convention and revise certain other requirements, it is necessary to incorporate the content of that Decision in Community legislation.
- (6) ***The Community has signed the Stockholm Convention of 22 May 2001 on persistent organic pollutants.***
- (7) It is important to organise and regulate the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health and which promotes a more uniform application of the Regulation throughout the Community.
- (8) It is also important to bear in mind the requirement laid down in Article 4(2)(d) of the Basel Convention that shipments of hazardous waste are to be reduced to a minimum, consistent with environmentally sound and efficient management of such waste.
- (9) Furthermore, it is important to bear in mind the right of each Party to the Basel Convention, pursuant to Article 4(1) thereof, to prohibit the import of hazardous waste or of waste listed in Annex II to that Convention.

<sup>(1)</sup> OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

<sup>(2)</sup> OJ L 310, 3.12.1994, p. 70.

<sup>(3)</sup> OJ L 156, 23.6.1999, p. 37.

<sup>(4)</sup> OJ L 39, 16.2.1993, p. 1.

<sup>(5)</sup> OJ L 39, 16.2.1993, p. 3.

<sup>(6)</sup> OJ L 272, 4.10.1997, p. 45.

<sup>(7)</sup> OJ L 22, 24.1.1997, p. 14.

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- (10) Shipments of waste generated by armed forces or relief organisations should be excluded from the scope of this Regulation when imported into the Community in certain situations (including transit within the Community when the waste enters the Community). The requirements of international law and international agreements should be respected in relation to such shipments. In *such* cases, *any* competent authority of transit and the competent authority of destination *in the Community* should be informed in advance concerning the shipment and its destination.
- (11) It is necessary to avoid duplication with Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption<sup>(1)</sup>, which already contains provisions covering the overall consignment, channelling and movement (collection, transport, handling, processing, use, recovery or disposal, record keeping, accompanying documents and traceability) of animal by-products within, into and out of the Community.
- (12) The Commission should report by the date of entry into force of this Regulation on the relationship between the existing sectoral legislation on animal and public health and the provisions of this Regulation, and should submit by that date any proposals needed to bring such legislation into line with this Regulation in order to achieve an equivalent level of control.
- (13) Although the supervision and control of shipments of waste within a Member State is a matter for that Member State, national systems concerning shipments of waste should take account of the need for coherence with the Community system in order to ensure a high level of protection of the environment and human health.
- (14) In the case of shipments of waste destined for disposal operations and waste not listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments. Such a procedure should in turn entail prior notification, which enables the competent authorities to be duly informed so that they can take all necessary measures for the protection of human health and the environment. It should also enable those authorities to raise reasoned objections to such a shipment.
- (15) In the case of shipments of waste listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure a minimum level of supervision and control by requiring such shipments to be accompanied by certain information.
- (16) In view of the need for uniform application of this Regulation and for the proper functioning of the internal market, it is necessary in the interests of efficiency to require that notifications be processed through the competent authority of dispatch.
- (17) It is also important to clarify the system of financial guarantees or equivalent insurance.
- (18) Considering the responsibility of waste producers for the environmentally sound management of waste, the notification and movement documents for waste shipments should, where practicable, be filled in by the waste producers.
- (19) It is necessary to provide procedural safeguards for the notifier, both in the interests of legal certainty and to ensure uniform application of this Regulation and the proper functioning of the internal market.

<sup>(1)</sup> OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 416/2005 (OJ L 66, 12.3.2005, p. 10).

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- (20) In the case of shipments of waste for **disposal**, Member States **should take into account** the principles of proximity, priority for recovery and self-sufficiency at Community and national levels, in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste<sup>(1)</sup>, by taking measures in accordance with the Treaty to prohibit generally or partially or to object systematically to such shipments. Account should also be taken of the requirement laid down in Directive 75/442/EEC, whereby Member States are to establish an integrated and adequate network of waste disposal installations, in order to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste. Member States should also be able to ensure that the waste management facilities covered by Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control<sup>(2)</sup> apply best available techniques as defined in that Directive in compliance with the permit of the facility, and that the waste is treated in accordance with legally binding environmental protection standards in relation to disposal operations established in Community legislation.
- (21) In the case of shipments of waste destined for recovery, Member States should be able to ensure that the waste management facilities covered by Directive 96/61/EC apply best available techniques as defined in that Directive in compliance with the permit of the facility. Member States should also be able to ensure that waste is treated in accordance with legally binding environmental protection standards in relation to recovery operations established in Community legislation and that, taking account of Article 7(3) of Directive 75/442/EEC, waste is treated in accordance with waste management plans established pursuant to that Directive with the purpose of ensuring the implementation of legally binding recovery or recycling obligations established in Community legislation.
- (22) The development of mandatory requirements for waste facilities and the treatment of specific waste materials at Community level, in addition to the existing provisions of Community law, can contribute to the creation of a high level of environmental protection across the Community, assist in the creation of a level playing field for recycling and help to ensure that the development of an economically viable internal market for recycling is not hindered. Therefore there is a need to develop a Community level playing field for recycling through the application of common standards in certain areas, as appropriate and including in relation to secondary materials, in order to increase the quality of recycling. The Commission should submit, as appropriate, proposals for such standards for certain wastes and certain recycling facilities as soon as practicable based on further examination in the context of the waste strategy and taking into account existing Community legislation and legislation in the Member States. In the interim, it should be possible, under certain conditions, to object to planned shipments where the related recovery would not be in accordance with national legislation in the country of dispatch relating to the recovery of waste. In the interim, the Commission should also keep under review the situation regarding possible undesired shipments of waste to the new Member States and, if necessary, submit appropriate proposals to deal with such situations.
- (23) An obligation should be laid down to the effect that waste from a shipment that cannot be completed as intended is to be taken back to the country of dispatch or recovered or disposed of in an alternative way.
- (24) It should also be made compulsory for the person whose action is the cause of an illegal shipment to take back the waste involved or make alternative arrangements for its recovery or disposal. Failing that, the competent authorities of dispatch or destination, as appropriate, should intervene themselves.
- (25) It is necessary, in order to protect the environment of the countries concerned, to clarify the scope of the prohibition laid down in accordance with the Basel Convention of exports from the Community of any waste destined for disposal in a third country other than an EFTA (European Free Trade Association) country.
- (26) Countries that are Parties to the Agreement on the European Economic Area may adopt the control procedures provided for shipments within the Community.

<sup>(1)</sup> OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

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- (27) It is also necessary, in order to protect the environment of the countries concerned, to clarify the scope of the prohibition of exports of hazardous waste destined for recovery in a country to which the OECD Decision does not apply, also laid down in accordance with the Basel Convention. In particular, it is necessary to clarify the list of waste to which that prohibition applies and to ensure that it also includes the waste listed in Annex II to the Basel Convention, namely waste collected from households and residues from the incineration of household waste.
- (28) Specific arrangements should be maintained for exports of non-hazardous waste destined for recovery in countries to which the OECD Decision does not apply and provision should be made for them to be further streamlined at a later date.
- (29) Imports into the Community of waste for disposal should be permitted where the exporting country is a Party to the Basel Convention. Imports into the Community of waste for recovery should be permitted where the exporting country is one to which the OECD Decision applies or is a Party to the Basel Convention. In other cases, however, imports should be allowed only if the exporting country is bound by a bilateral or multilateral agreement or arrangement compatible with Community legislation and in accordance with Article 11 of the Basel Convention, except when this is not possible during situations of crisis, peacemaking, peacekeeping or war.
- (30) This Regulation should be applied in accordance with international maritime law.
- (31) This Regulation should reflect the rules regarding exports and imports of waste to and from the overseas countries and territories laid down in Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision")<sup>(1)</sup>.
- (32) The necessary steps should be taken to ensure that, in accordance with Directive 75/442/EEC and other Community legislation on waste, waste shipped within the Community and waste imported into the Community is managed, throughout the period of shipment and including recovery or disposal in the country of destination, without endangering human health and without using processes or methods which could harm the environment. As regards exports from the Community that are not prohibited, efforts should be made to ensure that the waste is managed in an environmentally sound manner throughout the period of shipment and including recovery or disposal in the third country of destination. The facility which receives the waste should be operated in accordance with human health and environmental protection standards that are broadly equivalent to those established in Community legislation. A list of non-binding guidelines should be established in which guidance may be sought on environmentally sound management.
- (33) Member States should provide the Commission with information concerning the implementation of this Regulation, both through the reports submitted to the Secretariat of the Basel Convention and on the basis of a separate questionnaire.
- (34) *It is necessary to ensure the safe and environmentally sound management of ship dismantling in order to protect human health and the environment. Furthermore, it should be noted that a ship may become waste as defined in Article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules. It is important to recall that work is ongoing, involving inter-agency cooperation between ILO, IMO and the Basel Convention, to establish mandatory requirements at the global level ensuring an efficient and effective solution to the problem of ship dismantling.*
- (35) *Member States should be required to ensure that, in accordance with the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention), the relevant competent authorities make publicly available by appropriate means information on notifications of shipments, where such information is not confidential under national or Community legislation.*

<sup>(1)</sup> OJ L 314, 30.11.2001, p. 1.

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- (36) Efficient international cooperation regarding control of shipments of waste is instrumental in ensuring that shipments of hazardous waste are controlled. Information exchange, shared responsibility and cooperative efforts between the Community and its Member States and third countries should be promoted with a view to ensuring sound management of waste.
- (37) Certain Annexes to this Regulation should be adopted by the Commission in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC. This procedure should also apply to the amendment of the Annexes to take account of scientific and technical progress, of modifications in the relevant Community legislation or of events connected to the OECD Decision or to the Basel Convention and other related international conventions and agreements.
- (38) In preparing the instructions for completing the notification and movement documents to be set out in Annex IC, the Commission, taking into account the OECD Decision and the Basel Convention, should specify, inter alia, that the notification and movement documents should, as far as possible, be on two pages and what the precise timing is for completion of the notification and movement documents in Annex IA and IB, taking into account Annex II. In addition, where terminology and requirements differ between the OECD Decision or the Basel Convention and this Regulation, the specific requirements should be clarified.
- (39) In considering the mixtures of wastes to be added in Annex IIIA, the following information should be considered, inter alia: the properties of the waste such as its possible hazardous characteristics, its potential for contamination and its physical state; the management aspects, such as the technological capacity to recover the waste, and the environmental benefits arising from the recovery operation, including whether the environmentally sound management of the waste may be impaired. The Commission should progress towards the completion of this Annex as far as possible before the date of entry into force of this Regulation and complete this task at the latest six months after that date.
- (40) Additional measures related to the implementation of this Regulation should also be adopted by the Commission in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC. These should include a method for calculating the financial guarantee or equivalent insurance to be completed by the Commission, if possible, before the date of application of this Regulation.
- (41) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(1)</sup>.
- (42) Since the objective of this Regulation, namely to ensure protection of the environment when waste is subject to shipment, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects thereof, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

TITLE I  
SCOPE AND DEFINITIONS

Article 1  
Scope

1. This Regulation establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

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2. This Regulation shall apply to shipments of waste:
- (a) between Member States, within the Community or with transit through third countries;
  - (b) imported into the Community from third countries;
  - (c) exported from the Community to third countries;
  - (d) in transit through the Community, on the way from and to third countries.
3. The following shall be excluded from the scope of this Regulation:
- (a) the offloading to shore of waste, including waste water and residues, generated by the normal operation of ships and offshore platforms, provided that such waste is subject to the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78), or other binding international instruments;
  - (b) waste generated on board **vehicles, trains, aeroplanes and ships**, until such waste is offloaded in order to be recovered or disposed of;
  - (c) shipments of radioactive waste as defined in Article 2 of Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community <sup>(1)</sup>;
  - (d) shipments of the waste referred to in point 1(b)(ii), (iv) and (v) of Article 2 of Directive 75/442/EEC, where such shipments are already covered by other Community legislation containing similar provisions;
  - (e) shipments which are subject to the approval requirements of Regulation (EC) No 1774/2002;
  - (f) shipments of waste from the Antarctic into the Community which are in accordance with the requirements of the Protocol on Environmental Protection to the Antarctic Treaty (1991);
  - (g) imports into the Community of waste generated by armed forces or relief organisations in situations of crisis, peacemaking or peacekeeping operations where such waste is shipped, by the armed forces or relief organisations concerned or on their behalf, directly or indirectly to the country of destination. In **such** cases, **any** competent authority of transit and the competent authority of destination **in the Community** shall be informed in advance concerning the shipment and its destination.
4. Shipments of waste from the Antarctic to countries outside the Community, which transit through the Community, shall be subject to *Articles 36 and 49*.
5. Shipments of waste exclusively within a Member State shall be subject only to *Article 33*.

## Article 2

### Definitions

For the purposes of this Regulation:

- 1) "waste" is as defined in Article 1(a) of Directive 75/442/EEC;
- 2) "hazardous waste" is as defined in Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(2)</sup>;
- 3) "mixture of wastes" means waste that results from an intentional or unintentional mixing of two or more different wastes and for which mixture no single entry exists in Annexes III, IIIB, IV and IVA. Waste shipped in a single shipment of wastes, consisting of two or more wastes, where each waste is separated, is not a mixture of wastes;

<sup>(1)</sup> OJ L 35, 12.2.1992, p. 24.

<sup>(2)</sup> OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

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- 4) "disposal" is as defined in Article 1(e) of Directive 75/442/EEC;
- 5) "interim disposal" means disposal operations D 13 to D 15 as defined in Annex II A to Directive 75/442/EEC;
- 6) "recovery" is as defined in Article 1(f) of Directive 75/442/EEC;
- 7) "interim recovery" means recovery operations R 12 and R 13 as defined in Annex IIB to Directive 75/442/EEC;
- 8) "environmentally sound management" means taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste;
- 9) "producer" is anyone whose activities produce waste (original producer) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste (new producer) (as defined in Article 1(b) of Directive 75/442/EEC);
- 10) "holder" is the producer of the waste or the natural or legal person who is in possession of it (and as defined in Article 1(c) of Directive 75/442/EEC);
- 11) "collector" is anyone carrying out waste collection as defined in Article 1(g) of Directive 75/442/EEC;
- 12) "dealer" is anyone who acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste, and as referred to in Article 12 of Directive 75/442/EEC;
- 13) "broker" is anyone arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste, as referred to in Article 12 of Directive 75/442/EEC;
- 14) "consignee" means the person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal;
- 15) "notifier" means:
  - (a) in the case of a shipment originating from a Member State, any natural or legal person under the jurisdiction of that Member State who intends to carry out a shipment of waste or intends to have a shipment of waste carried out and to whom the duty to notify is assigned. The notifier is one of the persons or bodies listed below, selected in accordance with the ranking established in this listing:
    - (i) the original producer; or
    - (ii) the licensed new producer who carries out operations prior to shipment; or
    - (iii) a licensed collector who, from various small quantities of the same type of waste collected from a variety of sources, has assembled the shipment which is to start from a single notified location; or
    - (iv) a registered dealer who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his behalf as notifier;
    - (v) a registered broker who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his behalf as notifier;
    - (vi) where all of the persons specified in (i), (ii), (iii), (iv) and (v) if applicable, are unknown or insolvent, the holder.

Should a notifier specified in (iv) or (v) fail to fulfil any of the take-back obligations set out in Articles 22 to 25, the original producer, new producer or licensed collector specified in (i), (ii) or (iii) respectively who authorised that dealer or broker to act on his behalf shall be deemed to be the notifier for the purposes of the said take-back obligations. In circumstances of illegal shipment notified by a dealer or broker specified in (iv) or (v), the person specified in (i), (ii) or (iii) who authorised that dealer or broker to act on his behalf shall be deemed to be the notifier for the purposes of this Regulation;



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- (b) in the case of import into, or transit through, the Community of waste that does not originate in a Member State, any of the following natural or legal persons under the jurisdiction of *the country of destination* who intends to carry out a shipment of waste or intends to have, or who has had, a shipment of waste carried out, being either:
- (i) the person designated by the law of the country of *destination*; or, in the absence of any such designation,
  - (ii) the holder at the time the export took place;
- (16) “Basel Convention” means the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;
- (17) “OECD Decision” means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations;
- 18) “competent authority” means:
- (a) in the case of Member States, the body designated by the Member State concerned in accordance with *Article 53*; or
  - (b) in the case of a non-Member State that is a Party to the Basel Convention, the body designated by that country as the competent authority for the purposes of that Convention in accordance with *Article 5* thereof; or
  - (c) in the case of any country not referred to in either (a) or (b), the body that has been designated as the competent authority by the country or region concerned or, in the absence of such designation, the regulatory authority for the country or region, as appropriate, which has jurisdiction over shipments of waste for recovery or disposal or transit, as the case may be;
- 19) “competent authority of dispatch” means the competent authority for the area from which the shipment is planned to be initiated or is initiated;
- 20) “competent authority of destination” means the competent authority for the area to which the shipment is planned or takes place, or in which waste is loaded prior to recovery or disposal in an area not under the national jurisdiction of any country;
- 21) “competent authority of transit” means the competent authority for any country, other than that of the competent authority of dispatch or destination, through which the shipment is planned or takes place;
- 22) “country of dispatch” means any country from which a shipment of waste is planned to be initiated or is initiated;
- 23) “country of destination” means any country to which a shipment of waste is planned or takes place for recovery or disposal therein, or for the purpose of loading prior to recovery or disposal in an area not under the national jurisdiction of any country;
- 24) “country of transit” means any country, other than the country of dispatch or destination, through which a shipment of waste is planned or takes place;
- 25) “area under the national jurisdiction of a country” means any land or marine area within which a state exercises administrative and regulatory responsibility in accordance with international law as regards the protection of human health or the environment;
- 26) “overseas countries and territories” means the overseas countries and territories as listed in Annex IA to Decision 2001/822/EC;
- 27) “customs office of export from the Community” is the customs office as defined in Article 161(5) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>(1)</sup>;
- 28) “customs office of exit from the Community” is the customs office as defined in Article 793(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(2)</sup>;

(<sup>1</sup>) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

(<sup>2</sup>) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

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- 29) "customs office of entry into the Community" is the customs office where waste brought into the customs territory of the Community shall be conveyed to in accordance with Article 38(1) of Regulation (EEC) No 2913/92;
- 30) "import" means any entry of waste into the Community but excluding transit through the Community;
- 31) "export" means the action of waste leaving the Community but excluding transit through the Community;
- 32) "transit" means a shipment of waste or a planned shipment of waste through one or more countries other than the country of dispatch or destination;
- 33) "transport" means the carriage of waste by road, rail, air, sea or inland waterways;
- 34) "shipment" means the transport of waste destined for recovery or disposal which is planned or takes place:
- (a) between a country and another country; or
  - (b) between a country and overseas countries and territories or other areas, under that country's protection; or
  - (c) between a country and any land area which is not part of any country under international law; or
  - (d) between a country and the Antarctic; or
  - (e) from one country through any of the areas referred to above; or
  - (f) within a country through any of the areas referred to above and which originates in and ends in the same country; or
  - (g) from a geographic area not under the jurisdiction of any country, to a country;
- 35) "illegal shipment" means any shipment of waste effected:
- (a) without notification to all competent authorities concerned pursuant to this Regulation; or
  - (b) without the consent of the competent authorities concerned pursuant to this Regulation; or
  - (c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or
  - (d) in a way which is not specified materially in the notification or movement documents; or
  - (e) in a way which results in recovery or disposal in contravention of Community or international rules; or
  - (f) contrary to *Articles 34, 36, 39, 40, 41 and 43*; or
  - (g) which, in relation to shipments of waste as referred to in Article 3(2) and (4), has resulted from:
    - (i) the waste being discovered not to be listed in Annexes III, IIIA or IIIB; or
    - (ii) non-compliance with Article 3(4);
    - (iii) the shipment being effected in a way which is not specified materially in the document set out in Annex VII.

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## TITLE II

**SHIPMENTS WITHIN THE COMMUNITY WITH OR WITHOUT TRANSIT  
THROUGH THIRD COUNTRIES**

## Article 3

## Overall procedural framework

1. Shipments of the following wastes shall be subject to the procedure of prior written notification and consent as laid down in the provisions of this Title:
  - (a) if destined for disposal operations:  
all wastes;
  - (b) if destined for recovery operations:
    - (i) wastes listed in Annex IV, **which include inter alia wastes listed in Annexes II and VIII to the Basel Convention**;
    - (ii) wastes listed in Annex IVA;
    - (iii) wastes not classified under one single entry in either Annex III, IIIB, IV or IVA;
    - (iv) mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA.
2. Shipments of the following wastes destined for recovery shall be subject to the general **requirements** laid down in Article 18, **if the amount of waste shipped exceeds 20 kg**:
  - (a) waste listed in Annex III or IIIB;
  - (b) mixtures, not classified under one single entry in Annex III, of two or more wastes listed in Annex III, provided that the composition of these mixtures does not impair their environmentally sound recovery and provided that such mixtures are listed in Annex IIIA, in accordance with *Article 58*.
3. For wastes listed in Annex III, in exceptional cases, the relevant provisions shall apply as if they had been listed in Annex IV, if they display any of the hazardous characteristics listed in Annex III to Directive 91/689/EEC. These cases shall be treated in accordance with *Article 58*.
4. Shipments of waste explicitly destined for laboratory analysis to assess either its physical or chemical characteristics or to determine its suitability for recovery or disposal operations shall not be subject to the procedure of prior written notification and consent as described in paragraph 1. Instead, the procedural requirements of Article 18 shall apply. The amount of such waste exempted when explicitly destined for laboratory analysis shall be determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and shall not exceed 25 kg.
5. Shipments of mixed municipal waste (waste entry 20 03 01) collected from private households, including where such collection also covers such waste from other producers, to recovery or disposal facilities shall, in accordance with this Regulation, be subject to the same provisions as shipments of waste destined for disposal.

## Chapter 1

## Prior written notification and consent

## Article 4

## Notification

Where the notifier intends to ship waste as referred to in Article 3(1)(a) or (b), he/she shall submit a prior written notification to and through the competent authority of dispatch and, if submitting a general notification, comply with Article 13.

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When a notification is submitted, the following requirements shall be fulfilled:

(1) Notification and movement documents:

Notification shall be effected by means of the following documents:

- (a) the notification document set out in Annex IA; and
- (b) the movement document set out in Annex IB.

In submitting a notification, the notifier shall fill in the notification document and, where relevant, the movement document.

When the notifier is not the original producer in accordance with point 15(a)(i) of Article 2, the notifier shall ensure that this producer or one of the persons indicated in point 15(a)(ii) or (iii) of Article 2, where practicable, also signs the notification document set out in Annex IA.

The notification document and the movement document shall be issued to the notifier by the competent authority of dispatch.

(2) Information and documentation in the notification and movement documents:

The notifier shall supply on, or annex to, the notification document information and documentation as listed in Annex II, Part 1. The notifier shall supply on, or annex to, the movement document information and documentation referred to in Annex II, Part 2, to the extent possible at the time of notification.

A notification shall be considered properly carried out when the competent authority of dispatch is satisfied that the notification document and movement document have been completed in accordance with the first subparagraph.

(3) Additional information and documentation:

If requested by any of the competent authorities concerned, the notifier shall supply additional information and documentation. A list of additional information and documentation that may be requested is set out in Annex II, Part 3.

A notification shall be considered properly completed when the competent authority of destination is satisfied that the notification document and the movement document have been completed and that the information and documentation as listed in Annex II, Parts 1 and 2, as well as any additional information and documentation requested in accordance with this paragraph and as listed in Annex II, Part 3, have been supplied by the notifier.

(4) Conclusion of a contract between the notifier and the consignee:

The notifier shall conclude a contract as described in Article 5 with the consignee for the recovery or disposal of the notified waste.

Evidence of this contract or a declaration certifying its existence in accordance with Annex IA shall be supplied to the competent authorities involved at the time of notification. A copy of the contract or such evidence to the satisfaction of the competent authority concerned shall be provided by the notifier or consignee upon request by the competent authority.

(5) Establishment of a financial guarantee or equivalent insurance:

A financial guarantee or equivalent insurance shall be established as described in Article 6. A declaration to this effect shall be made by the notifier through completion of the appropriate part of the notification document set out in Annex IA.

The financial guarantee or equivalent insurance (or if the competent authority so allows, evidence of that guarantee or insurance or a declaration certifying its existence) shall be supplied as part of the notification document at the time of notification or, if the competent authority so allows, pursuant to national legislation, at such time before the shipment starts.

(6) Coverage of the notification:

A notification shall cover the shipment of waste from its initial place of dispatch and including its interim and non-interim recovery or disposal.

If subsequent interim or non-interim operations take place in a country other than the first country of destination, the non-interim operation and its destination shall be indicated in the notification and Article 15(f) shall apply.

Only one waste identification code shall be covered for each notification, except for:

- (a) wastes not classified under one single entry in either Annex III, IIIB, IV or IVA. In this case, only one type of waste shall be specified;
- (b) mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA. In this case, the code for each fraction of the waste shall be specified in order of importance.

Article 5

Contract

1. All shipments of waste for which notification is required shall be subject to the requirement of the conclusion of a contract between the notifier and the consignee for the recovery or disposal of the notified waste.

2. The contract shall be concluded and effective at the time of notification and for the duration of the shipment until a certificate is issued in accordance with Article 15(e), Article 16(e) or, where appropriate, Article 15(d).

3. The contract shall include obligations:

- (a) on the notifier to take the waste back if the shipment or the recovery or disposal has not been completed as intended or if it has been effected as an illegal shipment, in accordance with *Article 22* and *Article 24(2)*;
- (b) on the consignee to recover or dispose of the waste if it has been effected as an illegal shipment, in accordance with *Article 24(3)*; and
- (c) **on the** facility to provide, in accordance with Article 16(e), a certificate that the waste has been recovered or disposed of, in accordance with the notification and the conditions specified therein and the requirements of this Regulation.

4. If the waste shipped is destined for interim recovery or disposal operations, the contract shall include the **following** additional obligations:

- (a) the obligation **on the facility of destination** to provide, in accordance with Article 15(d) and, where appropriate, Article 15(e), the certificates that the waste has been recovered or disposed of in accordance with the notification and the conditions specified therein and the requirements of this Regulation; and
- (b) the obligation **on the consignee** to submit, where applicable, a notification to the initial competent authority of the initial country of dispatch in accordance with Article 15(f)(ii).

5. If the waste is shipped between two establishments under the control of the same legal entity, the contract may be replaced by a declaration by the entity in question undertaking to recover or dispose of the notified waste.

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Article 6

Financial guarantee

1. All shipments of waste for which notification is required shall be subject to the requirement of a financial guarantee or equivalent insurance covering:

- (a) costs of transport;
- (b) costs of recovery or disposal, including any necessary interim operation; and
- (c) costs of storage for 90 days.

2. The financial guarantee or equivalent insurance is intended to cover costs arising in the context of:

- (a) cases where a shipment or the recovery or disposal cannot be completed as intended, as referred to in *Article 22*; and
- (b) cases where a shipment or the recovery or disposal is illegal as referred to in *Article 24*.

3. The financial guarantee or equivalent insurance shall be established by the notifier or by another natural or legal person on its behalf and shall be effective at the time of the notification or, if the competent authority which approves the financial guarantee or equivalent insurance so allows, at the latest when the shipment starts, and shall apply to the notified shipment at the latest when the shipment starts.

4. The competent authority of dispatch shall approve the financial guarantee or equivalent insurance, including the form, wording and amount of the cover.

However, in cases of import into the Community, the competent authority of destination in the Community shall review the amount of cover and, if necessary, approve an additional financial guarantee or equivalent insurance.

5. The financial guarantee or equivalent insurance shall be valid for and cover a notified shipment and completion of recovery or disposal of the notified waste.

The financial guarantee or equivalent insurance shall be released when the **competent authority concerned has received the** certificate referred to in *Article 16(e)* or, where appropriate, in *Article 15(e)* as regards interim recovery or disposal operations.

6. By way of derogation from paragraph 5, if the waste shipped is destined for interim recovery or disposal operations and a further recovery or disposal operation takes place in the country of destination, the financial guarantee or equivalent insurance may be released when the waste leaves the interim facility and the **competent authority concerned has received the** certificate referred to in *Article 15(d)*. In this case, any further shipment to a recovery or disposal facility shall be covered by a new financial guarantee or equivalent insurance unless the competent authority of destination is satisfied that such a financial guarantee or equivalent insurance is not required. In these circumstances, the competent authority of destination shall be responsible for obligations arising in the case of an illegal shipment or for take-back where the shipment or the further recovery or disposal operation cannot be completed as intended.

7. The competent authority within the Community which has approved the financial guarantee or equivalent insurance shall have access thereto and shall make use of the funding, including for the purpose of payments to other authorities concerned, in order to meet the obligations arising in accordance with *Articles 23 and 25*.

8. In the case of a general notification pursuant to *Article 13*, a financial guarantee or equivalent insurance covering parts of the general notification may be established, instead of one covering the entire general notification. In such cases, the financial guarantee or equivalent insurance shall apply to the shipment at the latest when the notified shipment it covers starts.

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The financial guarantee or equivalent insurance shall be released when the **competent authority concerned has received the certificate referred to in Article 16(e) or, where appropriate, in Article 15(e) as regards interim recovery or disposal operations for the relevant waste.** Paragraph 6 shall apply mutatis mutandis.

9. Member States shall inform the Commission of provisions of national law adopted pursuant to this Article.

#### Article 7

##### Transmission of the notification by the competent authority of dispatch

1. Once the notification has been properly carried out, as described in the second subparagraph, point 2 of Article 4, the competent authority of dispatch shall retain a copy of the notification and transmit the notification to the competent authority of destination with copies to any competent authority(ies) of transit, and shall inform the notifier of the transmission. This shall be done within three working days of receipt of the notification.

2. If the notification is not properly carried out, the competent authority of dispatch shall request information and documentation from the notifier in accordance with the second subparagraph, point 2 of Article 4.

This shall be done within three working days of receipt of the notification.

In such cases the competent authority of dispatch shall have three working days following the receipt of the information and/or documentation requested in which to comply with paragraph 1.

3. Once the notification has been properly carried out, as described in the second subparagraph, point 2 of Article 4, the competent authority of dispatch may decide within three working days, not to proceed with the notification, if it has objections to the shipment in accordance with Articles 11 and 12.

It shall immediately inform the notifier of its decision and of these objections.

4. If, within 30 days of receipt of the notification, the competent authority of dispatch has not transmitted the notification as required under paragraph 1, it shall provide the notifier with a reasoned explanation upon his/her request. This shall not apply when the request for information, referred to in paragraph 2, has not been complied with.

#### Article 8

##### Requests for information and documentation by the competent authorities concerned and acknowledgement by the competent authority of destination

1. Following the transmission of the notification by the competent authority of dispatch, if any of the competent authorities concerned considers that additional information and documentation is required as referred to in the second subparagraph, point 3 of Article 4, it shall request such information and documentation from the notifier and inform the other competent authorities of such request. This shall be done within three working days of receipt of the notification. In such cases the competent authorities concerned shall have three working days following the receipt of the information and documentation requested in which to inform the competent authority of destination.

2. When the competent authority of destination considers that the notification has been properly completed, as described in the second subparagraph, point 3 of Article 4, it shall send an acknowledgement to the notifier and copies to the other competent authorities concerned. This shall be done within three working days of receipt of the properly completed notification.

3. If, within 30 days of receipt of the notification, the competent authority of destination has not acknowledged the notification as required under paragraph 2, it shall provide the notifier, upon his/her request, with a reasoned explanation.

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Article 9

Consents by the competent authorities of destination, dispatch and transit  
and time periods for transport, recovery or disposal

1. The competent authorities of destination, dispatch and transit shall have 30 days following the date of transmission of the acknowledgement by the competent authority of destination in accordance with Article 8 in which to take one of the following duly reasoned decisions in writing as regards the notified shipment:

- (a) consent without conditions;
- (b) consent with conditions in accordance with Article 10; or
- (c) objections in accordance with Articles 11 and 12.

Tacit consent by the competent authority of transit may be assumed if no objection is lodged within the said 30-day time limit.

2. The competent authorities of destination, dispatch and, where appropriate, transit shall transmit their decision and the reasons therefor to the notifier in writing within the 30-day time limit referred to in paragraph 1, with copies to the other competent authorities concerned.

3. The competent authorities of destination, dispatch and, where appropriate, transit shall signify their written consent by appropriately stamping, signing and dating the notification document or their copies thereof.

4. A written consent to a planned shipment shall expire one calendar year after it is issued or on such later date as is indicated in the notification document. However, this shall not apply if a shorter period is indicated by the competent authorities concerned.

5. Tacit consent to a planned shipment shall expire one calendar year after the expiry of the 30-day time limit referred to in paragraph 1.

6. The planned shipment may take place only after fulfilment of the requirements of Article 16(a) and (b) and during the period of validity of the tacit or written consents of all competent authorities.

7. The recovery or disposal of waste in relation to a planned shipment shall be completed no later than one calendar year from the receipt of the waste by the **facility**, unless a shorter period is indicated by the competent authorities concerned.

8. The competent authorities concerned shall withdraw their consent when they have knowledge that:

- (a) the composition of the waste is not as notified; or
- (b) the conditions imposed on the shipment are not respected; or
- (c) the waste is not recovered or disposed of in compliance with the permit of the facility that performs the said operation; or
- (d) the waste is to be, or has been, shipped, recovered or disposed of in a way that is not in accordance with the information supplied on, or annexed to, the notification and movement documents.

9. Any withdrawal of consent shall be transmitted by means of official notice to the notifier with copies to the other competent authorities concerned and to the consignee.



## Article 10

## Conditions for a shipment

1. The competent authorities of dispatch, destination and transit may, within 30 days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8, lay down conditions in connection with their consent to a notified shipment. Such conditions may be based on one or more of the reasons specified in either Article 11 or Article 12.
2. The competent authorities of dispatch, destination and transit may also, within the 30-day time limit referred to in paragraph 1, lay down conditions in respect of the transport of waste within their jurisdiction. Such transport conditions shall not be more stringent than those laid down in respect of similar shipments occurring wholly within their jurisdiction and shall take due account of existing agreements, in particular relevant international agreements.
3. The competent authorities of dispatch, destination and transit may also, within the 30-day time limit referred to in paragraph 1, lay down a condition that their consent is to be considered withdrawn if the financial guarantee or equivalent insurance is not applicable at the latest when the notified shipment starts, as required by Article 6(3).
4. Conditions shall be transmitted to the notifier in writing by the competent authority that lays them down, with copies to the competent authorities concerned.

Conditions shall be supplied on, or annexed to, the notification document by the relevant competent authority.

**5. The competent authority of destination may also, within the 30-day time limit referred to in paragraph 1, lay down a condition that the receiving facility shall keep a regular record of inputs, outputs and/or balances for wastes and their associated recovery or disposal operations as contained in the notification, and for the period of validity of the notification. Such records shall be signed by a person legally responsible for the facility and be sent to the competent authority of destination within one month of completion of the notified recovery or disposal operation.**

## Article 11

## Objections to shipments of waste destined for disposal

1. Where a notification is submitted regarding a planned shipment of waste destined for disposal, the competent authorities of destination and dispatch may, within 30 days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8, raise reasoned objections based on one or more of the following grounds and in accordance with the Treaty:
  - (a) that the planned shipment or disposal would not be in accordance with measures taken to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, to prohibit generally or partially or to object systematically to shipments of waste; or
  - (b) that the planned shipment or disposal would not be in accordance with national legislation relating to environmental protection, public order, public safety or health protection concerning actions taking place in the objecting country; or
  - (c) that the notifier or the consignee has previously been convicted of illegal shipment or some other illegal act in relation to environmental protection. In this case, the competent authorities of dispatch and destination may refuse all shipments involving the person in question in accordance with national legislation; or
  - (d) that the notifier or the **facility** has repeatedly failed to comply with Articles 15 and 16 in connection with past shipments; or
  - (e) that the Member State wishes to exercise its right pursuant to Article 4(1) of the Basel Convention to prohibit the import of hazardous waste or of waste listed in Annex II to that Convention; or

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- (f) that the planned shipment or disposal conflicts with obligations resulting from international conventions concluded by the Member State(s) concerned or the Community; or
  - (g) that the planned shipment or disposal is not in accordance with Directive 75/442/EEC, in particular Articles 5 and 7 thereof, while taking into account geographical circumstances or the need for specialised installations for certain types of waste:
    - (i) in order to implement the principle of self-sufficiency at Community and national levels; or
    - (ii) in cases where the specialised installation has to dispose of waste from a nearer source and the competent authority has given priority to this waste; or
    - (iii) in order to ensure that shipments are in accordance with waste management plans; or
  - (h) that the waste will be treated in a facility which is covered by Directive 96/61/EC, but which does not apply best available techniques as defined in Article 9(4) of that Directive in compliance with the permit of the facility; or
  - (i) that the waste is mixed municipal waste collected from private households (waste entry 20 03 01); or**
  - (j) that the waste concerned will not be treated in accordance with legally binding environmental protection standards in relation to disposal operations established in Community legislation (also in cases where temporary derogations are granted).
2. The competent authority(ies) of transit may, within the 30-day time limit referred to in paragraph 1, raise reasoned objections based only on paragraph 1(b), (c), **(d)** and (f).

3. In the case of hazardous waste produced in a Member State of dispatch in such a small quantity overall per year that the provision of new specialised disposal installations within that Member State would be uneconomic, paragraph 1(a) shall not apply.

The competent authority of destination shall cooperate with the competent authority of dispatch which considers that this paragraph and not paragraph 1(a) should apply, with a view to resolving the issue bilaterally.

If there is no satisfactory solution, either Member State may refer the matter to the Commission. The Commission shall then determine the issue in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.

4. If, within the 30-day time limit referred to in paragraph 1, the competent authorities consider that the problems which gave rise to their objections have been resolved, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

5. If the problems giving rise to the objections have not been resolved within the 30-day time limit referred to in paragraph 1, the notification shall cease to be valid. In cases where the notifier still intends to carry out the shipment, a new notification shall be submitted, unless all the competent authorities concerned and the notifier agree otherwise.

6. Measures taken by Member States in accordance with paragraph 1(a), to prohibit generally or partially or to object systematically to shipments of waste destined for disposal, or in accordance with paragraph 1(e), shall immediately be notified to the Commission which shall inform the other Member States.

**Article 12****Objections to shipments of waste destined for recovery**

1. Where a notification is submitted regarding a planned shipment of waste destined for recovery, the competent authorities of destination and dispatch may, within 30 days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8, raise reasoned objections based on one or more of the following grounds and in accordance with the Treaty:

- (a) that the planned shipment or recovery would not be in accordance with Directive 75/442/EEC, in particular Articles 3, 4, 7 and 10 thereof; or

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- (b) that the planned shipment or recovery would not be in accordance with national legislation relating to environmental protection, public order, public safety or health protection concerning actions taking place in the objecting country; or
- (c) that the planned shipment or recovery would not be in accordance with national legislation in the country of dispatch relating to the recovery of waste, including where the planned shipment would concern waste destined for recovery in a facility which has lower treatment standards for the particular waste than those of the country of dispatch, respecting the need to ensure the proper functioning of the internal market;

This shall not apply if:

- (i) there is corresponding Community legislation, in particular related to waste, and if requirements that are at least as stringent as those laid down in the Community legislation have been introduced in national legislation transposing such Community legislation;
- (ii) the recovery operation in the country of destination takes place under conditions that are broadly equivalent to those prescribed in the national legislation of the country of dispatch;
- (iii) the national legislation in the country of dispatch, other than that covered by (i), has not been notified in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services <sup>(1)</sup>, where required by that Directive; or
- (d) that the notifier or the consignee has previously been convicted of illegal shipment or some other illegal act in relation to environmental protection. In this case, the competent authorities of dispatch and destination may refuse all shipments involving the person in question in accordance with national legislation; or
- (e) that the notifier or the **facility** has repeatedly failed to comply with Articles 15 and 16 in connection with past shipments; or
- (f) that the planned shipment or recovery conflicts with obligations resulting from international conventions concluded by the Member State(s) concerned or the Community; or
- (g) that the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery, having regard to economic and/or environmental considerations; or
- (h) that the waste shipped is destined for disposal and not for recovery; or
- (i) that the waste will be treated in a facility which is covered by Directive 96/61/EC, but which does not apply best available techniques as defined in Article 9(4) of that Directive in compliance with the permit of the facility; or
- (j) that the waste concerned will not be treated in accordance with legally binding environmental protection standards in relation to recovery operations, or legally binding recovery or recycling obligations established in Community legislation (also in cases where temporary derogations are granted); or
- (k) that the waste concerned will not be treated in accordance with waste management plans drawn up pursuant to Article 7 of Directive 75/442/EEC with the purpose of ensuring the implementation of legally binding recovery or recycling obligations established in Community legislation.

2. The competent authority(ies) of transit may, within the 30-day time limit referred to in paragraph 1, raise reasoned objections to the planned shipment based only on paragraph 1(b), (d), (e) and (f).

3. If, within the 30-day time limit referred to in paragraph 1, the competent authorities consider that the problems which gave rise to their objections have been resolved, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

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4. If the problems giving rise to the objections are not resolved within the 30-day time limit referred to in paragraph 1, the notification shall cease to be valid. In cases where the notifier still intends to carry out the shipment, a new notification shall be submitted, unless all the competent authorities concerned and the notifier agree otherwise.

5. Objections raised by competent authorities in accordance with paragraph 1(c) shall be reported by Member States to the Commission in accordance with *Article 51*.

6. The Member State of dispatch shall inform the Commission and the other Member States of the national legislation on which objections raised by competent authorities in accordance with paragraph 1(c) may be based, and shall state to which waste and waste recovery operations those objections apply, before such legislation is invoked in order to raise reasoned objections.

## Article 13

## General notification

1. The notifier may submit a general notification to cover several shipments if, in the case of each shipment:

- (a) the waste has essentially similar physical and chemical characteristics; **and**
- (b) the waste is shipped to the same consignee and the same facility; and
- (c) the route of the shipment as indicated in the notification document is the same.

2. If, owing to unforeseen circumstances, the same route cannot be followed, the notifier shall inform the competent authorities concerned as soon as possible and, if possible, before the shipment starts if the need for modification is already known.

Where the route modification is known before the shipment starts and involves competent authorities other than those concerned by the general notification, the general notification may not be used and a new notification shall be submitted.

3. The competent authorities concerned may make their agreement to the use of a general **notification** subject to the subsequent provision of additional information and documentation, in accordance with the second subparagraph, points 2 and 3 of Article 4.

## Article 14

## Pre-consented recovery facilities

1. The competent authorities of destination which have jurisdiction over specific recovery facilities may decide to issue pre-consents to such facilities.

Such decisions shall be limited to a specific period and may be revoked at any time.

2. In the case of a general notification submitted in accordance with Article 13, the period of validity of the consent referred to in Article 9(4) and (5) may be extended to up to three years by the competent authority of destination in agreement with the other competent authorities concerned.

3. Competent authorities which decide to issue a pre-consent to a facility in accordance with paragraphs 1 and 2 shall inform the Commission and, where appropriate, the OECD Secretariat of:

- (a) the name, registration number and address of the recovery facility;
- (b) the description of technologies employed, including R-code(s);
- (c) the wastes as listed in Annexes IV and IVA or the wastes to which the decision applies;
- (d) the total pre-consented quantity;

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- (e) the period of validity;
- (f) any change in the pre-consent;
- (g) any change in the information notified; and
- (h) any revocation of the pre-consent.

For this purpose the form set out in Annex VI shall be used.

4. By way of derogation from Articles 9, 10 and 12, the consent given in accordance with Article 9, conditions imposed in accordance with Article 10 or objections raised in accordance with Article 12 by the competent authorities concerned shall be subject to a time limit of 7 working days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8.

5. Notwithstanding paragraph 4, the competent authority of dispatch may decide that more time is needed in order to receive further information or documentation from the notifier.

In such cases, the competent authority shall, within 7 working days, inform the notifier in writing with copies to the other competent authorities concerned.

The total time needed shall not exceed 30 days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8.

#### Article 15

##### Additional provisions regarding interim recovery and disposal operations

Shipments of waste destined for interim recovery or disposal operations shall be subject to the following additional provisions:

- (a) Where a shipment of waste is destined for an interim recovery or disposal operation, all the facilities where subsequent interim as well as non-interim recovery and disposal operations are envisaged shall also be indicated in the notification document in addition to the initial interim recovery or disposal operation.
- (b) The competent authorities of dispatch and destination may give their consent to a shipment of waste destined for an interim recovery or disposal operation only if there are no grounds for objection, in accordance with Articles 11 or 12, to the shipment(s) of waste to the facilities performing any subsequent interim or non-interim recovery or disposal operations.
- (c) Within three days of the receipt of the waste by the facility which carries out this interim recovery or disposal operation, that facility shall provide confirmation in writing that the waste has been received.

This confirmation shall be supplied on, or annexed to, the movement document. The said facility shall send signed copies of the movement document containing this confirmation to the notifier and to the competent authorities concerned.

- (d) As soon as possible, but no later than 30 days after completion of the interim recovery or disposal operation, and no later than one calendar year, or a shorter period in accordance with Article 9(7), following the receipt of the **waste, the facility** carrying out this operation shall, under its responsibility, certify that the interim recovery or disposal has been completed.

This certificate shall be contained in, or annexed to, the movement document.

The said facility shall send signed copies of the movement document containing this certificate to the notifier and to the competent authorities concerned.

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- (e) When a recovery or disposal facility which carries out an interim recovery or disposal operation delivers the waste for any subsequent interim or non-interim recovery or disposal operation to a facility located in the country of destination, it shall obtain as soon as possible but no later than one calendar year following delivery of the waste, or a shorter period in accordance with Article 9(7), a certificate from that facility that the subsequent non-interim recovery or disposal operation has been completed.

The said facility that carries out an interim recovery or disposal operation shall promptly transmit the relevant certificate(s) to the notifier and the competent authorities concerned, identifying the shipment(s) to which the certificate(s) pertain.

- (f) When a delivery as described in subparagraph (e) is made to a facility respectively located:
- (i) in the initial country of dispatch or in another Member State, a new notification shall be required in accordance with the provisions of this Title; or
  - (ii) in a third country, a new notification shall be required in accordance with the provisions of this Regulation, with the addition that the provisions concerning the competent authorities concerned shall also apply to the initial competent authority of the initial country of dispatch.

**Article 16****Requirements following consent to a shipment**

After consent has been given to a notified shipment by the competent authorities involved, all undertakings involved shall complete the movement document, or, in the case of a general notification, the movement documents at the points indicated, sign it or them and retain a copy or copies. The following requirements shall be fulfilled:

- (a) Completion of the movement document by the notifier: once the notifier has received consent from the competent authorities of dispatch, destination and transit or, in relation to the competent authority of transit, can assume tacit consent, he/she shall insert the actual date of shipment and otherwise complete the movement document to the extent possible.
- (b) Prior information regarding actual start of shipment: the notifier shall send signed copies of the then completed movement document, as described in point (a), to the competent authorities concerned and to the consignee at least three working days before the shipment starts.
- (c) Documents to accompany each transport: the notifier shall retain a copy of the movement document. The movement document and copies of the notification document containing the written consents and the conditions of the competent authorities concerned shall accompany each transport. The movement document shall be retained by the **facility which receives the waste**.
- (d) Written confirmation of receipt of the waste by the **facility**: within three days of receipt of the waste, the **facility** shall provide confirmation in writing that the waste has been received.

This confirmation shall be contained in, or annexed to, the movement document.

The **facility** shall send signed copies of the movement document containing this confirmation to the notifier and to the competent authorities concerned.

- (e) Certificate for non-interim recovery or disposal by the **facility**: as soon as possible, but no later than 30 days after completion of the non-interim recovery or disposal operation, and no later than one calendar year, or a shorter period in accordance with Article 9(7), following receipt of the **waste, the facility** carrying out the operation shall, under its responsibility, certify that the non-interim recovery or disposal has been completed.

This certificate shall be contained in, or annexed to, the movement document.

The **facility** shall send signed copies of the movement document containing this certificate to the notifier and to the competent authorities concerned.

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## Article 17

## Changes in the shipment after consent

1. If any essential change is made to the details and/or conditions of the consented shipment, including changes in the intended quantity, route, routing, date of shipment or carrier, the notifier shall inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts.
2. In such cases a new notification shall be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.
3. Where such changes involve competent authorities other than those concerned in the original notification, a new notification shall be submitted.

## Chapter 2

## General information requirements

## Article 18

## Waste to be accompanied by certain information

1. Waste as referred to in Article 3(2) and (4) that is intended to be **shipped shall** be subject to the following procedural requirements:
  - (a) In order to assist the tracking of shipments of such waste, the person under the jurisdiction of the country of dispatch who arranges the shipment shall ensure that the waste is accompanied by the document contained in Annex VII.
  - (b) The document contained in Annex VII shall be signed by the person who arranges the shipment before the shipment takes place and shall be signed by the recovery facility or the laboratory and the consignee when the waste in question is received.
2. The contract referred to in Annex VII between the person who arranges the shipment and the consignee for recovery of the waste shall be effective when the shipment starts and shall include an obligation, where the shipment of waste or its recovery cannot be completed as intended or where it has been effected as an illegal shipment, on the person who arranges the shipment or, where that person is not in a position to complete the shipment of waste or its recovery (for example, is insolvent), on the consignee, to:
  - (a) take the waste back or ensure its recovery in an alternative way, and
  - (b) provide, if necessary, for its storage in the meantime.

The person who arranges the shipment or the consignee shall provide a copy of the contract upon request by the competent authority concerned.

3. For inspection, enforcement, planning and statistical purposes, Member States may in accordance with national legislation require information as referred to in paragraph 1 on shipments covered by this Article.
4. The information referred to in paragraph 1 shall be treated **as confidential where this is required by** Community and national legislation.

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### Chapter 3

#### General requirements

#### Article 19

##### Prohibition on mixing waste during shipment

From the start of the shipment to the receipt in a recovery or disposal facility, waste, as specified on the notification document or as referred to in Article 18, shall not be mixed with other waste.

#### Article 20

##### Keeping of documents and information

1. All documents sent to or by the competent authorities in relation to a notified shipment shall be kept in the Community for at least three years from the date when the shipment starts, by the competent authorities, the notifier, the consignee **and the facility which receives the waste.**
2. Information given pursuant to Article 18(1) shall be kept in the Community for at least three years from the date when the shipment starts, by the person who arranges for the shipment, the consignee **and the facility which receives the waste.**

#### Article 21

##### **Public access to notifications**

***The competent authorities of dispatch or destination may make publicly available by appropriate means, such as the Internet, information on notifications of shipments they have consented to, where such information is not confidential under national or Community legislation.***

### Chapter 4

#### Take-back obligations

#### Article 22

##### Take-back when a shipment cannot be completed as intended

1. Where any of the competent authorities concerned becomes aware that a shipment of waste, including its recovery or disposal, cannot be completed as intended in accordance with the terms of the notification and movement documents and/or contract referred to in the second subparagraph, point 4 of Article 4 and in Article 5, it shall immediately inform the competent authority of dispatch. Where a recovery or disposal facility rejects a shipment received, it shall immediately inform the competent authority of destination.
2. The competent authority of dispatch shall ensure that, except in cases referred to in paragraph 3, the waste in question is taken back to its area of jurisdiction or elsewhere within the country of dispatch by the notifier as identified in accordance with the ranking established in point 15 of Article 2, or, if impracticable, by that competent authority itself or by a natural or legal person on its behalf.

This shall take place within 90 days, or such other period as may be agreed between the competent authorities concerned, after the competent authority of dispatch becomes aware or has been advised in writing by the competent authorities of destination or transit that the consented shipment of waste or its recovery or disposal cannot be completed and has been informed of the reason(s) therefor. Such advice may result from information submitted to the competent authorities of destination or transit inter alia by other competent authorities.



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3. The take-back obligation in paragraph 2 shall not apply if the competent authorities of dispatch, transit and destination involved in disposing of or recovering the waste are satisfied that the waste can be recovered or disposed of in an alternative way in the country of destination or elsewhere by the notifier or, if impracticable, by the competent authority of dispatch or by a natural or legal person on its behalf.

The take-back obligation in paragraph 2 shall not apply if the waste shipped has, in the course of the operation at the facility concerned, been irreversibly mixed with other waste before a competent authority concerned has become aware of the fact that the notified shipment cannot be completed as referred to in paragraph 1. Such mixture shall be recovered or disposed of in an alternative way in accordance with the first subparagraph.

4. In cases of take-back as referred to in paragraph 2, a new notification shall be submitted, unless the competent authorities concerned agree that a duly reasoned request by the initial competent authority of dispatch is sufficient.

A new notification, where appropriate, shall be submitted by the initial notifier or, if impracticable, by any other natural or legal persons identified in accordance with point 15 of Article 2, or, if impracticable, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

No competent authority shall oppose or object to the return of waste from a shipment that cannot be completed or to the related recovery and disposal operation.

5. In cases of alternative arrangements outside the initial country of destination as referred to in paragraph 3, a new notification, where appropriate, shall be submitted by the initial notifier or, if impracticable, by any other natural or legal persons identified in accordance with point 15 of Article 2, or, if impracticable, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

When such a new notification is submitted by the notifier, this notification shall also be submitted to the competent authority of the initial country of dispatch.

6. In cases of alternative arrangements in the initial country of destination as referred to in paragraph 3, a new notification shall not be required and a duly reasoned request shall suffice. Such a duly reasoned request, seeking agreement to the alternative arrangement, shall be transmitted to the competent authority of destination and dispatch by the initial notifier or, if impracticable, to the competent authority of destination by the initial competent authority of dispatch.

7. If no new notification is to be submitted in accordance with paragraphs 4 or 6, a new movement document shall be completed in accordance with Article 15 or Article 16 by the initial notifier or, if impracticable, by any other natural or legal persons identified in accordance with point 15 of Article 2, or, if impracticable, by the initial competent authority of dispatch or by a natural or legal person on its behalf.

If a new notification is submitted by the initial competent authority of dispatch in accordance with paragraphs 4 or 5, a new financial guarantee or equivalent insurance shall not be required.

8. The obligation of the notifier and the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the **facility** issues the certificate of non-interim recovery or disposal as referred to in Article 16(e) or, where appropriate, in Article 15(e). In the cases of interim recovery or disposal referred to in Article 6(6), the subsidiary obligation of the country of dispatch shall end when the **facility** issues the certificate referred to in Article 15(d).

If a **facility** issues a certificate of recovery or disposal in such a way as to result in an illegal shipment, with the consequence that the financial guarantee is released, Article 24(3) and Article 25(2) shall apply.

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9. Where waste from a shipment which cannot be completed, including its recovery or disposal, is discovered within a Member State, the competent authority with jurisdiction over the area where the waste was discovered shall be responsible for ensuring that arrangements are made for the safe storage of the waste pending its return or non-interim recovery or disposal in an alternative way.

*Article 23*

## Costs for take-back when a shipment cannot be completed

1. Costs arising from the return of waste from a shipment that cannot be completed, including costs of its transport, recovery or disposal pursuant to *Article 22(2)* or (3) and, from the date on which the competent authority of dispatch becomes aware that a shipment of waste or its recovery or disposal cannot be completed, storage costs pursuant to *Article 22(9)* shall be charged:

- (a) to the notifier as identified in accordance with the ranking established in point 15 of *Article 2*; or, if impracticable,
- (b) to other natural or legal persons as appropriate; or, if impracticable,
- (c) to the competent authority of dispatch; or, if impracticable,
- (d) as otherwise agreed between the competent authorities concerned.

2. This Article shall be without prejudice to Community and national provisions concerning liability.

*Article 24*

## Take-back when a shipment is illegal

1. Where a competent authority discovers a shipment that it considers to be an illegal shipment, it shall immediately inform the other competent authorities concerned.

2. If an illegal shipment is the responsibility of the notifier, the competent authority of dispatch shall ensure that the waste in question is:

- (a) taken back by the notifier de facto; or, if no notification has been submitted,
- (b) taken back by the notifier de jure; or, if impracticable,
- (c) taken back by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable,
- (d) alternatively recovered or disposed of in the country of destination or dispatch by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable,
- (e) alternatively recovered or disposed of in another country by the competent authority of dispatch itself or by a natural or legal person on its behalf if all the competent authorities concerned agree.

This take-back, recovery or disposal shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of dispatch becomes aware of or has been advised in writing by the competent authorities of destination or transit of the illegal shipment and informed of the reason(s) therefor. Such advice may result from information submitted to the competent authorities of destination or transit inter alia by other competent authorities.

In cases of take-back as referred to in (a), (b) and (c), a new notification shall be submitted, unless the competent authorities concerned agree that a duly reasoned request by the initial competent authority of dispatch is sufficient.

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The new notification shall be submitted by the person or authority listed in (a), (b) or (c) and in accordance with that order.

No competent authority shall oppose or object to the return of waste of an illegal shipment. In the case of alternative arrangements as referred to in (d) and (e) by the competent authority of dispatch, a new notification shall be submitted by the initial competent authority of dispatch or by a natural or legal person on its behalf unless the competent authorities concerned agree that a duly reasoned request by that authority is sufficient.

3. If an illegal shipment is the responsibility of the consignee the competent authority of destination shall ensure that the waste in question is recovered or disposed of in an environmentally sound manner:

(a) by the consignee; or, if impracticable,

(b) by the competent authority itself or by a natural or legal person on its behalf.

This recovery or disposal shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of destination becomes aware of or has been advised in writing by the competent authorities of dispatch or transit of the illegal shipment and informed of the reason(s) therefor. Such advice may result from information submitted to the competent authorities of dispatch and transit inter alia by other competent authorities.

To this end, the competent authorities concerned shall cooperate, as necessary, in the recovery or disposal of the waste.

4. If no new notification is to be submitted, a new movement document shall be completed in accordance with Article 15 or 16 by the person responsible for take-back or, if impracticable, by the initial competent authority of dispatch.

If a new notification is submitted by the initial competent authority of dispatch, a new financial guarantee or equivalent insurance shall not be required.

5. In particular in cases where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee, the competent authorities concerned shall cooperate to ensure that the waste in question is recovered or disposed of.

6. In the cases of interim recovery or disposal referred to in Article 6(6) where an illegal shipment is discovered after completion of the interim recovery or disposal operation, the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the **facility** has issued the certificate referred to in Article 15(d).

If a **facility** issues a certificate of recovery or disposal in such a way as to result in an illegal shipment, with the consequence that the financial guarantee is released, paragraph 3 and Article 25(2) shall apply.

7. Where the waste of an illegal shipment is discovered within a Member State, the competent authority with jurisdiction over the area where the waste was discovered shall be responsible for ensuring that arrangements are made for the safe storage of the waste pending its return or non-interim recovery or disposal in an alternative way.

8. Articles 34 and 36 shall not apply in cases where illegal shipments are returned to the country of dispatch and that country of dispatch is a country covered by the prohibitions set out in those Articles.

9. In the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.

10. This Article shall be without prejudice to Community and national provisions concerning liability.

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*Article 25*

Costs for take-back when a shipment is illegal

1. Costs arising from the take-back of waste of an illegal shipment, including costs of its transport, recovery or disposal pursuant to *Article 24(2)* and, from the date on which the competent authority of dispatch becomes aware that a shipment is illegal, storage costs pursuant to *Article 24(7)*, shall be charged to:
  - (a) the notifier de facto, as identified in accordance with the ranking established in point 15 of Article 2; or, if no notification has been submitted,
  - (b) the notifier de jure or other natural or legal persons as appropriate; or, if impracticable,
  - (c) the competent authority of dispatch.
2. Costs arising from recovery or disposal pursuant to *Article 24(3)*, including possible transport and storage costs pursuant to *Article 24(7)*, shall be charged to:
  - (a) the consignee; or, if impracticable,
  - (b) the competent authority of destination.
3. Costs arising from recovery or disposal pursuant to *Article 24(5)*, including possible transport and storage costs pursuant to *Article 24(7)*, shall be charged to:
  - (a) the notifier, as identified in accordance with the ranking established in point 15 of Article 2, and/or the consignee, depending upon the decision by the competent authorities involved; or, if impracticable,
  - (b) other natural or legal persons as appropriate; or, if impracticable,
  - (c) the competent authorities of dispatch and destination.
4. In the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.
5. This Article shall be without prejudice to Community and national provisions concerning liability.

Chapter 5

General administrative provisions

*Article 26*

Format of the communications

1. The information and documents listed below may be submitted by post:
  - (a) notification of a planned shipment pursuant to Articles 4 and 13;
  - (b) request for information and documentation pursuant to Articles 4, 7 and 8;
  - (c) submission of information and documentation pursuant to Articles 4, 7 and 8;
  - (d) written consent to a notified shipment pursuant to Article 9;
  - (e) conditions for a shipment pursuant to Article 10;
  - (f) objections to a shipment pursuant to Articles 11 and 12;
  - (g) information on decisions to issue pre-consents to specific recovery facilities pursuant to Article 14(3);

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- (h) written confirmation of receipt of the waste pursuant to Articles 15 and 16;
- (i) certificate for recovery or disposal of the waste pursuant to Articles 15 and 16;
- (j) prior information regarding actual start of the shipment pursuant to Article 16;
- (k) information on changes in the shipment after consent pursuant to Article 17; and
- (l) written consents and movement documents to be sent pursuant to Titles IV, V and VI.

2. Subject to the agreement of the competent authorities concerned and the notifier, the documents referred to in paragraph 1 may alternatively be submitted using any of the following methods of communication:

- (a) by fax; or
- (b) by fax followed by post; or
- (c) by e-mail with digital signature. In this case, any stamp or signature required shall be replaced by the digital signature; or
- (d) by e-mail without digital signature followed by post.

3. The documents to accompany each transport in accordance with Article 16(c) and Article 18 may be in an electronic form with digital signatures if they can be made readable at any time during the transport and if this is acceptable to the competent authorities concerned.

4. Subject to the agreement of the competent authorities concerned and of the notifier, the information and documents listed in paragraph 1 may be submitted and exchanged by means of electronic data interchange with electronic signature or electronic authentication in accordance with Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures<sup>(1)</sup>, or a comparable electronic authentication system which provides the same level of security. In such cases, organisational arrangements concerning the flow of electronic data interchange may be made.

#### Article 27

##### Language

1. Any notification, information, documentation or other communication submitted pursuant to the provisions of this Title shall be supplied in a language acceptable to the competent authorities concerned.

2. The notifier shall provide the competent authorities concerned with authorised translation(s) into a language which is acceptable to them, should they so request.

#### Article 28

##### Disagreement on classification issues

1. If the competent authorities of dispatch and of destination cannot agree on the classification as regards the distinction between waste and non-waste, the subject matter shall be treated as if it were waste. This shall be without prejudice to the right of the country of destination to deal with the shipped material in accordance with its national legislation, following arrival of the shipped material and where such legislation is in accordance with Community or international law.

2. If the competent authorities of dispatch and of destination cannot agree on the classification of the notified waste as being listed in Annex III, IIIA, IIIB or IV, the waste shall be regarded as listed in Annex IV.

<sup>(1)</sup> OJ L 13, 19.1.2000, p. 12.

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3. If the competent authorities of dispatch and destination cannot agree on the classification of the waste treatment operation notified as being recovery or disposal, the provisions regarding disposal shall apply.
4. Paragraphs 1 to 3 shall apply only for the purposes of this Regulation, and shall be without prejudice to rights of interested parties to resolve any dispute related to these questions before a court of law or tribunal.

*Article 29*

## Administrative costs

Appropriate and proportionate administrative costs of implementing the notification and supervision procedures and usual costs of appropriate analyses and inspections may be charged to the notifier.

*Article 30*

## Border-area agreements

1. In exceptional cases, and if the specific geographical or demographical situation warrants such a step, Member States may conclude bilateral agreements making the notification procedure for shipments of specific flows of waste less stringent in respect of cross-border shipments to the nearest suitable facility located in the border area between the two Member States concerned.
2. Such bilateral agreements may also be concluded where waste is shipped from and treated in the country of dispatch but transits another Member State.
3. Member States may also conclude such agreements with countries that are Parties to the Agreement on the European Economic Area.
4. Such agreements shall be notified to the Commission before they take effect.

## Chapter 6

## Shipments within the Community with transit via third countries

*Article 31*

## Shipments of waste destined for disposal

Where a shipment of waste takes place within the **Community with** transit via one or more third countries, and the waste is destined for disposal, the competent authority of dispatch shall, in addition to the provisions of this Title, ask the competent authority in the third countries whether it wishes to send its written consent to the planned shipment:

- (a) in the case of Parties to the Basel Convention, within 60 days, unless it has waived this right in accordance with the terms of that Convention, or
- (b) in the case of countries not Parties to the Basel Convention, within a period agreed between the competent authorities.

*Article 32*

## Shipments of waste destined for recovery

1. When a shipment of waste takes place within the **Community with** transit via one or more third countries to which the OECD Decision does not apply, and the waste is destined for recovery, *Article 31* shall apply.

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2. When a shipment of waste takes place within the Community, including shipments between localities in the same Member State, with transit via one or more third countries to which the OECD Decision applies, and the waste is destined for recovery, the consent referred to in Article 9 may be provided tacitly, and if no objection has been lodged or no conditions have been specified, the shipment may start 30 days after the date of transmission of the acknowledgement by the competent authority of destination in accordance with Article 8.

## TITLE III

## SHIPMENTS EXCLUSIVELY WITHIN MEMBER STATES

*Article 33*

Application of this Regulation to shipments exclusively within Member States

1. Member States shall establish an appropriate system for the supervision and control of shipments of waste exclusively within their jurisdiction. This system shall take account of the need for coherence with the Community system established by Titles II and VII.
2. Member States shall inform the Commission of their system for supervision and control of shipments of waste. The Commission shall inform the other Member States thereof.
3. Member States may apply the system provided for in Titles II and VII within their jurisdiction.

## TITLE IV

## EXPORTS FROM THE COMMUNITY TO THIRD COUNTRIES

## Chapter 1

## Exports of waste for disposal

*Article 34*

Export prohibited except to EFTA countries

1. All exports of waste from the Community destined for disposal shall be prohibited.
2. The prohibition in paragraph 1 shall not apply to exports of waste destined for disposal in EFTA countries which are also Parties to the Basel Convention.
3. However, exports of waste for disposal to an EFTA country Party to the Basel Convention shall also be prohibited:
  - (a) where the EFTA country prohibits imports of such waste; or,
  - (b) if the competent authority of dispatch has reason to believe that the waste will not be managed in an environmentally sound manner, as referred to in *Article 49*, in the country of destination concerned.
4. This provision shall be without prejudice to the take-back obligations as laid down in *Articles 22 and 24*.

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Article 35

Procedures when exporting to EFTA countries

1. Where waste is exported from the Community and destined for disposal in EFTA countries Parties to the Basel Convention, the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additions listed in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) the competent authority of transit outside the Community shall have 60 days following the date of transmission of its acknowledgement of receipt of the notification in which to request additional information on the notified shipment, to provide, if the country concerned has decided not to require prior written consent and has informed the other Parties thereof in accordance with Article 6(4) of the Basel Convention, tacit consent or to give a written consent with or without conditions; and
  - (b) the competent authority of dispatch in the Community shall take the decision to consent to the shipment as referred to in Article 9 only after having received written consent from the competent authority of destination and, where appropriate, the tacit or written consent of the competent authority of transit outside the Community, and not earlier than 61 days following the date of transmission of the acknowledgement by the competent authority of transit. The competent authority of dispatch may take the decision before the conclusion of the 61-day time limit if it has the written consent of the other competent authorities concerned.
3. The following additional provisions shall apply:
  - (a) the competent authority of transit in the Community shall acknowledge the receipt of the notification to the notifier;
  - (b) the competent authorities of dispatch and, where appropriate, transit in the Community shall send a stamped copy of their decisions to consent to the shipment to the customs office of export and to the customs office of exit from the Community;
  - (c) a copy of the movement document shall be delivered by the carrier to the customs office of export and the customs office of exit from the Community;
  - (d) as soon as the waste has left the Community, the customs office of exit from the Community shall send a stamped copy of the movement document to the competent authority of dispatch in the Community stating that the waste has left the Community;
  - (e) if, 42 days after the waste has left the Community, the competent authority of dispatch in the Community has received no information from the **facility** about receipt of the waste, it shall without delay inform the competent authority of destination; and
  - (f) the contract referred to in the second subparagraph, point 4 of Article 4 and in Article 5 shall stipulate that:
    - (i) if a **facility** issues an incorrect certificate of disposal with the consequence that the financial guarantee is released, **the consignee** shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and from its recovery or disposal in an alternative and environmentally sound manner;
    - (ii) within three days of receipt of the waste for disposal, the **facility** shall send signed copies of the completed movement document, except for the certificate of disposal referred to in subpoint (iii), to the notifier and the competent authorities concerned; and
    - (iii) as soon as possible but no later than 30 days after completion of disposal, and no later than one calendar year following the receipt of the waste the **facility** shall, under **its** responsibility, certify that the disposal has been completed and shall send signed copies of the movement document containing this certification to the notifier and to the competent authorities concerned.



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4. The shipment may take place only if:
- the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit outside the Community and if the conditions laid down are met;
  - a contract between the notifier and consignee has been concluded and is effective, as required in the second subparagraph, point 4 of Article 4 and in Article 5;
  - a financial guarantee or equivalent insurance has been established and is effective, as required in the second subparagraph, point 5 of Article 4 and in Article 6; and
  - environmentally sound management, as referred to in *Article 49*, is ensured.
5. Where waste is exported, it shall be destined for disposal operations within a facility which, under applicable national law, is operating or is authorised to operate in the country of destination.
6. If a customs office of export or a customs office of exit from the Community discovers an illegal shipment, it shall without delay inform the competent authority in the country of the customs office which shall:
- without delay inform the competent authority of dispatch in the Community; and
  - ensure detention of the waste until the competent authority of dispatch has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained.

## Chapter 2

### Exports of waste for recovery

#### Section 1

#### Exports to non-OECD Decision countries

##### *Article 36*

##### Exports prohibition

1. Exports from the Community of the following wastes destined for recovery in countries to which the OECD Decision does not apply are prohibited:
- wastes listed as hazardous in Annex V;
  - wastes listed in Annex V, part 3;
  - hazardous wastes not classified under one single entry in Annex V;
  - mixtures of hazardous wastes and mixtures of hazardous wastes with non-hazardous wastes not classified under one single entry in Annex V;
  - wastes that the country of destination has notified to be hazardous under Article 3 of the Basel Convention;
  - wastes the import of which has been prohibited by the country of destination; or,
  - wastes which the competent authority of dispatch has reason to believe will not be managed in an environmentally sound manner, as referred to in *Article 49*, in the country of destination concerned.
2. This provision shall be without prejudice to the take-back obligations as set out in *Articles 22 and 24*.

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3. Member States may, in exceptional cases, adopt provisions to determine, on the basis of documentary evidence provided in an appropriate way by the notifier, that a specific hazardous waste listed in Annex V is excluded from the export prohibition if it does not display any of the properties listed in Annex III to Directive 91/689/EEC, taking into account, as regards the properties H3 to H8, H10 and H11 defined in that Annex, the limit values laid down in Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste<sup>(1)</sup>.

4. The fact that waste is not listed as hazardous in Annex V, or that it is listed in Annex V, part 1, list B, shall not preclude, in exceptional cases, characterisation of such waste as hazardous and therefore subject to the export prohibition if it displays any of the properties listed in Annex III to Directive 91/689/EEC, taking into account, as regards the properties H3 to H8, H10 and H11 defined in that Annex, the limit values laid down in Commission Decision 2000/532/EC, as provided for in Article 1(4), second indent, of Directive 91/689/EEC and in the introductory paragraph of Annex III to this Regulation.

5. In the cases referred to in paragraphs 3 and 4, the Member State concerned shall inform the envisaged country of destination prior to taking a decision. Member States shall notify such cases to the Commission before the end of each calendar year. The Commission shall forward the information to all Member States and to the Secretariat of the Basel Convention. On the basis of the information provided, the Commission may make comments and, where appropriate, adapt Annex V in accordance with Article 58.

*Article 37*

## Procedures when exporting waste listed in Annex III or IIIA

1. In the case of waste which is listed in Annex III or IIIA and the export of which is not prohibited under Article 36, the Commission shall, within 20 days of the entry into force of this Regulation, send a written request to each country to which the OECD Decision does not apply, seeking:

- (i) confirmation in writing that the waste may be exported from the Community for recovery in that country; and
- (ii) an indication as to which control procedure, if any, would be followed in the country of destination.

Each country to which the OECD Decision does not apply shall be given the following options:

- (a) a prohibition; or
- (b) a procedure of prior written notification and consent as described in Article 35; or
- (c) no control in the country of destination.

2. Before the date of application of this Regulation, the Commission shall adopt a Regulation taking into account all replies received pursuant to paragraph 1 and shall inform the Committee established pursuant to Article 18 of Directive 75/442/EEC.

If a country has not issued a confirmation as referred to in paragraph 1 or if a country for any reason has not been contacted, paragraph 1(b) shall apply.

The Commission shall periodically update the Regulation adopted.

3. If a country indicates in its reply that certain shipments of waste are not subject to any control, Article 18 shall apply *mutatis mutandis* to such shipments.

4. Where waste is exported, it shall be destined for recovery operations within a facility which, under applicable national law, is operating or is authorised to operate in the country of destination.

<sup>(1)</sup> OJ L 226, 6.9.2000, p. 3. Decision as last amended by Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p. 18).

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5. In the case of a shipment of waste not classified under one single entry in Annex III or a shipment of mixtures of wastes not classified under one single entry in Annex III or IIIA or a shipment of waste classified in Annex IIIB, and provided that the export is not prohibited pursuant to Article 36, paragraph 1(b) of this Article shall apply.

## Section 2

### Exports to OECD-Decision countries

#### Article 38

##### Exports of waste listed in Annexes III, IIIA, IIIB, IV and IVA

1. Where waste listed in Annexes III, IIIA, IIIB, IV and IVA, waste not classified or mixtures of wastes not classified under one single entry in either Annex III, IV or IVA are exported from the Community and destined for recovery in countries to which the OECD Decision applies, with or without transit through countries to which the OECD Decision applies, the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additions listed in paragraphs 2, 3 and 5.

2. The following adaptations shall apply:

- (a) mixtures of wastes listed in Annex IIIA destined for an interim operation shall be subject to the procedure of prior written notification and consent if any subsequent interim or non-interim recovery or disposal operation is to take place in a country to which the OECD Decision does not apply;
- (b) waste listed in Annex IIIB shall be subject to the procedure of prior written notification and consent;
- (c) the consent as required in accordance with Article 9 may be provided in the form of tacit consent from the competent authority of destination outside the Community.

3. As regards exports of waste listed in Annexes IV and IVA, the following additional provisions shall apply:

- (a) the competent authorities of dispatch and, where appropriate, transit in the Community shall send a stamped copy of their decisions to consent to the shipment to the customs office of export and to the customs office of exit from the Community;
- (b) a copy of the movement document shall be delivered by the carrier to the customs office of export and customs office of exit from the Community;
- (c) as soon as the waste has left the Community, the customs office of exit from the Community shall send a stamped copy of the movement document to the competent authority of dispatch in the Community stating that the waste has left the Community;
- (d) if, 42 days after the waste has left the Community, the competent authority of dispatch in the Community has received no information from the **facility** about receipt of the waste, it shall without delay inform the competent authority of destination; and
- (e) the contract referred to in the second subparagraph, point 4 of Article 4 and in Article 5 shall stipulate that:
  - (i) if a **facility** issues an incorrect certificate of recovery with the consequence that the financial guarantee is released, **the consignee** shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and from its recovery or disposal in an alternative and environmentally sound manner;
  - (ii) within three **days** of receipt of the waste for recovery, the **facility** shall send signed copies of the completed movement document, except for the certificate of recovery referred to in subpoint (iii), to the notifier and the competent authorities concerned; and

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- (iii) as soon as possible but no later than 30 days after completion of recovery, and no later than one calendar year following the receipt of the waste the **facility** shall, under **its** responsibility, certify that the recovery has been completed and shall send signed copies of the movement document containing this certification to the notifier and to the competent authorities concerned.
4. The shipment may take place only if:
- (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit or, if tacit consent from the competent authorities of destination and transit outside the Community is provided or can be assumed and if the conditions laid down are met;
- (b) *Article 35(4)(b)*, (c) and (d) is complied with.
5. If an export as described in paragraph 1 of waste listed in Annexes IV and IVA is in transit through a country to which the OECD Decision does not apply, the following adaptations shall apply:
- (a) the competent authority of transit to which the OECD Decision does not apply shall have 60 days following the date of transmission of its acknowledgement of receipt of the notification in which to request additional information on the notified shipment, to provide, if the country concerned has decided not to require prior written consent and has informed the other Parties thereof in accordance with Article 6(4) of the Basel Convention, tacit consent or to give a written consent with or without conditions; and
- (b) the competent authority of dispatch in the Community shall take the decision to consent to the shipment as referred to in Article 9 only after having received tacit or written consent from that competent authority of transit to which the OECD Decision does not apply, and not earlier than 61 days following the date of transmission of the acknowledgement of the competent authority of transit. The competent authority of dispatch may take the decision before the conclusion of the 61-day time limit if it has the written consent of the other competent authorities concerned.
6. Where waste is exported, it shall be destined for recovery operations within a facility which, under applicable national law, is operating or is authorised to operate in the country of destination.
7. If a customs office of export or a customs office of exit from the Community discovers an illegal shipment, it shall without delay inform the competent authority in the country of the customs office which shall:
- (a) without delay inform the competent authority of dispatch in the Community; and
- (b) ensure detention of the waste until the competent authority of dispatch has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained.

## Chapter 3

## General provisions

*Article 39*

## Exports to the Antarctic

Exports of waste from the Community to the Antarctic shall be prohibited.

*Article 40*

## Exports to overseas countries or territories

1. Exports from the Community of waste destined for disposal in overseas countries or territories shall be prohibited.

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2. As regards exports of waste destined for recovery in overseas countries or territories, the prohibition set out in *Article 36* shall apply *mutatis mutandis*.

3. As regards exports of waste destined for recovery in overseas countries or territories not covered by the prohibition set out in paragraph 2, the provisions of Title II shall apply *mutatis mutandis*.

## TITLE V

## IMPORTS INTO THE COMMUNITY FROM THIRD COUNTRIES

## Chapter 1

## Imports of waste for disposal

*Article 41*

Imports prohibited except from a country Party to the Basel Convention or with an agreement in place or from other areas during situations of crisis or war

1. Imports into the Community of waste destined for disposal shall be prohibited except those from:

- (a) countries which are Parties to the Basel Convention; or
- (b) other countries with which the Community, or the Community and its Member States, have concluded bilateral or multilateral agreements or arrangements compatible with Community legislation and in accordance with Article 11 of the Basel Convention; or
- (c) other countries with which individual Member States have concluded bilateral agreements or arrangements in accordance with paragraph 2; or
- (d) other areas in cases where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, no bilateral agreements or arrangements pursuant to points (b) or (c) can be concluded or where a competent authority in the country of dispatch has either not been designated or is unable to act.

2. In exceptional cases, individual Member States may conclude bilateral agreements and arrangements for the disposal of specific waste in those Member States, where such waste will not be managed in an environmentally sound manner, as referred to in *Article 49*, in the country of dispatch.

These agreements and arrangements shall be compatible with Community legislation and in accordance with Article 11 of the Basel Convention.

These agreements and arrangements shall guarantee that the disposal operations will be carried out in an authorised facility and will comply with the requirements for environmentally sound management.

These agreements and arrangements shall also guarantee that the waste is produced in the country of dispatch and that disposal will be carried out exclusively in the Member State which has concluded the agreement or arrangement.

These agreements or arrangements shall be notified to the Commission prior to their conclusion. However, in emergency situations they may be notified up to one month after conclusion.

3. Bilateral or multilateral agreements or arrangements entered into in accordance with paragraph 1(b) and (c) shall be based upon the procedural requirements of *Article 42*.

4. The countries referred to in paragraph 1(a), (b) and (c) shall be required to present a prior duly reasoned request to the competent authority of the Member State of destination on the basis that they do not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner.

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*Article 42*

Procedural requirements for imports from a country Party to the Basel Convention  
or from other areas during situations of crisis or war

1. Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention, the provisions of Title II shall apply *mutatis mutandis*, with the adaptations and additions listed in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) the competent authority of transit outside the Community shall have 60 days following the date of transmission of its acknowledgement of receipt of the notification in which to request additional information on the notified shipment, to provide, if the country concerned has decided not to require prior written consent and has informed the other Parties thereof in accordance with Article 6(4) of the Basel Convention, tacit consent or to give a written consent with or without conditions; and
  - (b) in the cases referred to in *Article 41(1)(d)* involving situations of crisis, peacemaking, peacekeeping or war, the consent of the competent authorities of dispatch shall not be required.
3. The following additional provisions shall apply:
  - (a) the competent authority of transit in the Community shall acknowledge the receipt of the notification to the notifier, with copies to the competent authorities concerned;
  - (b) the competent authorities of destination and, where appropriate, transit in the Community shall send a stamped copy of their decisions to consent to the shipment to the customs office of entry into the Community;
  - (c) a copy of the movement document shall be delivered by the carrier to the customs office of entry into the Community; and
  - (d) having carried out the necessary customs formalities, the customs office of entry into the Community shall send a stamped copy of the movement document to the competent authorities of destination and transit in the Community, stating that the waste has entered the Community.
4. The shipment may take place only if:
  - (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit and if the conditions laid down are met;
  - (b) a contract between the notifier and consignee has been concluded and is effective, as required in the second subparagraph, point 4 of Article 4 and in Article 5;
  - (c) a financial guarantee or equivalent insurance has been established and is effective, as required in the second subparagraph, point 5 of Article 4 and in Article 6; and
  - (d) environmentally sound management, as referred to in *Article 49*, is ensured.
5. If a customs office of entry into the Community discovers an illegal shipment, it shall without delay inform the competent authority in the country of the customs office which shall:
  - (a) without delay inform the competent authority of destination in the Community which shall inform the competent authority of dispatch outside the Community; and
  - (b) ensure detention of the waste until the competent authority of dispatch outside the Community has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained.

## Chapter 2

## Imports of waste for recovery

## Article 43

Imports prohibited except from an OECD Decision country or a country  
Party to the Basel Convention or with an agreement in place or  
from other areas during situations of crisis or war

1. All imports into the Community of waste destined for recovery shall be prohibited except those from:
  - (a) countries to which the OECD Decision applies; or
  - (b) other countries which are Parties to the Basel Convention; or
  - (c) other countries with which the Community, or the Community and its Member States, have concluded bilateral or multilateral agreements or arrangements compatible with Community legislation and in accordance with Article 11 of the Basel Convention; or
  - (d) other countries with which individual Member States have concluded bilateral agreements or arrangements in accordance with paragraph 2; or
  - (e) other areas in cases where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, no bilateral agreements or arrangements pursuant to points (b) or (c) can be concluded or where a competent authority in the country of dispatch has either not been designated or is unable to act.
2. In exceptional cases, individual Member States may conclude bilateral agreements and arrangements for the recovery of specific waste in those Member States, where such waste will not be managed in an environmentally sound manner, as referred to in Article 49, in the country of dispatch.

In such cases Article 41(2) shall apply.

3. Bilateral or multilateral agreements or arrangements entered into in accordance with paragraph 1(c) and (d) shall be based upon the procedural requirements of Article 42 in so far as may be relevant.

## Article 44

Procedural requirements for imports from an OECD Decision country  
or from other areas during situations of crisis or war

1. Where waste destined for recovery is imported into the Community from countries and through countries to which the OECD Decision applies, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3.
2. The following adaptations shall apply:
  - (a) the consent as required in accordance with Article 9 may be provided in the form of tacit consent from the competent authority of dispatch outside the Community;
  - (b) prior written notification in accordance with Article 4 may be submitted by the notifier; and
  - (c) in the cases referred to in Article 43(1)(e) involving situations of crisis, peacemaking, peacekeeping or war, the consent of the competent authorities of dispatch shall not be required.
3. In addition, Article 42(3)(b), (c) and (d) shall be complied with.

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4. The shipment may take place only if:
  - (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit or if tacit consent from the competent authority of dispatch outside the Community is provided or can be assumed and if the conditions laid down are met;
  - (b) a contract between the notifier and consignee has been concluded and is effective, as required in the second subparagraph, point 4 of Article 4 and in Article 5;
  - (c) a financial guarantee or equivalent insurance has been established and is effective, as required in the second subparagraph, point 5 of Article 4 and in Article 6; and
  - (d) environmentally sound management, as referred to in *Article 49*, is ensured.
5. If a customs office of entry into the Community discovers an illegal shipment, it shall without delay inform the competent authority in the country of the customs office which shall:
  - (a) without delay inform the competent authority of destination in the Community which shall inform the competent authority of dispatch outside the Community; and
  - (b) ensure detention of the waste until the competent authority of dispatch outside the Community has decided otherwise and has communicated that decision in writing to the competent authority in the country of the customs office in which the waste is detained.

*Article 45*

Procedural requirements for imports from a non-OECD Decision country  
Party to the Basel Convention or from other areas  
during situations of crisis or war

Where waste destined for recovery is imported into the Community:

- (a) from a country to which the OECD Decision does not apply; or
- (b) through any country to which the OECD Decision does not apply and which is also Party to the Basel Convention,

*Article 42* shall apply *mutatis mutandis*.

## Chapter 3

## General provisions

*Article 46*

## Imports from overseas countries or territories

1. Where waste is imported into the Community from overseas countries or territories, Title II shall apply *mutatis mutandis*.
2. One or more overseas countries and territories and the Member State to which they are linked may apply national procedures to shipments from the overseas country or territory to that Member State.
3. Member States which apply paragraph 2 shall notify the Commission of the national procedures applied.



## TITLE VI

## TRANSIT THROUGH THE COMMUNITY FROM AND TO THIRD COUNTRIES

## Chapter 1

## Transit of waste for disposal

## Article 47

## Transit through the Community of waste destined for disposal

Where waste destined for disposal is shipped through Member States from and to third countries, *Article 42* shall apply *mutatis mutandis*, with the adaptations and additions listed below:

- (a) the first and last competent authority of transit in the Community shall, where appropriate, send a stamped copy of the decisions to consent to the shipment or, if they have provided tacit consent, a copy of the acknowledgement in accordance with *Article 42(3)(a)* to the customs offices of entry into and exit from the Community respectively; and
- (b) as soon as the waste has left the Community, the customs office of exit from the Community shall send a **stamped** copy of the movement document to the competent authority(ies) of transit in the Community, stating that the waste has left the Community.

## Chapter 2

## Transit of waste for recovery

## Article 48

## Transit through the Community of waste destined for recovery

1. Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision does not apply, *Article 47* shall apply *mutatis mutandis*.
2. Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision applies, *Article 44* shall apply *mutatis mutandis*, with the adaptations and additions listed below:
  - (a) the first and last competent authority of transit in the Community shall, where appropriate, send a stamped copy of the decisions to consent to the shipment or, if they have provided tacit consent, a copy of the acknowledgement in accordance with *Article 42(3)(a)* to the customs offices of entry into and exit from the Community respectively; and
  - (b) as soon as the waste has left the Community, the customs office of exit from the Community shall send a **stamped** copy of the movement document to the competent **authority(ies)** of transit in the Community, stating that the waste has left the Community.
3. Where waste destined for recovery is shipped through Member States from a country to which the OECD Decision does not apply to a country to which the OECD Decision applies or vice versa, paragraph 1 shall apply as regards the country to which the OECD Decision does not apply and paragraph 2 shall apply as regards the country to which the OECD Decision applies.

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TITLE VII  
OTHER PROVISIONS

Chapter 1  
Additional obligations

*Article 49*

Protection of the environment

1. The producer, the notifier and other undertakings involved in a shipment of waste and/or its recovery or disposal shall take the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery and disposal. In particular, when the shipment takes place in the Community, the requirements of Article 4 of Directive 75/442/EEC and other Community legislation on waste shall be respected.
2. In the case of exports from the Community, the competent authority of dispatch in the Community shall:
  - (a) require and endeavour to secure that any waste exported is managed in an environmentally sound manner throughout the period of shipment, including recovery as referred to in *Articles 36 and 38* or disposal as referred to in *Article 34*, in the third country of destination;
  - (b) prohibit an export of waste to third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of point (a).

Environmentally sound management may *inter alia* be assumed as regards the waste recovery or disposal operation concerned, if the notifier or the competent authority in the country of destination can demonstrate that the facility which receives the waste will be operated in accordance with human health and environmental protection standards that are broadly equivalent to standards established in Community legislation.

This assumption shall, however, be without prejudice to the overall assessment of environmentally sound management throughout the period of shipment and including recovery or disposal in the third country of destination.

For the purposes of seeking guidance on environmentally sound management, the guidelines listed in Annex VIII may be considered.

3. In the case of imports into the Community, the competent authority of destination in the Community shall:
  - (a) require and take the necessary steps to ensure that any waste shipped into its area of jurisdiction is managed without endangering human health and without using processes or methods which could harm the environment, and in accordance with Article 4 of Directive 75/442/EEC and other Community legislation on waste throughout the period of shipment, including recovery or disposal in the country of destination;
  - (b) prohibit an import of waste from third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of point (a).

*Article 50*

Enforcement in Member States

1. Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.

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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 13 of Directive 75/442/EEC, and for spot checks on shipments of waste or on the related recovery or disposal.

3. Checks on shipments may take place in particular:

- (a) at the point of origin, carried out with the producer, holder or notifier;
- (b) at the destination, carried out with the consignee **or the facility**;
- (c) at the frontiers of the Community; and/or
- (d) during the shipment within the Community.

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

5. Member States **shall** cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.

**Member States shall identify those members of their permanent staff responsible for such cooperation and identify the focal point(s) for physical checks. The information shall be sent to the Commission which shall distribute a compiled list to the correspondents referred to in Article 54.**

6. At the request of another Member State, a Member State may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State.

#### Article 51

##### Reports by Member States

1. Before the end of each calendar year, each Member State shall send the Commission a copy of the report for the previous calendar year which, in accordance with Article 13(3) of the Basel Convention, it has drawn up and submitted to the Secretariat of that Convention.

2. Before the end of each calendar year, Member States shall also draw up a report for the previous year based on the additional reporting questionnaire in Annex IX, and shall send it to the Commission.

3. The reports drawn up by Member States in accordance with paragraphs 1 and 2 shall be submitted to the Commission in an electronic version.

4. The Commission shall establish every three years a report, based on these reports, on the implementation of this Regulation by the Community and its Member States.

#### Article 52

##### International cooperation

Member States, where appropriate and necessary in liaison with the Commission, shall cooperate with other Parties to the Basel Convention and inter-State organisations, inter alia via the exchange and/or sharing of information, the promotion of environmentally sound technologies and the development of appropriate codes of good practice.

#### Article 53

##### Designation of competent authorities

Member States shall designate the competent authority or authorities responsible for the implementation of this Regulation. Each Member State shall designate only one single competent authority of transit.

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*Article 54*

Designation of correspondents

Member States and the Commission shall each designate one or more correspondents responsible for informing or advising persons or undertakings making enquiries. The Commission correspondent shall forward to the correspondents of the Member States any questions put to him/her which concern the latter, and vice versa.

*Article 55*

Designation of customs offices of entry into and exit from the Community

Member States may designate specific customs offices of entry into and exit from the Community for shipments of waste entering and leaving the Community. If Member States decide to designate such customs offices, no shipment of waste shall be allowed to use any other frontier crossing points within a Member State for the purposes of entering or leaving the Community.

*Article 56*

Notification of, and information regarding, designations

1. Member States shall notify the Commission of designations of:
  - (a) competent authorities, pursuant to *Article 53*;
  - (b) correspondents, pursuant to *Article 54*; and,
  - (c) where appropriate, customs offices of entry into and exit from the Community, pursuant to *Article 55*.
2. In relation to those designations, Member States shall notify the Commission of the following information:
  - (a) name(s);
  - (b) postal address(es);
  - (c) e-mail address(es);
  - (d) telephone number(s);
  - (e) fax number(s); and
  - (f) languages acceptable to the competent authorities.
3. Member States shall immediately notify the Commission of any changes in this information.
4. This information as well as any changes in the information shall be submitted to the Commission in an electronic as well as a paper version if so required.
5. The Commission shall publish on its web-site lists of the designated competent authorities, correspondents and customs offices of entry into and exit from the Community, and shall update these lists as appropriate.

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## Chapter 2

## Other provisions

## Article 57

## Meeting of the correspondents

The Commission shall, if requested by Member States or if otherwise appropriate, periodically hold a meeting of the correspondents to examine the questions raised by the implementation of this Regulation. **Relevant stakeholders shall be invited to such meetings, or parts of meetings, where all Member States and the Commission are in agreement that this is appropriate.**

## Article 58

## Amendment of Annexes

1. The Annexes may be amended by the Commission by means of Regulations and in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC, to take account of scientific and technical progress. In addition:

- (a) Annexes I, II, III, IIIA, IV and V shall be amended to take account of changes agreed under the Basel Convention and the OECD Decision; in addition, Annex IC on specific instructions for completing the notification and movement documents shall be completed at the latest by the date of application of this Regulation having regard to the OECD instructions;
- (b) unclassified wastes may be added to Annex IIIB, IV or V on a provisional basis pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision;
- (c) following the submission of a request by a Member State, mixtures of two or more wastes listed in Annex III may be considered for inclusion in Annex IIIA in the cases referred to in Article 3(2) on a provisional basis pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision. The initial entries to be included in Annex IIIA shall be inserted, if practicable, by the date of application of this Regulation and at the latest 6 months after that date. Annex IIIA may contain the proviso that one or more of the entries therein shall not apply for exports to countries to which the OECD Decision does not apply;
- (d) the exceptional cases referred to in Article 3(3) shall be determined and, where necessary, such waste shall be added to Annexes IVA and V and deleted from Annex III;
- (e) Annex V shall be amended to reflect agreed changes to the list of hazardous waste adopted in accordance with Article 1(4) of Directive 91/689/EEC;
- (f) Annex VIII shall be amended to reflect relevant international conventions and agreements.

2. When amending Annex IX, the Committee established by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment<sup>(1)</sup> shall be fully associated with the deliberations.

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at 3 months.

## Article 59

## Additional measures

1. The Commission may adopt additional measures related to the implementation of this Regulation as follows:

- (a) a method for calculating the financial guarantee or equivalent insurance as set out in Article 6;
- (b) guidelines for the application of Article 12(1)(g);

<sup>(1)</sup> OJ L 377, 31.12.1991, p. 48. Directive as amended by Regulation (EC) No 1882/2003.

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- (c) further conditions and requirements in relation to pre-consented recovery facilities as referred to in Article 14;
  - (d) guidelines on the application of Article 15 in relation to the identification and tracking of waste undergoing substantial changes in the interim recovery or disposal operation;
  - (e) guidelines for the cooperation of competent authorities with regard to illegal shipments as referred to in Article 24;
  - (f) technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information in accordance with Article 26(4);
  - (g) further guidance concerning the use of languages referred to in Article 27;
  - (h) further clarification of the procedural requirements of Title II as regards their application to exports, imports and transit of waste from, to, and through the Community;
  - (i) further guidance concerning undefined legal terms.
2. Such measures shall be decided in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.
3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

*Article 60*

## Review

1. By ... (\*), the Commission shall complete its review of the relationship between existing sectoral legislation on animal and public health, including shipments of waste covered by Regulation (EC) No 1774/2002, and the provisions of this Regulation. If necessary, this review shall be accompanied by appropriate proposals with a view to achieving an equivalent level of procedures and control regime for the shipment of such waste.
2. Within five years from ... (\*\*), the Commission shall review the implementation of Article 12(1)(c), including its effect on environment protection and the functioning of the internal market. If necessary, this review shall be accompanied by appropriate proposals to amend this provision.

*Article 61*

## Repeals

1. Regulation (EEC) No 259/93 and Decision 94/774/EC are hereby repealed with effect from ... (\*\*).
2. References made to the repealed Regulation (EEC) No 259/93 shall be construed as being made to this Regulation.
3. Decision 1999/412/EC is hereby repealed with effect from 1 January ... (\*\*).

*Article 62*

## Transition rules

1. Any shipment that has been notified and for which the competent authority of destination has given acknowledgement before ... (\*) shall be subject to the provisions of Regulation (EEC) No 259/93.

(\*) The date of entry into force of this Regulation.

(\*\*) The date of application of this Regulation (12 months after the date of publication).

(\*\*\*) The year following the year of application of this Regulation (the second year following the year of publication).

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**2. Any shipment for which the competent authorities concerned have given their consent pursuant to Regulation (EEC) No 259/93 shall be completed not later than one year from the date of application of this Regulation.**

3. Reporting pursuant to Article 41(2) of Regulation (EEC) No 259/93 and Article 51 of this Regulation for the year ...<sup>(1)</sup> shall be based on the questionnaire contained in Decision 1999/412/EC.

#### Article 63

##### Transitional arrangements for certain Member States

1. **Until** 31 December 2010, all shipments to Latvia of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes shall be subject to the procedure of prior written notification and consent in accordance with Title II.

By way of derogation from Article 12, the competent authorities shall object to shipments of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes destined for a facility benefiting from a temporary derogation from certain provisions of Directive 96/61/EC during the period in which the temporary derogation is applied to the facility of **destination**.

2. **Until** 31 December 2012, all shipments to Poland of waste for recovery listed in Annex III shall be subject to the procedure of prior written notification and consent in accordance with Title II.

By way of derogation from Article 12, until 31 December 2007, the competent authorities may raise objections to shipments to Poland for recovery of the following waste listed in Annexes III and IV in conformity with the grounds for objection laid down in Article 11:

B2020 and GE 020 (glass waste)

B2070

B2080

B2100

B2120

B3010 and GH 013 (solid plastic waste)

B3020 (paper waste)

B3140 (waste pneumatic tyres)

Y46

Y47

A1010 and A1030 (only the indents referring to arsenic and mercury)

A1060

A1140

A2010

A2020

A2030

A2040

A3030

A3040

A3070

A3120

A3130

A3160

A3170

<sup>(1)</sup> The year of application of this Regulation (the year following the year of publication).

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A3180 (applies only in respect of polychlorinated naphthalenes (PCN))

**A4010**

A4050

A4060

A4070

A4090

AB030

AB070

AB120

AB130

AB150

AC060

AC070

AC080

AC150

AC160

AC260

AD150

With the exception of glass waste, paper waste and waste pneumatic tyres, this period may be extended until no later than 31 December 2012 in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.

By way of derogation from Article 12, until 31 December 2012, the competent authorities may raise objections in conformity with the grounds for objection laid down in Article 11 to shipments to Poland of:

(a) the following waste for recovery listed in Annex IV:

A2050

A3030

A3180 except polychlorinated naphthalenes (PCN)

A3190

A4110

A4120

RB020

and of

(b) waste for recovery not listed in the Annexes.

By way of derogation from Article 12, competent authorities shall object to shipments of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes destined for a facility benefiting from a temporary derogation from certain provisions of Directive 96/61/EC during the period in which the temporary derogation is applied to the facility of destination.

3. Until 31 December 2011, all shipments to Slovakia of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes shall be subject to the procedure of prior written notification and consent in accordance with Title II.

By way of derogation from Article 12, the competent authorities shall object to shipments of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes destined for a facility benefiting from a temporary derogation from certain provisions of Directives 94/67/EC and 96/61/EC, Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste<sup>(1)</sup>, and Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants<sup>(2)</sup> during the period in which the temporary derogation is applied to the facility of destination.

<sup>(1)</sup> OJ L 332, 28.12.2000, p. 91.

<sup>(2)</sup> OJ L 309, 27.11.2001, p. 1. Directive as amended by the 2003 Act of Accession.



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**4. Until 31 December 2014, all shipments to Bulgaria of waste for recovery listed in Annex III shall be subject to the procedure of prior written notification and consent in accordance with Title II.**

*By way of derogation from Article 12, until 31 December 2009, the Bulgarian competent authorities may raise objections to shipments to Bulgaria for recovery of the following waste listed in Annexes III and IV in conformity with the grounds for objection laid down in Article 11:*

B2070

B2080

B2100

B2120

Y46

Y47

*A1010 and A1030 (only the indents referring to arsenic and mercury)*

A1060

A1140

A2010

A2020

A2030

A2040

A3030

A3040

A3070

A3120

A3130

A3160

A3170

*A3180 (applies only in respect of polychlorinated naphthalenes (PCN))*

A4010

A4050

A4060

A4070

A4090

AB030

AB070

AB120

AB130

AB150

AC060

AC070

AC080

AC150

AC160

AC260

AD150

*This period may be extended until no later than 31 December 2012 in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.*

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*By way of derogation from Article 12, until 31 December 2009, the Bulgarian competent authorities may raise objections in conformity with the grounds for objection laid down in Article 11 to shipments to Bulgaria of:*

*(a) the following waste for recovery listed in Annex IV:*

*A2050*

*A3030*

*A3180, except polychlorinated naphthalenes (PCN)*

*A3190*

*A4110*

*A4120*

*RB020*

*and of*

*(b) waste for recovery not listed in those Annexes.*

*By way of derogation from Article 12, the Bulgarian competent authorities shall object to shipments of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes destined for a facility benefiting from a temporary derogation from certain provisions of Directive 96/61/EC or Directive 2001/80/EC during the period in which the temporary derogation is applied to the facility of destination.*

*5. Until 31 December 2015, all shipments to Romania of waste for recovery listed in Annex III shall be subject to the procedure of prior written notification and consent in accordance with Title II.*

*By way of derogation from Article 12, until 31 December 2011, the Romanian competent authorities may raise objections to shipments to Romania for recovery of the following waste listed in Annexes III and IV in conformity with the grounds for objection laid down in Article 11:*

*B2070*

*B2100, except waste alumina*

*B2120*

*B4030*

*Y46*

*Y47*

*A1010 and A1030 (only the indents referring to arsenic, mercury and thallium)*

*A1060*

*A1140*

*A2010*

*A2020*

*A2030*

*A3030*

*A3040*

*A3050*

*A3060*

*A3070*

*A3120*

*A3130*

*A3140*

*A3150*

*A3160*

*A3170*

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A3180 (*applies only in respect of polychlorinated naphthalenes (PCN)*)  
A4010  
A4030  
A4040  
A4050  
A4080  
A4090  
A4100  
A4160  
AA060  
AB030  
AB120  
AC060  
AC070  
AC080  
AC150  
AC160  
AC260  
AC270  
AD120  
AD150

*This period may be extended until no later than 31 December 2015 in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.*

*By way of derogation from Article 12, until 31 December 2011, the Romanian competent authorities may raise objections in conformity with the grounds for objection laid down in Article 11 to shipments to Romania of:*

*(a) the following waste for recovery listed in Annex IV:*

A2050  
A3030  
A3180 *except polychlorinated naphthalenes (PCN)*  
A3190  
A4110  
A4120  
RB020

*and of*

*(b) waste for recovery not listed in those Annexes.*

*This period may be extended until no later than 31 December 2015 in accordance with the procedure referred to in Article 18(2) of Directive 75/442/EEC.*

*By way of derogation from Article 12, the Romanian competent authorities shall object to shipments of waste for recovery listed in Annexes III and IV and shipments of waste for recovery not listed in those Annexes destined for a facility benefiting from a temporary derogation from certain provisions of Directive 96/61/EC, Directive 2000/76/EC or Directive 2001/80/EC during the period in which the temporary derogation is applied to the facility of destination.*

6. When reference is made in this Article to Title II in relation to waste listed in Annex III, Article 3(2), Article 4, second subparagraph, point 5, and Articles 6, 11, 22, 23, 24, 25 and 31 shall not apply.

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Article 64

Entry into force and application

1. This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

It shall apply from ...<sup>(\*)</sup>.

**2. Should the date of accession of Bulgaria or Romania be later than the date of application specified in paragraph 1, Article 63(4) and (5) shall, by way of derogation from paragraph 1 of this Article, apply from the date of accession.**

3. Subject to the agreement of the Member States concerned, Article 26(4) may be applied before ...<sup>(\*)</sup>.

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

Done at ..., on ...

For the European Parliament  
The President

For the Council  
The President

<sup>(\*)</sup> 12 months after the date of publication of this Regulation.