



European Union Network for
the Implementation and Enforcement
of Environmental Law

PRACTICABILITY AND ENFORCEABILITY OF THE WASTE SHIPMENT REGULATION

Final Report

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Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Bruxelles, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 6th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at:

www.impel.eu

<p>Title report: Practicability and Enforceability of the Waste Shipment Regulation</p>	<p>Number report: 2011/15</p>
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<p>Executive summary: The Waste Shipment Regulation (WSR) is a major challenge for Member States to implement. It is a long and complex law, it addresses a wide range of different activities (legal and illegal) and requires co-operation between Member States on many aspects of its application. The practicability and enforceability of environmental law is of particular concern to IMPEL members and IMPEL has developed a systematic approach to examining issues of practicability and enforceability. This report presents the results of an IMPEL project which has gathered the views and experience of IMPEL members on the practicability and enforceability of the WSR to help inform any future legislative development and help inform competent authorities (individually and collectively) to enhance their practical implementation of the Regulation.</p> <p>IMPEL members highlighted practicability and enforceability issues across many aspects of the WSR. Some of the key specific conclusions that should be highlighted are:</p> <ul style="list-style-type: none"> • There is a significant problem with the enforcement of the WSR in some Member States, such as on effective inspection systems. However, circumstances are very different in different Member States. Thus while it is clear that better enforcement is needed, a simple solution is not obvious and care needs to be taken that enhanced enforcement requirements are compatible with the quite different good practice that does exist in Member States. • The classification system in the Annexes of the WSR does not fit modern waste. There is divergence between competent authorities in the interpretation of classification issues, which leads to practical problems for both competent authorities and business. There would be advantages for EU wide standards for some of the more common wastes as well as information sharing on Member State classifications. • The practical application of notification requirements would be significantly enhanced by an electronic system. There is an urgency for a common/interoperable system before Member States develop many incompatible systems. • Registration of brokers and addressing the jurisdiction issue for notifiers would be steps forward in addressing much illegal activity. In this regard, it would be important to restrict brokers to EU countries. • There are significant problems from the interaction between the WSR and the Animal By-Products Regulation and Member States are not interpreting this interaction in the same way. There is probably a need for there to be a change in the law. It would be a good idea to clearly separate them, e.g. what is in scope of one Regulation is not in 	

the other.

- A number of aspects of the WSR are not clear, e.g. the annexes are confusing and are open to interpretation and some definitions are not clear or are lacking.
- De minimis is limited in the WSR, but this limitation causes significant concerns, not least to new waste shipment mechanisms that have become important recently.
- For Annex VII, electronic systems similar to customs systems would make it more enforceable.
- The practical use of the Financial Guarantee is limited. Consideration should be given to making its use more practical.
- There are a number of issues concerned with transit states in the application of the WSR, but which are either unclear or not addressed by the WSR.

These findings need to be considered by all of those involved in the application of the WSR, from the European Commission to the individual competent authorities. It is, therefore, recommended that:

- The **European Commission** should take careful consideration of the issues raised in any future revision of the WSR (and possibly the Animal By-Products Regulation) and, prior to this, consider whether additional guidance is necessary to support implementation in the Member States.
- The **European Commission** should consider the issues raised on the practical concerns in relationships with third countries and international organisations and support Member States in communicating concerns with the Basel Convention, OECD and third countries.
- The **European Commission** should facilitate co-operation between competent authorities of the Member States to help address divergent interpretations of the WSR and divergence of its application to reduce discrepancies and so reduce practical implementation problems.
- The **European Commission** should facilitate the co-operation between competent authorities of the Member States to help learn from systems (especially electronic) already in place or under development and help to ensure inter-operability of these systems.
- **Competent authorities** of the Member States should consider the conclusions of this report and determine if there are lessons to learn in improving their application of the WSR.
- **Competent authorities** of the Member States should take the initiative in working with partners in other Member States to help reduce divergence in application of the WSR and so reduce some of the practical problems of implementation.

Disclaimer:

This report is the result of a project within the IMPEL-Network. The content does not necessarily represent the view of the national administrations.

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1. Introduction

1.1 Introduction

This report is the report of the IMPEL project 'Practicability and Enforceability of the Waste Shipment Regulation'. The report synthesises responses from IMPEL members to a questionnaire on this issue and conclusions from discussion at a project workshop held in Brussels on 3-4 November 2011.

This report begins by providing background on IMPEL's work on practicability and enforceability. It explains the questionnaire and workshop methodology of the project. The report presents the detailed results of the project according to the structure of the Waste Shipment Regulation (WSR). It ends with some key conclusions and recommendations.

1.2 IMPEL's work on practicability and enforceability

In order to encourage policymakers to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process IMPEL has produced a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States. The checklist was adopted by the IMPEL Plenary Meeting in December 2006, and published on the IMPEL website:

<http://impel.eu/projects/developing-a-checklist-for-assessing-legislation-on-practicability-and-enforceability>

IMPEL has used the practicability and enforceability (P&E) Checklist to examine the practicability and enforceability issues relating to IMPEL members' work in relation to the IPPC Recast Proposal and the WEEE Directive recast proposal. Links to these reports are below:

<http://impel.eu/projects/practicability-and-enforceability-of-the-ippc-recast-proposal>

<http://impel.eu/projects/practicability-and-enforceability-of-the-2008-recast-proposal-of-the-weee-directive>

The experience of undertaking this assessment formed the basis of a workshop between IMPEL members and Commission officials in September 2008 to identify lessons learnt and ways forward for co-operation between the Commission and IMPEL. The workshop concluded that it was important for IMPEL to continue to use

the P&E checklist and this project on the WSR, therefore, continues this process. However, this project on the WSR is a departure from earlier work in that it is not focused on proposed legislation, but on existing legislation.

This IMPEL project uses questions identified in the P&E Checklist to examine key aspects of the WSR. The project **does not intend to interfere with the normal European legislative procedure**, rather it seeks to provide guidance to the co-legislators on the **areas which need particular attention** with regard to the **objectives of practicability and enforceability** based on the **practical experiences** of experts from IMPEL member countries. The project report highlights the key practicability and enforceability questions and areas which, in the opinion of the IMPEL experts, need particular attention. By this the project aims at informing and supporting, *inter alia*, the legislative process.

1.3 The project questionnaire

A questionnaire was produced to collect views and experience from IMPEL members on the P&E of the WSR. A copy of the questionnaire is provided in Annex I to this report.

The questionnaire was structured according to elements of the WSR. Each theme was briefly introduced identifying the Articles in the WSR. For each theme key questions from the P&E Checklist were used as the basis to develop questions specific to the detailed provisions of the legislation.

The questionnaire addressed a wide range of practical implementation of the WSR. It did not address every detail in the WSR, but focused on those areas which are most likely to raise practicability and enforceability issues. It sought to obtain general views on P&E issues as well as practical examples from IMPEL members to help illustrate issues that have arisen.

18 responses to the questionnaire were received from respondents in 14 countries. A list of those who responded is provided in Annex II.

1.4 The project workshop

The project workshop was held in Brussels on 3-4 November 2011. A list of those who attended is provided in Annex III. The workshop discussed the main findings from the questionnaire responses, focusing on the major themes of the WSR. It provided an opportunity to clarify some of the comments made and exchange experience of the practicability and enforceability experiences of implementing the WSR. The workshop also highlighted specific key conclusions and recommendations for the European Commission and IMPEL members.

1.5 This project report

This report presents the findings of the collation and synthesis of the questionnaire responses. These have been clarified and augmented by the discussions at the project workshop which have been integrated into the report findings. The structure of the report follows the structure of the WSR.

In previous IMPEL P&E reports it has been common practice for the final report not to attribute most comments made by IMPEL members, such as on problems of interpretation, etc. The exceptions to this are on some practical examples that are given, which may need to be attributed. This approach is retained in this report.

2. The findings of the project

2.1 General provisions (Title I)

Scope (Article 1)

Article 1 of the WSR sets out the scope of the WSR by defining the range of waste shipments addressed by the WSR and a range of activities excluded from the WSR. However, is the scope of the WSR clear and are the specific inclusions and exemptions operationally practical? Also are there any issues concerning consistency with other areas of EU waste law?

General comments

Two respondents considered that the scope is clear. A further two considered that the scope of the WSR is mainly clear. One considered that the scope is less clear since the new Waste Framework Directive (WFD, 2008/98/EC) entered into force. Another considered that the scope is not clear.

At the workshop it was concluded that Member States should consider what elements of national law should be addressed, or guidance developed, to help with implementation of the WSR (e.g. national law can add to the definition of notifier on top of the WSR provisions, meaning authorities can take action against more people than is possible under the WSR).

At the workshop it was also concluded that some aspects that affect implementation of the WSR (e.g. definition of waste, Basel Convention annexes, OECD Decisions) are beyond the scope of the WSR, therefore if there are problems with those aspects of the WSR, solutions need to be sought elsewhere.

Animal by-products

Seven responses highlighted a lack of clarity over animal by-products (ABP). The Commission view is that many issues come under the ABP Regulation rather than the WSR, but this position results in lack of clarity because it depends upon whether authorities are giving approvals for shipments or for facilities receiving them. The Commission also considers that category 1, 2 and 3 ABP require approval, but Member States do not necessarily follow this view with regard to either the ABP Regulation or the WSR.

One respondent stated that some Member States exclude all ABP falling under the approval requirements of the ABP Regulation from the scope of the WSR. Two more similarly commented that Article 1(3)(d), which exempts shipments subject to the approval requirements of Regulation (EC) No 1774/2002 (the ABP Regulation, which has been replaced by (EC) No Regulation 1069/2009) means that the transboundary shipment of a large variety of ABP (e.g. unprocessed Category 3 material) is not subject to explicit approval, and that this makes it unclear whether the shipment of some ABP is subject to both the WSR and the ABP Regulation. One respondent suggested that the exemption in Article 13(d) could usefully state that all materials within the scope of the ABP Regulation are exempt from the WSR. Another agreed that it is unclear which ABP is or is not covered by the WSR, and has so far interpreted that ABP under category 3 in the ABP Regulation are under the scope of the WSR. One respondent questioned whether the ABP Regulation contains similar provisions to the WSR. Another respondent stated that Article 1(3)(d) provides approvals for the establishments which accept ABP, rather than for shipments, which leads to confusion when trying to establish if a particular movement is exempt or not. A second respondent agreed that alignment with the ABP Regulation remains difficult because the legal frameworks and procedures differ depending on the destination process (incineration, landfill, biogas, composting versus processing for human or animal consumption).

At the workshop it was argued that a consistent approach to ABP would be desirable for effective cooperation and for businesses. EU-level clarification is needed, particularly as the ABP Regulation only covers facilities, not shipments.

The workshop concluded that the interaction between the ABP Regulation and the WSR is not working as Member States do not interpret overlaps in the same way. There is therefore a need at least for more guidance, and possibly for a legislative change (e.g. to clearly separate the scope of each of the Regulations).

Offshore, ship- and vehicle-generated waste

One respondent stated that greater clarity is needed on wastes generated by offshore platforms and ships. Another responded that the relevant Government department has clarified various issues on shipments of waste from the marine area, but that Member States are likely to have differing views on this and therefore which

wastes should be regulated under MARPOL or the WSR. A further respondent stated that the wording of Article 1(3)(a) (waste generated by the normal operation of ships and offshore platforms) is unclear, in particular the use of the word 'normal' (does it include waste from the core activities that occur on board, including where on-board treatment of waste is 'normal'). It is suggested that Article 19 could be extended with a prohibition to treat waste on board. The relationship between Article 1(3)(b) and Article 1(3)(a) is also unclear – should all waste generated on board vehicles, trains, planes and ships, whether arising from the operation or resulting from an operation/ processing of cargo on board be exempt from the scope of the WSR? A second respondent agreed that the exemptions on ship- and vehicle-generated waste are somewhat unclear.

At the workshop it was pointed out that it is unclear how far the dismantling of ships falls under the scope of the WSR.

Decommissioned explosives, armed forces, crisis situations, peacekeeping operations

One respondent questioned whether the Regulation covering 'decommissioned explosives' contains similar provisions to the WSR, and also suggested there is a lack of clarity on when waste from decommissioning of military armaments and ammunitions becomes excluded from WSR requirements. The same respondent also stated that there is no help with emergencies or accidents, and questioned whether the full provisions of the regulations always apply in these cases. Another respondent also stated there were different interpretations on decommissioned explosives.

One respondent suggested Article 1(3)(g) (on waste generated by armed forces, crisis situations and peacekeeping) is unclear; although it only actually relates to inter-Community shipments (outside the EU the Basel Convention must be respected). A second respondent agreed that greater clarity is needed on wastes generated by peacekeeping operations and civil unrest.

Other comments

According to one respondent, the distinction between what has to be regarded as waste and what can be regarded as a product (and thus outside the scope of the WSR) is not always clear, leaving too much room for misuse of classification and fraud.

One respondent considered that some wastes can fall between the requirements of the WSR and Directive 92/3/EURATOM (see 'Practical examples' box below).

The same respondent suggested there is confusion on the applicability of the WSR to shipments of waste containing ozone depleting substances (Ozone Depleting Regulation (EC) No 1005/2009); it is unclear who has authority to detain/request the return shipment.

Another respondent asked whether a country is considered a transit country when a shipment passes through its territorial waters but does not stop.

Practical examples

AC260 pig manure and faeces are mentioned on the Amber List but excluded from the scope of the WSR, as they fall under Cat. 2 of the ABP Regulation. One respondent considers animal meal of Cat.3 as Green Listed Waste B3060 if destined for incineration with energy recovery or biogas plants. Another respondent stated that Commission guidance on whether an ABP shipment falls under the WSR or ABP legislation is unclear, so it is not evident which shipments of various types of ABP (e.g. bone meal, manure, oil) should be controlled by waste or animal health authorities. Examples were also provided during the workshop of eggshells (which are Cat. 3, not protein, so Member States can interpret this to fall under the WSR or the ABP Regulation) and meat products waste in plastic wrappings (which again can be interpreted to fall under the WSR or the ABP Regulation).

Belgium Flanders OVAM highlighted ongoing discussions regarding used goods versus waste. For example, a lot of used EEE is exported as second hand goods but in actual fact it is WEEE. A clearer distinction is necessary in this case and must be used in every Member State; the draft recast WEEE Directive provides only a partial solution, and implementation risks distorting it even further.

England and Wales – Environment Agency gave a (hypothetical) example of shipments of radioactive waste, where the countries of dispatch and destination do not both require the movement to be controlled. As the Euratom Directive controls on international movements only apply where the country of dispatch and destination both require the movement to be controlled, and as Article 1(3)(c) of the WSR excludes shipments of radioactive waste as defined in the Euratom Directive from the scope of the WSR, the movement of the substance is in this case unregulated. It would be preferable if the WSR caught those shipments where Euratom controls do not apply.

Sweden EPA has asked the correspondents group and lawyers for views on 'decommissioned explosives', specifically Article 1(3)(e) which states 'where such shipments are already covered by other Community legislation containing similar provisions'; some answers suggest decommissioned explosives are under the scope of the WSR because there is not any other similar Community legislation, but other answers say there is. Investigations are ongoing on this issue.

An example was mentioned at the workshop of a vessel filled with waste (as storage on land was too expensive) that was sent to international waters and is still there. It is unclear whether the WSR covers this situation as it always refers to shipments between countries and states and therefore the sea cannot be a final destination. Clarification is needed, e.g. amending the WSR to ensure that its provisions can be applied to all movements in/out of a Member State.

Definitions (Article 2)

The definitions define a very wide range of terms used by authorities to implement the WSR. Issues of clarity of definitions, lack of definitions or consistency with other areas of EU waste law may raise practicability or enforceability issues for competent authorities.

General comments

One respondent suggested that definitions should be the same as in the WFD (2008/98/EC) and that specific definitions for the regulations should be identified as such.

Another suggested that lack of a definition of 'start of the shipment' and 'disposal facility and recovery facility' is problematic; there is a definition of 'receiver' and the waste should go physically to this location, but in practice this is not always the case.

Waste

One respondent considered defining materials as waste would be easier if the competent authority could designate certain substances which the holder has to discard, e.g. residues of the dioxin and BSE crises. A second stated that the lack of a waste definition in the WSR (which refers to the WFD for such a definition) creates significant problems in the field of transboundary shipment, due to large differences in living standards between OECD- and non-OECD-countries. A third respondent pointed out that it can sometimes be difficult to define whether certain items are a product or 'waste'.

Mixture of wastes

One respondent considered 'mixture' is very strictly defined, meaning that in practice almost all waste shipments can be considered a mixture. It is also not consistent with Annex III that does not rule out contamination, meaning it is unclear when waste should be considered as a mixture, contaminated or non-listed. A second respondent suggested that there should be a definition of 'polluted' waste, rather than 'mixtures' of waste.

At the workshop it was stated that the different approaches in countries to what is a 'mixture' is a challenge for authorities and business. This should be explored in more detail at the EU level, for example to assess whether clear standards (e.g. EU-wide percentages) would help. Any standards must however be practicable and not too complex or expensive to enforce (e.g. avoiding complex/costly sampling techniques).

Disposal

Austria stated that interim disposal operations are not only D13-D15 but also D9 and D8, from a technical point of view.

Interim operations

One respondent suggested that the new WFD definition of recycling will in effect mean that many operations become interim and not final; this will clash with the WSR procedures, where it is foreseen that shipments to interim operations would be the exception.

Dealer

One respondent considered it is difficult to reconcile when waste has been sold. A second would like practical clarification on what 'physical possession' means - a dealer could, although may not always, take physical possession of the waste, so ownership and physical possession could be two different things.

Broker

One respondent would like practical clarification on what 'physical possession' means; surely a broker should only deal with paperwork, not take physical possession of the waste?

Consignee

One respondent stated that the definition of the 'consignee' is clear in the WSR, but that according to the instructions in Annex IC (point 15) a broker may also be the consignee. A second pointed out that it is common for the notifier and consignee to be the same. A third asked whether the consignee must be the recovery facility.

Notifier

One respondent considered the definition of 'notifier' is not helpful and that the definition of 'natural or legal person' needs to be clarified for notifiers. It is also very rare that a registered dealer/broker is 'authorised in writing'. A second agreed that the definition causes significant problems. Another considered that the 'person who arranges the transport' should be added to the definition. A fourth considered the definition could be clearer.

'Under the jurisdiction' (in particular with reference to the notifier)

Three respondents considered the definition is not clear; one stated that interpretation of the last part of Article 2(15)(a) is particularly difficult. A fourth agreed that it is unclear which jurisdiction is competent for the notifier; the same problem applies in relation to the person who arranges the shipment under Article 18(1)(a).

At the workshop, it was recommended that the person who arranges shipping should be resident in the country of shipping, or at least in the EU (this is currently

open to abuse by brokers not resident in a Member State, resulting in the producer having to pay take back costs if required). Requiring financial guarantees from brokers may also be an additional incentive. It may be difficult to find the answer but this has become a very widespread issue (almost the rule) since waste is now bought. The Commission and IMPEL need to think creatively about this.

Export

One respondent questioned whether the definition of 'export' as the action of waste leaving is useful.

Transit

One respondent suggested it would be useful for a time limit to be specified for when waste can be seen as being 'in transit' and when it should be considered as storage under the relevant recovery/disposal code.

Transport and shipment

One respondent suggested the separate definition of 'transport' and 'shipment' is not helpful. Definition of a 'shipment' is required, to determine whether it should be a bulk vessel, single vehicle or container load. There is currently disagreement between competent authorities on this issue.

At the workshop, it was pointed out that the inclusion of the term 'if planned' in the definition of 'shipment' can cause problems. Examples include identifying when a shipment started if waste is moved to another site for bulking up prior to final shipment, or when waste is moved from one Member State to another and then to China, it is hard to prove that the intention to ship to China originated in the first Member State. The notification says where waste is being produced but not where the movement starts; in the absence of a definition of 'start of shipment', more tracking information could be included on the notification form.

Illegal shipment

One respondent considered Article 2(35)(g)(iii) on illegal shipment is worded too cryptically/weakly; the following rewording was suggested: 'the shipment without an Annex VII document, or with an incomplete/incorrectly completed/falsely completed Annex VII document'.

Practical examples

The issue was raised of large amounts of post consumer waste exported by waste tourists, who buy waste but are only in the EU for relatively short periods of time, are not resident in the country of dispatch, and export waste/damaged goods illegally (e.g. ELVs & WEEE, RDF/SRF). Many exports are arranged by brokers/purchasers that arrange for shipments of waste between countries where they have no natural or legal presence, making it difficult to hold someone accountable for an illegal waste movement. One specific example from

England and Wales – Environment Agency was a shipment by a Pakistan National of scrap PCs, inspected on route in the Netherlands; the notifier could not be contacted, so the UK authorities had to take back the waste for suitable recovery. The owner later contacted the Environment Agency to have the PCs returned, demanding compensation for the original purchase price of the PCs.

It was suggested that it can be difficult to differentiate WEEE from EEE and used parts from ELV.

England and Wales – Environment Agency would regard 10 vehicles travelling together (loosely) to be one shipment; other Member States would not, which has implications for the paperwork required (10 pre-notifications rather than one) and the charging scheme (based on shipments).

It was suggested that the lack of a definition of the person who arranges the transport allows companies to attempt to transfer their responsibility to shipping agents.

It was considered that the last part of the definition of ‘notifier’ (Article 2(15)(a)) is presented as a condition on take-back, rather than being a pure definition, and that the expression ‘fail to fulfil’ is rather broad and may serve to acquit guilty dealers/brokers. It is also considered this is difficult to interpret and can make brokers or dealers hard to prosecute.

With regard to notifications, it was asked whether it is right to demand that the notifier has to be registered and have a business address in the country of dispatch.

The lack of a definition of ‘polluted’ waste as opposed to ‘mixtures of waste’ can be very difficult to communicate during court cases.

2.2 Shipments within the Community (Title II)

Overall procedural framework (Article 3)

The procedural framework applies to wastes defined in the Annexes to the WSR. Practicability or enforceability issues could arise from the definitions and classification of wastes set out in the Annexes to the WSR (thus framing controls such as export prohibitions under Article 36). For example, is it clear to which annex waste belongs? Also issues could arise from issues of consistency with other areas of EU waste law.

General comments

Three respondents made the point that in practical terms, the Annexes are confusing (in particular to non-experts or infrequent users of the Annexes), with a lot of cross-referencing, which leads to difficulties in classification. This could in turn lead to illegal shipments. One respondent pointed out that the problem is worse with unlisted and hazardous waste.

One respondent suggested that the Annexes and their use are in general open to interpretation. They were drawn up when post consumer wastes were not so significant, and the classification of those wastes now poses the most uncertainties or difficulties.

The same respondent considered there is an inconsistent style of the waste entries in the various Annexes, with some just describing the waste (e.g. A2050 Waste asbestos (dusts and fibres)), others including reference to the origin of the waste (e.g. AA010 Dross, scalings and other wastes from the manufacture of iron and steel), and others including reference to subsequent recovery operations (e.g. GC020 Electronic scrap etc ... suitable for base and precious metal recovery).

At the workshop, it was suggested that the complexity of the annexes is a problem, but that this is due to Basel and other measures and therefore the problems are beyond the WSR itself.

One respondent considered that there is leeway for the authority of dispatch to classify green waste (which is only indirectly defined) into a particular category of what might be called strictly regulated Grey waste.

WEEE

Five respondents called for clearer, less broad descriptions for certain WEEE classifications (GC010 and GCO20, Annex III). A sixth agreed that a suitable code for 'whole non-hazardous WEEE' would be useful.

Impurities / contamination / mixing wastes

One respondent considered the permissible contamination level of non-hazardous impurities in the case of Green Listed wastes is not clear. Another made a similar point that the preamble to Annex III makes no reference to non-hazardous contamination apart from 'prevents the recovery of waste in an environmentally sound manner' and that it could be argued that even high levels of non-hazardous contamination may not prevent environmentally sound recovery. Two respondents called for clearer/stricter standards about the acceptable level of contamination. One of those respondents also suggested it would be relevant to know whether a mixture results from an intentional systematic failure or whether it was created by a random or one-off mistake (mis-sorting). Another respondent stated that it is very difficult to define what are the allowable or acceptable levels of contamination which could be exported under the Annex VIII procedure.

One respondent considered that some entries have a lot of paragraphs with wastes (e.g. B2010; B2040; B3010) and it is unclear whether wastes from within the same paragraph or the same B-code can be mixed.

One respondent considered it would be useful if a common view could be taken on the shipment of discrete packages of waste within one consignment. Each type of

waste could move with an Annex VII form, and the shipment need not be seen as a 'mixed' load.

By-products

One respondent stated that the definition of by-products is interpreted in different ways; as it never was waste it could be argued that Article 28 could not apply.

Hazardous waste

Two respondents perceived problems over whether waste containing hazardous substances can be exported from the EU as Green List waste. Two further respondents agreed that the preamble of Annex III on the Green List is vague enough to allow very different (strict or loose) interpretations of what is hazardous waste or not. One respondent argued that the strict definition of a mixture is not consistent with the preamble of Annex III, making it unclear when waste should be considered as green listed, mixture, contaminated or non-listed. Another similarly considered that there are differing interpretations of this.

Household waste

One respondent stated it is unclear whether Article 3(5) captures or is intended to capture Y46 (household waste) as in Part 3 of Annex V.

Outdated and inconsistent definitions (Basel / OECD / EWL / WSR)

One respondent made the point that new types of waste streams are starting to move internationally and it can be difficult to apply the old definitions (e.g. RDF: Article 3(5) refers to waste coded with EWC code 20 03 01 but it is unclear what level of treatment is required to change 20 03 01 waste to 19 12 10 to enable RDF to be exported for recovery purposes; does Y46 still apply to the waste even if it is no longer 20 03 01 waste for purposes of Article 36(1)(b)?).

Three respondents considered that the codes and waste descriptions of the Basel Convention and the OECD-decision need attention; they should be updated (and updated more regularly/quickly), and made more diverse and precise to capture modern waste streams. One of those respondents suggested that the definitions of OECD and Basel waste lists and the WSR should (ideally) be harmonised. Another considered that more background information should also be available on how the descriptions were formulated. Member States (and even regions within Member States) interpret many of the codes differently, causing problems for enforcement authorities and enterprises. Waste codes should be stricter (ideas include linking them to ISRI codes and Chinese import standards). Another respondent suggested that shipments within the EU could use the European Waste List (EWL), but that exports and imports are bound by the Basel Convention.

Shipments within the EU

One respondent pointed out that for shipments within the EU there is no provision similar to Article 37 paragraph 4 and Article 38, paragraph 6, that the recovery should take place in a facility which is allowed to accept the waste.

Practical examples

It was highlighted that nickel catalysts and V2O5 catalysts are hazardous due to their intrinsic properties but mentioned on the Green List, causing inconsistency (within EU/OECD - Green, outside the EU - export ban). The same applies to almost all batteries, which fulfil hazard criteria but are Green Listed.

Questions were raised over iron slags (B1210) used as a construction material, containing an extraordinary high level of Cr III (oxide), but no Cr VI; it could equally be argued that they should be classified as green listed waste (only Cr VI contributes to the hazardous characteristics) or that a notification might be justified to ensure that the iron slags will be used in combination with cement in order to prevent possible future leaching of Cr III.

For plastics containing BFRs there is an overlap between the WSR, the RoHS Directive and the POP Regulation, but in practice all three pieces of legislation must be implemented (which is often not the case).

It is unclear when waste ships become waste; in the case of the Tuxedo Princess, the relevant agency suspected it was going to be scrapped. It was sold in theory to be towed to Greece by the new owners for conversion, but was in fact scrapped in Turkey.

The current position of England and Wales – Environment Agency is that whole (or compacted or shredded) non hazardous WEEE is not correctly classified as GC 020.

England and Wales – Environment Agency reported on an export of glass to Poland that was notified and consented to by the competent authorities. It was detained by the Polish competent authority due to contamination (plastic, metal cans, textiles etc.). The contamination levels were within those specified on the notification (5% by weight) and the consignee claimed they were able to process the waste but visually the glass looked very contaminated. The waste was repatriated to England upon request from the Polish competent authority, but no enforcement action could be taken as the waste was within the specification of the notification and the contaminants were not hazardous.

With regards to exports of RDF, SRF and other waste derived fuels from household / municipal waste sources, it was suggested it is unclear at what point mechanically treated MSW may no longer be considered as municipal/household wastes (WSR Annex V (Y 46) or EWC 20 03 01); the agency currently takes the view that waste that has been through minimal treatment is classified as 19 12 10 or 19 12 12. The same question was raised over what treatment is required to change waste from 20 01 03 to 19 12 10. Also the EC codes 20 03 01 (mixed municipal waste) and 19 12 10 (fuel-like combustible waste) can be confused. On the same issue, it is not clear whether residues of waste incineration should be considered as waste of code Y46, B1010 or non-listed.

England and Wales – Environment Agency gave examples of exports to the Netherlands which could not take place due to differing views on acceptable levels of a) CFCs in fridge plastic (UK threshold for classification as a hazardous waste is 0.1% w/w, while the Netherlands view is that any detectable CFC makes it hazardous) and b) oil contamination of metal (Environment Agency regarded the oil as non-hazardous, the Netherlands view is that 0.1% w/w oil contamination meant the waste could not meet the green list criteria).

On B3010, it was suggested clarification is needed on 'not mixed with other wastes' and 'in accordance with specifications prepared'. One respondent also argued that A1190, B1115: cables with oil or PAH always need to be sampled to prove that it is A1190, which is difficult because the whole insulation needs to be analysed.

It was also asked whether WEEE should be dismantled to comply with code GC020, and what should be done about electronics that mainly consist of plastics. The respondent also argued that printed circuit boards contain many hazardous substances and therefore should not be included in code GC020.

It was also argued to reconsider codes B2130 + A3200 asphalt granulates, suggesting the limitation of 50 mg/kg benzo (a) pyrene is not a good norm for the distinction between green and amber list waste. In the Netherlands this has caused a major export of asphalt granulates to the Baltic states.

It was also suggested that contaminants may be exaggerated. For example, very small amounts of ODS in waste materials is not a case for referring to the ODS Regulation, only dealing with functional ODS in objects or containers.

Portugal – IGAOT cited a recent Portuguese Criminal Court decision that revoked IGAOT's decision on applying a fine to a company responsible for an illegal WSR movement because the Judge failed to understand Annex IV.

Further examples are shipments of waste paper with low level contamination of plastics, and shipments of metals with low level contamination of oil.

De minimis

Practicability or enforceability issues might arise from the lack of a de minimis clause in many aspects of the Regulation (i.e. that all waste shipments are subject to the Regulation, no matter how small the amount of waste).

General comments

Three respondents considered there are no issues. Five respondents pointed out that there are two de minimis clauses in Article 3(2) (20 kg) and Article 3(4) (25 kg for laboratory analysis). These were considered to be useful.

One respondent, on the other hand, stated that there are issues. At the workshop it was suggested that de minimis may also be an issue for fee structures.

One respondent considered that a de minimis within the EU would be helpful, as the lack of one makes the notification requirements appear over burdensome, e.g. in the case of shipments of small hazardous waste quantities for trial runs. Another respondent considered that in principle a de minimis may be the right thing to do, but that the upper limits set in paragraphs 2 and 4 are sufficient. It suggested that instead the maximum amount of waste allowed to be shipped without the use of the notification procedure should be considered on a case by case basis.

Problems with small amounts of waste

One respondent pointed out that companies that import/export small amounts for laboratory use feel that the obligations in the WSR are too strict, and it can be difficult to make them use Annex VII or issue a notification.

One respondent replied that the WSR does not seem fit to regulate shipments of very small amounts of waste from households (e.g. to civic amenity sites very close to national borders), or within the perimeters of companies located on borders (i.e. with buildings, installations and stocks on both sides of the border). At the workshop it was suggested that the WSR should acknowledge this, and that the issue could be addressed through sensible bilateral agreements.

Postal deliveries

One respondent suggested that transboundary shipments that are not generally designed to be waste shipments are used as waste shipments e.g. postal deliveries (letters, small packages). At the workshop it was discussed that whilst there is no de minimis for hazardous waste, the postal system is used for items such as old mobile phones, inhalers and toner cartridges. The use of the postal system in this way has happened since the adoption of the WSR, and the WSR needs to be amended to accommodate it. Whilst this could include specific rules for specific waste streams (e.g. mobile phones) there would always be a new waste stream that is not accommodated, so some general provisions may be more appropriate.

Practical examples

On postal services, it was stated that in some cases packages and letters (e.g. containing used cartridges and mobile phones) will be sent between Member States and in/out of the EU, which can cause problems as the WSR is almost impossible to implement in such cases and is therefore ignored. Packaging may not be adequate to prevent environmental damage and broader safety risks with regards to handling. One respondent called for waste under the weight limits that is sent by postal shipments to be handled *per se* as a specific phenomenon. Some authorities have considered the bulking up points (sorting offices) to cause a problem (because they then exceed the 20 kg for permitting issues).

Two respondents cited the example of short transboundary movements by private persons living in border regions, e.g. individuals living in a border area whose nearest municipal collection point is in another country. In theory, they must meet all WSR obligations.

Belgium Flanders MI gave the example of transboundary movements of household waste collected in an enclave to recycling facilities in the motherland, and an end-of life recycling facility with depollution activities on one side of the border, and a car shredder on the other side.

It was suggested the lack of a de minimis prevents small amounts of wastes being exported for trials, due to notification costs and administrative burden. One respondent stated that on several occasions it has ensured that exports of small amounts of mixed waste (exceeding 20kg but being moved to trial new technologies) have been notified, which has seemed heavy-handed for such small quantities, but stated that it seems generally to be a proportionate limit.

Portugal – IGAOT reported only one issue about minimum weight. A Portuguese company shipped 50 kg (packaging included) of WEEE as 'samples' to a French company, to be sent to an unspecified African country. It later claimed that without packaging it would have been less than 20 kg.

Notification (Article 4)

The WSR sets out a detailed notification procedure for waste to be shipped within the Community. This might raise practicability or enforceability issues, including issues of consistency with other areas of EU waste law.

General comments

Two respondents had no comments on this point. One respondent stated it is not involved in the permits of the notification procedures and there is hardly any problem with such regulated transports. Another respondent stated that there are issues.

That respondent stated that the procedures are complicated for new notifiers to work with, and that the detailed guidance they have produced may be off-putting (but considered that such detailed guidance is necessary). To reduce administrative burden, another respondent suggested every involved country should not always be required to register all administrative shipment data after consent has been given, and for waste types that do not pose any particular risk. It suggested bilateral agreements between countries could be produced instead.

At the workshop it was stated that the notification system is resource intensive and needs to be addressed. Regulators put data into databases and companies might do the same, so a single system could be developed. Electronic forms could be filled in as a shipment happens, which would provide a system immediately accessible to the relevant authorities; the forms could also be printed to travel with the waste. There are several systems in the EU but it is not clear how many; however, a common system exists for the transport of dangerous goods, so it can be done. The European Commission must lead on this now, with help from IMPEL members, to create a common system or at least interoperable systems.

Use of an electronic / digital system

One respondent considered the procedure works well, but that an electronic system would be very useful within the EU. Another considered the procedure is rather complex and that a digital system would improve it greatly. A third respondent also considered the procedure is challenged by the fact that there are more and more brokers and that trade in waste is done electronically.

Definitions and use of codes

One respondent considered the new WFD definition of recycling, which will in effect mean that many operations become interim and not final, causes clashes with the procedures of the WSR (it is not foreseen that shipments to interim operations would be the main rule and not the exception).

One respondent stated that there are disagreements on the use of R codes on a notification, in particular the use of R11 and R12.

The same respondent considered the restriction imposed on the use of one waste identification code per notification causes problems; multiple shipments of grouped (relatively small) quantities of assorted wastes would be very costly if shipped otherwise (e.g. expired lab chemicals, waste from site clearance schemes, wastes generated at overseas military bases). Another respondent considered that under Article 4(6) it should be clearly mentioned which code is being used (i.e. from Annex III, IIIA, IIIB, or EWC code).

Lack of documentation / missing information

One respondent stated that some countries do not give acknowledgements on time, or ever.

One respondent suggested there is lack of clarity on circumstances where non-EU countries will not raise notification documents.

One respondent stated the documentation does not explicitly state where the movement commences. Another respondent stated that better initial assessments of notifications or waste documentation at authorities should mean new options for more differentiated procedures later on, emphasising destination data instead of dispatch and transit data.

One respondent considered that for Green waste, documentation of all national shipment stakeholders should be part of registration lists; this (with focused enforcement) might secure notification of most of the Amber waste being shipped.

One suggested the competent authority of dispatch should have the right to request all the necessary data from Annex II part I and part II (including the financial guarantee) before notification is sent to the other competent authorities. If this

additional information was then given together with notification to other competent authorities, they would have almost complete notification and would not have to call for the same documents again (in particular the financial guarantee), reducing the administrative burden. Another respondent has found the three day deadline to determine whether a notification is 'properly carried out' to be difficult, in particular those from notifiers who have not sought pre-application advice. It would be preferable to have all the information at the outset, especially as this might also be of use to the other competent authorities involved.

One respondent considered the declaration of contract between notifier and consignee should always be requested, and that declaration of a financial guarantee is not enough proof.

Other comments

One respondent suggested that in their particular case, a major issue is that shipping routes are continuously changing, and therefore notifications which were approved with a particular shipping route become invalid.

Practical examples

Finland stated there was an issue with Poland and green listed waste, but did not give more detail.

England and Wales – Environment Agency stated that the USA will not provide notification documents, and some non-OECD competent authorities do not respond to communications, leaving notifications 'hanging'.

England and Wales – Environment Agency cited an example where EWC codes were changed post acknowledgement by Belgian authorities; Belgium issued a consent that conflicted with the consent already issued by the UK authority, causing confusion for the notifier and consignee over which notification and movement documents to use.

England and Wales – Environment Agency sometimes permits imports from overseas territories/armed forces stationed overseas of certain mixtures of waste under one notification, because of the impracticability of raising a notification to ship small quantities of waste.

Scotland – SEPA has encountered disagreements between competent authorities of destination (e.g. shipments within the OECD) about which competent authority has the authority to sign the notification.

Portugal – IGAOT reported that operators complain of the high prices charged by the Environmental Agency for notification procedures and that some infringements have resulted from waste movements that occur after the expiration date of the notification procedures.

Financial guarantee (Article 6)

All shipments of waste subject to notification have to be subject to a financial guarantee as defined in the WSR, which may raise practicability or enforceability issues, such as how extensive the use of financial guarantees/insurance has been.

Use of financial guarantee

One respondent responded that it had developed a method for the financial guarantee that is used without any problems. Two respondents reported that a financial guarantee has only been called upon in very rare cases. A further two respondents had never called upon a financial guarantee. However, it was clarified at the workshop that financial guarantees are useful to help promote compliance with the regulatory requirements.

Amount of the financial guarantee

One respondent requires a financial guarantee for all exports and for imports outside the EU/OECD. The guarantee can be partial and its coverage is continuously followed up. Another respondent stated that guarantees are delivered in each case, with a minimum amount of around €20,000; no formula is being used by the authority for insurance costs or presentation of costs for possible take-back situations. Take-backs should in any case not be regarded as punishments or as complicated administrative operations.

One respondent suggested a uniform method of calculation should be laid down. It is unclear (Article 6(8)) whether one guarantee can cover several shipments or there could be several bank guarantees (each covering several shipments) which in total cover all shipments. A second respondent agreed that an EU-wide formula for calculating a financial guarantee would be helpful, and suggested the Commission could work with the financial sector to establish a standard format for the guarantee/ equivalent insurance. A third respondent agreed that there should be a standard method for calculating the bank guarantee to avoid unforeseen additional burdens on the notifier.

According to one respondent, calculations of the amounts required for a financial guarantee are difficult to verify and the amounts provided by different companies for similar waste types can vary greatly. For some wastes, companies claim (correctly) that there are no alternative recovery/disposal costs, as the waste will always have a value.

The same respondent is unsure whether, if a regulator needed to make use of a financial guarantee, it could get the same terms as commercial organisations. The model calculation of financial guarantee cover is too simplistic and does not reflect other costs involved with returning waste shipments (e.g. customs clearance fees, repackaging/transshipment, equipment hire, personnel/waste contractor fees).

Illegal shipments

One respondent stated that there is a general problem posed by illegal shipments without any notification. A second agreed that the risks of illegal shipments are not with notified shipments, but with those shipped as non-waste. The effort expended by competent authorities, notifiers and banks/insurance companies is disproportionate to the risks associated with notified shipments. Another respondent stated that 'deep pockets' are only needed when there is no notification and thus no guarantee; money is needed to pay for the take back or treatment of illegal shipments (green or amber listed). Similarly, a further respondent stated that most illegal cases it has dealt with have been sent totally outside the scope of the WSR, so there is no financial guarantee. One respondent hoped that the guidance on illegal waste will be shortened into a few pages, dealing with the main options. It considered that transit and destination countries should to a larger extent be using the guarantee to assist and finance take-back operations.

Regarding the level of the financial guarantee, at the workshop it was mentioned that the costs of taking back illegal waste are usually much higher than the levels required for a financial guarantee for legal waste. However, it was also noted that if the financial guarantee is not called on this may not be a problem.

Other comments

One respondent stated that no company has managed to arrange a suitable insurance under national law. Small or new companies cannot obtain bank bonds which are not prohibitively expensive.

One respondent considered the only issue with financial guarantees relates to guarantees for interim operations, specifically the part after the interim plant; it regards the final stage of the treatment of the waste to be the responsibility of the interim plant and its competent authority, not of the original notifier and the authority of dispatch.

One respondent stated that banks do not want to issue guarantees including the condition it is released when certificates according to Article 15(e) or 16(e) have been received (it is against their practice and rules). It is therefore not clear which date to use as the date for release of the guarantee.

Practical examples

England and Wales – Environment Agency stated that the rates obtained by the national authority do not match those obtained by most waste companies, due to their bargaining power, existing contracts/agreements and business know-how.

England and Wales – Environment Agency reported frequent disagreements with notifiers about the amount of the guarantee to be provided; they tend to assume their waste is a commodity with a resale value, which they want to offset against the amount of guarantee required to bring the waste back to the country of jurisdiction. Further guidance is required

and greater clarity needed on the criteria to be used in assessing financial guarantee provisions. A view from the Commission on whether the inherent value of materials can be used to offset the value of the guarantee would be useful.

The Netherlands stated there have been some cases in which the financial guarantee was not sufficient to take back the waste. It also considered the financial guarantee is a good tool to get treatment declarations back.

Norway (Climate and Pollution Agency) has found that most notifiers seem to find it too complicated to make use of the guarantee by deviations, and are eager to do the take-back themselves (or make other operations) as quickly as possible, to avoid attention from the media or other parties.

Sweden EPA stated that most illegal cases it has dealt with have been sent totally outside the scope of the WSR, so there is no financial guarantee to use.

Consents (Article 9) and conditions of a shipment (Article 10)

Consent procedures apply to competent authorities of destination, dispatch and transit. Conditions may be applied in connection with the consent, which may raise practicability or enforceability issues.

General comments

Three respondents reported that there are no issues. One stated that the procedure generally works well, but did outline a couple of issues (described below).

Consents

Three respondents stated that issues can be caused due to the variation between countries on consent expiry dates. At the workshop the variation in consents was highlighted as an issue that is confusing for business. This would be simplified by an electronic system which would address delays, etc. IMPEL members can help try to address this by comparing existing electronic systems. One respondent considered it is not clear what happens when an authority consents outside the 30 day period.

Two respondents stated issues arise from the late receipt of items sent by mail, which can eat into the decision-making time, meaning not all decisions can be presented in time.

Two respondents stated that competent authorities seem to ignore the WSR for the three working days in which they have to examine the notification and provide an acknowledgement of receipt.

One respondent stated it is unclear whether the decision should be issued within 30 days of the date of actual transmission or the date mentioned in field 19 of the notification document (these are not the same).

Another respondent stated that the consignee is not given the means to monitor and ensure that all consents are in place prior to import shipments; this makes enforcement much more complicated (the notifier under a different jurisdiction must be contacted).

Conditions for shipments

One respondent stated that it does not generally set conditions. Another uses standard conditions in almost all cases of consents, except for those wastes with particular contaminants/substances, such as ODS (prohibition), mercury (final disposal treatment), BFR (destruction), POPs.

One respondent stated that it is clear that waste shipments have to comply with ADR legislation, but that when a notified shipment does not comply with the ADR legislation (and the shipment cannot continue) it is not clear if a practical solution has to be found within the ADR framework, or if this also affects the application of the WSR. The lack of a clear description in the WSR of the relationship between ADR and notified waste shipments means that competent authorities do not know which framework should be used to handle those cases, which results in shipments being blocked en route for a considerable time.

One respondent suggested the follow up of the final destination (after R12 and R11) is not easy, and that a lot of notifiers do not willingly provide information on the final destination (especially when the notification request is done for economic/commercial reasons).

One respondent stated the issues arise from the late receipt of items sent by post, which can eat into the decision-making time, meaning not all decisions can be presented in time.

Practical examples

Ireland stated that the competent authority of dispatch may issue consent for a shorter period than the competent authority of destination (or vice-versa).

England and Wales – Environment Agency stated that the 30 day period is missed if the competent authority of destination does not correctly transmit the acknowledgement to competent authority of dispatch (Article 8(2)).

England and Wales – Environment Agency has found that some authorities consent for 12 months from the date of consent and then tacit transit consent 30 days + 12 months (Article 9(5)). Therefore the expiry dates on a notification do vary (see further details under the consideration of issues requiring consent – see below).

The connection (if any) between tacit consent (Article 9(1)) and unknown interim treatment is not quite clear, but that the correct response is possibly withdrawal of consent.

Interim recovery (Article 15)

The WSR establishes additional administrative requirements where waste is destined for interim recovery or disposal operations, which may raise practicability or enforceability issues.

General comments

At the workshop it was suggested that this is an area of non compliance with the notification rules, and that it would be better to require information to be provided on the final destination. The interim approach works reasonably well in the EU, but not outside the EU, where the final destination may be a better requirement. It was also suggested that national rules on top of the requirements of the WSR can make the system work. IMPEL could examine best practice in this area, and the Commission could examine Member States' laws to consider lessons that could be used to re-examine the WSR.

One respondent stated that this is a very difficult area. Practically, the tracking of interim shipments is unlikely to work, especially where more than one country of destination is involved.

Another respondent considered the paperwork required is onerous to produce and monitor.

Financial guarantee

One respondent stated that the financial guarantee coverage for interim operation only can cause issues.

One respondent stated that it is difficult to calculate an appropriate amount of financial guarantee for the notified waste in cases where several waste streams result from the interim recovery operation. At the workshop, it was suggested that it would be impossible to make use of the financial guarantee once the waste has begun to be processed and mixed.

Illegal shipments

One respondent cited that problems can result in the case of illegal shipments of wastes for the purpose of mixing and blending; there is as yet no solution with regards to take-back requirements, as the composition of the mixed waste is different from the originally sent waste.

Lack of clarity / differing interpretations

One respondent stated that Correspondents' Guideline 3 (procedure for interim and certificate for subsequent non-interim recovery/disposal) may be implemented in many ways, and that so far it has not received any certificates of final treatments

although they have been requested. Another respondent stated that Guideline 3 does not require the subsequent non-interim recovery/disposal facility to sign the certificate until the waste is recovered/disposed of. Therefore, the authorities cannot be certain that the waste has arrived at the subsequent non-interim recover/disposal facility. That respondent interpreted that the process only covers A to B to C (not A to B and C, or even A to B or C).

One respondent stated that Member States have different views on the use of R11, R12 and R13. Another stated that the R12 code is unclear, as this seems more applicable to bartering with wastes, which cannot reflect the actual operation of the waste market. Two respondents agreed that the interpretation of R13 varies between Member States. One of those respondents stated that some countries regard almost every treatment as interim (e.g. they might only think that R4 only is suitable for shipments directly to smelters).

Composition / definition of waste

One respondent stated that interim treatment is easier to assess when treating simple waste materials in a few steps, but is more complex when dealing with discarded objects with composite separable parts – in the latter case the authority in the interim country should take full responsibility for a second-step notification. Another respondent agreed that it is difficult, if not impossible, to keep track of individual waste fractions once they have been mixed with others, and that it is preferable to let the regular notification procedure end at the interim recovery facility and subject the following treatment within one Member State to national control procedures on the basis of the WFD.

One respondent stated that the new WFD definition of recycling in effect means that many operations become interim and not final, and that this results in a clash with the WSR procedures (where it is not foreseen that shipments to interim operations would be the main rule and not the exception).

One respondent commented that once waste is delivered to an interim facility and some sort of treatment is carried out, it is very easy to lose track of this waste. A second respondent made a similar point, asking whether, if the interim recovery produces several waste streams, each of those waste streams could be transferred to a different final recovery facility.

Other comments

One respondent suggested it is not clear when an interim notification is complete.

The same respondent pointed out that each stage of interim notifications could in theory have 12 months for recovery.

One respondent suggested it is a problem that information on the final operation is not needed in relation to green listed waste.

Practical examples

It was stated there is no interim option for Article 18 shipments; there is a lack of consistency within WSR (amber v green wastes).

England and Wales – Environment Agency cited an example of mixed batteries going for sorting prior to recovery. If the initial recovery operation (sorting) is considered interim (e.g. R12) rather than R3, how could the interim procedure work?

England and Wales – Environment Agency suggested that many Member States (Netherlands, Belgium, and Germany) use R11, R12 and R13 to describe the first part of an operation e.g. dismantling of TVs into separate fractions, treatment of refuse derived fuel before it is used for R1. In England & Wales, if the operation undertaken by the consignee changes the nature of the waste, this is not regarded as an interim operation, but part of the recovery process. The nature of the waste is considered changed, therefore it would be difficult to accept the waste back if the further recovery could not be completed.

England and Wales – Environment Agency cited an example of an export from Belgium to England for recovery. It was acknowledged and approved for R5 recovery by the English authority, but details of Belgian consent to the same notification were changed and approved for R12 after acknowledgement. The notifier therefore effectively had two different consents for the same waste movement.

The R13 code (more applicable to green-listed materials) can be used to conceal illegal shipments, e.g. those listed as destined for Hong Kong which are in actual fact never to be landed there, but instead bound for China.

WEEE may be difficult to follow all the way from a discarded object to different reusable parts, materials, combustible waste, and waste for disposal. It seems to be necessary to sketch the processes from the start, but leave the total enforcement to a line of different authorities. No complete report of treatment will be made. An alternative approach would be to prohibit interim recovery entirely, or reduce the number of initial treatment steps, and/or take out hazardous substances early.

Germany – Hessen cited the example of liquid wastes gathered in interim facilities, to be fractioned in several parts for the next step of recovering and disposal. In cases like this, the additional notification documents are not practical and not really required, because of national regulations in the Member State.

Requirements following consent (Article 16)

Requirements following consent apply to the undertakings involved in shipment and receipt of waste, including documentation procedures and transmission of information. These requirements may raise issues of practicability or enforceability.

General comments

Three respondents stated there are no issues regarding requirements following consent.

Administrative burden

One respondent considered there is far too much administration around this, and that a digital system is needed rather than an old-fashioned system of paper following a shipment. Another respondent considered the discrepancy between reporting actions and actual enforcement is too large. Electronic reporting would help, but the expected control level seems to be far higher than similar environmental areas with comparable risks. A second respondent agreed that the physical attachment of movement documents to rail and ship containers is often seen as cumbersome and unpractical, and that in future waste shipments should be tracked electronically (e.g. RFID, GPS or similar technology). Every container should be identifiable, whether shipped by railway, ship or truck.

One respondent stated it can be time consuming ensuring compliance against technical breaches of the WSR in respect of pre-notification and providing certificates of receipt and recovery on time.

Other comments

One respondent stated that certificates of receipt/recovery or disposal of the waste are not always obtained, in particular in transits through Finland (e.g. Norway to Sweden).

Another respondent stated that receivers often send the declaration of recycling/disposal directly after acceptance of the waste; the financial guarantee is released before the waste is processed. This could cause problems for the country of destination when the receiving company becomes bankrupt.

One respondent stated that there are currently no rules on what should be done (what documents are necessary) if the shipment is temporarily postponed or cancelled (e.g. due to default of the carrier).

One respondent commented that it is very difficult to keep track of waste when it is delivered to an interim facility for treatment and then transferred to a non-interim facility for final treatment.

Another respondent asked, in the case of combined transport (e.g. initial transportation by the ship, then reloading to several trucks), how many movement documents should accompany the shipment; should the dispatcher complete only one movement document for the ship transportation and documents with 'sub-numbers' for the subsequent transportation by trucks?

Practical examples

England and Wales – Environment Agency cited an ongoing case. A company in France went into liquidation and information received from the competent authority in France indicates that certificates of recovery have been issued but the waste has not been recovered. The financial guarantee has been released by the competent authority of dispatch because all certificates of recovery were provided. It will be difficult for the competent authority of dispatch to accept the waste back as it cannot be clearly identified as the original waste that was exported (it has been mixed with other waste) and the financial guarantee has been released.

England and Wales – Environment Agency stated that the period of authorisations may still differ widely, if there are delays in issuing the consent beyond the intended dates of shipment inserted in block 6. Most competent authorities tend to consent according to the times set out in block 6, but this agency is inclined to still give 1 year if the consents are delayed for any reason.

England and Wales – Environment Agency stated that pre-notification of waste movements close to the expiry of the authorised period of consent, or waste shipments delayed due to unforeseen circumstances that moves beyond the authorised period of consent, should technically be considered an illegal shipment.

Norway (Climate and Pollution Agency) considered that non-hazardous wastes (e.g. mixed wood, food waste) are followed too closely.

Information to accompany waste (Article 18)

Waste that is to be shipped is to be accompanied by specified documentation, including information and contract requirements, which could raise practicability or enforceability issues.

General comments

One respondent stated that there are many issues of concern and enforcement is not currently possible. A second respondent agreed that the whole of Article 18 needs to be much clearer because it is currently very hard to make it work in practice (a BiPRO report from 12 April 2011 (Report for identified problems and solutions for implementations and enforcement of Annex VII, Ref: ENV.G.4/SER/2009/0027) has looked at this in detail).

One respondent considered that the requirements of this Article are clear but in practice the data are sometimes incorrectly provided (e.g. companies involved in

shipment, wrong waste codes). Another respondent stated the main issue is a lack of rules/requirements rather than of enforcement and practicability.

Green listed waste

Two respondents considered that the large number of movements of Green listed waste exports (e.g. there are an estimated 15 million tonnes (750,000 shipments) of green listed waste exported annually from the UK) makes this difficult to enforce; daily trade in green listed waste can therefore totally differ from the legislation. The real location of origin and destination are often not mentioned on Annex VII for commercial reasons; according to Article 18 only the person who arranges the transport is responsible, so other involved companies can not be punished for wrong Annex VII information (clarification of Article 2(35)(g)(iii) could help solve this); and during the movement, waste is often sold several times to others and ownerships often change (especially for wastes sent to Asia). The Article is unenforceable once the waste has left the EU.

One respondent has been proposing a Green Waste Operators Register to identify the exporters in this field. Better information on quality and treatment options may reduce the number of illegal cases, and cases with too small operators.

Lack of clarity / differing interpretations

One respondent stated that Article 18 does not specifically state that the shipment shall be accompanied by a copy of the contract.

Another respondent suggested that a format should be established for the contract required.

At the workshop, one problem that was pointed out is that Annex VII is only valid in the EU; it was suggested that efforts could be made to get this taken up within Basel.

One respondent considered that the responsibilities in the contract as described in Article 18 are often contradictory with the financial contract and other agreements between involved companies. There is no obligation in the case of R12 and R13 treatment to mention the final location of recovery (R1-R11) on the Annex VII form, which means that for many shipments it is not clear where the waste will end up; an obligation for the final treatment facility to return a declaration of recovery could partly solve this (e.g. under the WEEE and Packaging Waste Directives there should be hard evidence about the final treatment to count the exported amounts in the recycling targets).

One respondent cited one problem as the differing interpretations of Member States of the term 'under the jurisdiction of the country of dispatch' in Article 18(1).

One respondent asked whether 'accompanied by' (Article 18(1)(a)) means that the paper document of Annex VII physically travels with the waste cargo, or joins the

rest of the administrative documents that are necessary to organise the shipment (e.g. CMR, customs declaration); for container shipments, the physical cargo and paperwork are typically separated. A good solution would be to explicitly state that the Annex VII document has to accompany both cargo and paperwork.

Another respondent asked how completion of the Annex VII form by the receiving facility can be enforced when the WSR does not require a completed return. Operators find it difficult to ensure a copy of the document travels with the load (there is nowhere to store documents in a container); an electronic tracking system could be the solution.

One respondent considered that in Annex VII, box 1, the 'Person who arranges the shipment' is not adequately defined; competent authorities will interpret it as the person who has a commercial contract with the importer/consignee and has decided to ship the waste to a specific country, whereas business actors regard the company who has engaged the carrier as the one 'who arranges the shipment'.

One respondent considered the intervention of brokers/dealers in the buying and selling of waste commodities can confuse the responsibility for the waste shipment.

One respondent considered it is unclear which jurisdiction is competent for the notifier – does the notifier have to be resident and registered in the Member State from which the shipment originates, or is it sufficient that the notifier is merely present in that Member State or comes under its jurisdiction on some other grounds?

Commercial confidentiality

One respondent stated that notifiers have genuine concerns over the commercial confidentiality issue of the identity of suppliers and buyers.

Another respondent stated that many companies that arrange shipments do not willingly provide all the requested information on Annex VII, and that it is common for double documents to be provided to obscure information from the waste generator and/or waste treatment facility (for purely economic/commercial reasons).

At the workshop it was pointed out that there is a current case before the ECJ on confidentiality; brokers want to maintain confidentiality in particular on information on final destination available to producers.

Other comments

One respondent considered that in many cases waste is shipped to facilities that are not licensed or technically capable to accept and/or treat a certain type of waste, but the person who arranges the shipment often does not feel liable. The solution could be to extend the contract in Article 18(2) to include an obligation (i) for the

consignee to provide the person who organises the shipment with the necessary information to prove that the recovery facility is licensed, and (ii) for the person who organises the shipment to take notice of this information.

One respondent is aware that shipments of waste leave the country for one destination but are sold en route and diverted to another country, which may be inappropriate or constitute an illegal shipment. Another respondent similarly commented that it is very difficult to monitor the final destination of waste being shipped outside the EU under the Annex VII procedure.

One respondent stated that it is one of the few countries that not only requires for Annex VII a specific (serial-numbered) government-issued form, but also a previous warning (five days) of the movement to the competent authority. This is only enforceable for exports; it cannot be demanded for imports. In practice it is difficult for a producer/trader to give notice so far in advance.

One respondent suggested that an EU-wide database containing information on all movements of waste and brokers/carriers registered would be useful, but considered this is unlikely to happen. At the workshop an electronic system was also discussed as the answer to the large number of pieces of paperwork that currently travel with waste. An electronic system could also address issues of confidentiality as access could be tailored according to need.

Practical examples

Ireland recommended introducing an interim recovery operation to facilitate shipments to e.g. Hong Kong. England and Wales – Environment Agency gave the example that a number of Asian countries have indicated they prohibit or require notification for the import of tyres. Hong Kong, Malaysia and India have indicated they allow tyres under Article 18 procedures; where Annex VII documents detail that tyres are destined for these countries, and in particular for Hong Kong, it is difficult to know how much effort should be put into checking that this is the final destination.

Austria cited the following hypothetical case. A broker of EU Member State B arranges a shipment of Green Listed waste from company A in EU Member State A to Member State C, but does not physically receive the waste. So he is inserted in the Annex VII form as the person arranging the shipment and simultaneously as the consignee. The wastes are shipped directly from EU Member State A to Member State C for the purpose of interim storage R13. The holder of the interim storage facility C is inserted as the recovery facility. In case of the requirement of take-back (illegal shipment) the person arranging the shipment (broker of EU Member State B) is responsible for take-back, but the original producer and starting point of the shipment is in State A, where the broker does not have a local branch or storage facility for take-back of the waste. The specific construction was intentionally chosen by the broker to hide the final consignee of the waste. The original producer of the waste in Member State A can only be made liable for the shipment to the intermediate storage facility R13 as the broker was not willing to inform him about the final destination of the recovery facility. Relevant provisions are missing in the WSR for such cases.

England and Wales – Environment Agency stated that waste brokers do not like to include details of the consignee on the form as they do not want the information being revealed to the waste producer. This authority has not taken any action against companies who have inserted ‘information available upon request’ (although this is legally questionable). Some companies have also used a two part Annex VII with only the second part (no producer details) moving with the waste. According to England and Wales – Environment Agency, completed and signed copies of Annex VII form by the consignee are rarely if ever seen by the notifier.

England and Wales – Environment Agency stated that recovery contracts with the consignee in the destination country are easily fabricated.

Scotland – SEPA stated it is unusual for brokers to disclose the sites of generation and recovery on Annex VII forms; although this may be necessary to safeguard their operations, it makes it difficult for waste producers to ensure their wastes are being recovered in an environmentally sound manner. This authority allows brokers to send information on the sites involved under separate cover (i.e. not on the Annex VII form) due to the sensitive nature of this information, but warns brokers that competent authorities ‘intercepting’ the waste may take a different view and deem the shipment to be illegal.

Scotland – SEPA stated it is unclear whether a broker has to be based within UK jurisdiction in order to arrange the shipment of waste from Scotland, and that the Helpdesk response on this was not helpful.

The Netherlands gave the example of shipments to Hong Kong. Generally when the ship leaves Europe it is not yet known that the shipments will go to Hong Kong. The waste is often sold to a Hong Kong trader who decides about the final destination only a few days before the ship arrives in Hong Kong. The trader can directly transfer the waste to China/another Asian country, and the exporter disguises this by putting an R12 or R13 facility on the Annex VII. In this case the exporting country is not able to stop prohibited shipments to China, but the exporting country is responsible in case of a take back situation.

The Netherlands suggests that many shipments pass through seaports with post consumer plastics, paper and WEEE. A main part of this waste has its origins in collection schemes under the Packaging Waste and WEEE Directives. In investigations it has been almost impossible to find the final treatment facility. This means a violation of the WSR as well as false reporting of figures of the producer responsibility legislation.

Norway (Climate and Pollution Agency) suggests that drivers from the Baltic states/ Eastern Europe are badly informed on waste types and the WSR, bringing wastes like lead batteries back to their countries in the belief that the waste may be taken for free, and later selling it to have an extra income.

Slovenia has found in some cases that companies written in Annex VII are mostly dealers or brokers with waste, so that there is no information on producers and recipients.

Portugal – IGAOT suggested it is difficult in maritime movements for the documents to accompany the containers.

Take back obligations (Chapter 4 – Articles 22-25)

Where waste shipments cannot be completed according to the terms of notification documents, obligations relating to the take back of the waste apply. These obligations may raise issues of practicability or enforceability.

General comments

One respondent had had no experience with take backs. A second stated that there have not been many cases of this within its jurisdiction. Similarly, a third respondent has limited experience with take backs, but all those that have occurred have been done on a voluntary basis by the exporter, and were successful.

Lack of clarity / differing interpretations

One respondent stated that there are different interpretations by Member State authorities on the conditions for when a shared responsibility of the cost of an illegal shipment should be assumed (when the notifier and consignee are missing). Another respondent agreed that there are differences between Member States in handling take back of illegal shipments; it would be simpler and quicker if all Member States adopt a similar approach for organising practical take back.

One respondent considered it is unclear under Article 24(2)(a) to where the notifier must take back the waste if an illegal shipment has taken place. It is assumed that it should go back to the country of dispatch, but what if the notifier is a broker from another country with no facilities in the country of dispatch?

At the workshop it was pointed out that there is confusion over who is responsible for take back – the producer or (Article 18(2)) the person who arranges the shipment. The WSR also does not specify that the waste has to come back to country of export, but the notifier has to take care of it. Article 24 suggests a need for a full return shipment, but this is not actually specified. Article 24 does not really work (e.g. should take back be done by the notifier or the competent authority), but Article 2(15) defines the notifier so this seems not to include the broker and dealer.

One respondent considered that the requirement that the person who arranges the transport and the consignee should fall directly under the jurisdiction of the country of dispatch or destination is completely different from normal trade in green listed wastes. For example Dutch exporters buy waste in Germany and export it directly from Germany to China, or traders who are located in the UK, but use warehouses in the Netherlands. Member States have different policies about enforcement of this requirement, which affects competition. Thereby this could cause problems in the case of take back procedures of illegal waste shipments. Which authority has to take actions against the person who arranges the transport in case of a take back situation?

The same respondent stated that Article 24(3) (illegal shipments that are the responsibility of the consignee) leads to 'undesirable situations'.

Another respondent has experienced a variety of attitudes from different transit or destination countries. It is important that both transit and destination countries participate actively in take back of waste, or treating it near location. Shorter, more accessible guidance on illegal waste would be welcomed; current guidance is too long and complex (although the flow-charts are useful) and is therefore seldom used.

Two respondents feel it is unclear what should be done in the case of green listed waste that is the subject of notification according to national rules of a non-EU exporting country, or when it comes to the take back of stopped shipments of green listed waste.

One respondent requested clarification on how the notification should be continued in the case that the shipment could not be completed as intended, a take-back is not recommended and the competent authority of destination chooses an alternative waste recovery or disposal facility to complete the shipment.

Transit countries

One respondent suggested there are no provisions with regards to the coverage of costs resulting from the stop-over of illegal shipments in transit states – does the transit state have to bear the costs of storage, analysis and necessary re-packaging in case of leakage? Another respondent confirmed that the transit countries are missed in the Articles, and need to be mentioned because they are imported actors in the shipments and often stop illegal or suspected shipments.

30 day period

Five respondents stated that the 30 day period to contact the sender and get it to arrange take back is not always practical or long enough; the authority of dispatch often does not respect the target time of 30 days, and an alternative period is almost never agreed upon, meaning that cases of return shipments can often drag on for many years. The creation of an arbitration committee for blocked return shipment cases, or some use of a formal request from the competent authority of destination/transit, could help.

Other comments

One respondent stated that Article 24 provides rules for certain types of illegal shipments (missing/falsified notification, green listed waste with incorrect Annex VII) but does not provide rules regarding shipments that are illegal because an export prohibition has been violated. Another respondent suggested that competent authorities do not always undertake adequate activity in relation to the company of dispatch responsible for illegal shipment.

One respondent stated that competent authorities (especially in non-OECD countries) may be reluctant to detain containers due to lack of domestic legislation, concerns about costs and fear of being sued. An alternative is that they will order the ship to return the containers without them being unloaded. However, the risk is that such 'unofficial' returns are not tracked. This lack of continuity of evidence makes successful prosecutions difficult, if not impossible. A second respondent agreed that it is very important that inspectors/customs have access to good, detailed evidence to describe in detail why a shipment has been stopped, and that it can be difficult to rely on other countries to provide such evidence.

Two respondents stated that the classification of waste/non-waste and ensuring proof when a shipment is stopped in another Member State can be problematic. This view was reiterated at the workshop; it can be a problem if the shipment is not classed as waste initially (e.g. a shipment classed as EEE when it is WEEE) so take back is required. The classification might be questioned in court, so the obligation to ensure take back and penal enforcement on the basis of another Member State's classification (especially for non-OECD countries) should be clarified. Some authorities refuse the necessary cooperation in this procedure and there is no possibility to punish this.

One respondent suggested that there are problems with securing the transport of waste pending its repatriation, and also that there can be problems with enforcing waste storage costs from the dispatcher or country of dispatch.

At the workshop it was suggested that brokers are an issue across the provisions of the WSR, and that any WSR revision must address the changed role of different entities and define provisions accordingly (e.g. a registration scheme for brokers and dealers and possibly some form of financial guarantee from them).

Practical examples

England and Wales – Environment Agency cited three examples. In one case vehicles from the Netherlands took two years to return. In the second case, NESREA, Nigeria ordered a container of WEEE to be returned by the ship after it was detected outside the port. The container was returned and accepted back but not through the formal notification procedure. In the third case, some authorities (Austria/Germany) may raise an issue pertaining to WSR control procedures or illegal shipment, but appear reluctant to be involved in repatriating the waste. Therefore, subject to a fine being paid the waste movement is allowed to continue.

According to Scotland – SEPA, some competent authorities of transit which intercept an illegal shipment require waste to be repatriated under notification controls, which introduces delays in returning waste and makes it more likely that an exporter will 'walk away' from his responsibilities as the costs of demurrage begin to escalate. The lack of a streamlined system across Member States can raise significant issues in requiring evidence from other competent authorities in relation to waste that they have required to be returned to the UK.

There was an example of tyres being illegally exported to Vietnam by a broker from the USA. The broker agreed to deal with the tyres but nothing happened so the agency was forced to get the original waste holder to take it back despite the lack of written documentation indicating they had authorised the broker to act on their behalf but had transferred the waste to them through a normal business transaction.

The Netherlands gave the example of a shipwreck bought at auction by a company with the intention of demolition. The seller suspects that the ship was sold for reuse and the movement is without notification, so there is an illegal shipment. The consignee is responsible, but cannot be forced to bring the ship back to the original country, meaning that the punishment is limited.

Also the amount that has to be taken back is not clear, e.g. if there are 300 tonnes at the receiving company, but there is only proof that the exporter shipped 150 tonnes.

Slovenia stated that Serbian national legislation requires that a notification should be submitted for export of all green listed waste. EU countries consider this differently; some applied notification procedures, others the Article 18 procedure. The one which applied the Article 18 procedure took the view that the waste is the green listed waste for exporting and also for importing and that there is no disagreement on classification, and also stated that this case is additionally not mentioned anywhere in Article 28.

Portugal – IGAOT gave the example of a container of zinc waste, accompanied by an Annex VII form. It was detained in transit in Rotterdam, and was being shipped from a Portuguese company to India. The Dutch authorities questioned the classification of the waste and considered that it was a code that required the Notification Procedure. The affected company shipped it back to Portugal at its own expense.

Format of communications (Article 26)

The WSR prescribes detailed requirements for the format of communications, which may raise practicability or enforceability issues.

General comments

One respondent stated it has had few if any problems with the requirements.

Electronic procedures / use of email

One respondent considered it is not clearly specified which requirements are to be met by the electronic signature.

According to one respondent, there are problems with regards to the electronic notification system (EUDIN). A second respondent agreed that there are problems when using electronic communication. A third stated that electronic communication is still not optimal, and digital signatures are not always used. A fourth respondent considered that the lack of a harmonised digital signature and joint interchange is a huge obstacle for sound national investments.

Three respondents suggested that an (EU-wide) electronic/online process would streamline this process. One respondent suggested that the sending of documents by post (which is the preferred method of some countries) prolongs waiting time. Another respondent suggested that where the risk of abuse is low, it should be possible to send the documents named in Article 26(1)(h), (i) and especially (j) as a PDF file via email.

One respondent asked why email cannot be compared to fax (Article 26(2)(a)); is it not the same security or traceability?

Practical examples

Scotland – SEPA pointed out that Article 26 allows the transmission of information by e-mail but that this is not possible the authority's existing IT systems and the level of digital encryption applied across the EU (government prohibits the sending of documents marked 'Protect/Commercial' to non-secure e-mail addresses). This means a reliance on submitting notifications/ information by courier, which introduces delays into the notification process.

Norway (Climate and Pollution Agency) stated that the Nordic countries are currently assessing a common electronic reporting system.

Sweden EPA sometimes sends acknowledgement and consent only via email to authorities that approve of this method, but this does not seem to be in the scope of Article 26.

Sweden EPA has heard that customs has created a digital system for shipments within the EU that every Member State has to join, which is being legislatively enforced on the Member State. Perhaps such a system could also be set up for the WSR.

Disagreement on classification issues (Article 28)

The competent authorities of dispatch and destination may not agree on the classification of whether materials are waste. In such cases the WSR requires it to be treated as waste and procedures apply. This may raise practicability or enforceability issues.

General comments

At the workshop it was acknowledged that the Member States have different views on classification. It was suggested that a better sharing of understanding and better binding EU rules would help, but that differences will still remain. It was also suggested that IMPEL could help to create a database of what the Member States view as differences in classification to help share information; this could be done through an IMPEL project focussed on key classification issues.

One respondent did not perceive any issues. A second respondent considered that this is not usually a problem. A third considered it is just one more complication to an already complex procedure.

One respondent considered that Article 28 is relatively clear that the stricter line applies in the case of disagreements on classification.

Lack of clarity / differing interpretations

One respondent considered that in Article 28(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...') the word 'notified' should be deleted, so that it covers situations where there is no notification but only an inquiry on the correct classification of the wastes in the country of dispatch and destination before a notification will be submitted.

One respondent interprets FAQ 2.5 in the FAQ document on waste shipments as meaning that waste cannot be classified according to the recycling process to which it is intended.

Three respondents stated one major issue of contention is individual Member State views on whether something is waste or not. For example, problems can arise when the competent authority of dispatch does not recognise the product as waste, then refuses to take it back despite the position of the competent authority of destination.

According to one respondent it is not easy to establish the view on classification of wastes by other competent authorities outside the EU.

The same respondent considered another major issue is Member State views on whether an operation is recovery or disposal. A second respondent agrees that there are differences between authorities regarding the number of the R-or D-operation and the codes (Basel, OECD, EWC) to be used, and stated that authorities are not likely to give in, especially when treatment plant licences are limited to specific operations and codes.

One respondent stated there is conflict with the WFD over the definition of waste. Another respondent stated that some authorities seem to forget about the WFD criteria for by-products (or the Commission's 2007 check-list), ECHA definitions, and the food administration's regulation areas (e.g. for catering waste).

One respondent considered that there are disagreements on waste classification.

Other comments

One respondent highlighted the problem of the transit authority within the EU not being mentioned as an authority to express a stronger view in shipments that pass through its country.

Two respondents stated that there have already been discussions about this Article and the roles of countries of dispatch, destination and transit (e.g. at an NCP meeting in Kassel). One of those respondents stated that this seems to be a controversial issue between Member States, and that to reach a majority for amendment in the competent assemblies will be particularly difficult (e.g. at the level of the Basel Convention, and because the USA is a difficult negotiation partner at the OECD level).

Practical examples

Austria cited several examples of different classifications of (by-)products and wastes (e.g. glycerine phase from bio-diesel production and tall oil soaps are considered hazardous wastes in Austria; compost is considered a product in Austria only if it complies with national standards (Compost Ordinance)).

England and Wales – Environment Agency gave the example of unsorted used clothing and second-hand household items sent to Poland for re-use /resale that were detained in Poland because of lack of notification paperwork. Arrangements were made by the notifier to return the waste using the notification procedure PL000494. It was then available for re-export on the return from the UK.

Scotland – SEPA considered that disagreements on transit countries' authority to determine that material is waste, and under which code it falls, seems to stem from the fact that the transit authority is not specifically mentioned in the Article. The Basel Convention does not differentiate between the status of dispatch, transit and destination countries. In cases where the authority has disagreed with an intercepting authority's views on whether a shipment is a waste shipment (and consequently whether it is illegal under the WSR), the authority is never in a position to see the waste at the transit point and has therefore always opted to rely on the opinion of the country of transit. Article 28 should be amended to afford the country of transit the same status as the other countries.

In particular Member States with sea ports deal a lot with transit of other Member States, and that different opinions or no opinions on classification cause extra inspection time and costs for authorities and businesses.

The codes and descriptions used for waste are not related to the process the waste originates from; descriptions are generalised and codes are used to comply with site licenses.

Norway (Climate and Pollution Agency) stated that end-of-waste criteria may now be used informally as extra criteria for non-waste.

Portugal – IGAOT cited the example of ashes from power plants, which are not considered

waste in Portugal if they are to be used in the cement industry. There are a lot of movements of this type from Spain, which start out under the WSR, with all the documents, but suddenly become 'sub-products' after they reach Portugal.

2.3 Exports to non-OECD Countries (Title IV)

Exports prohibited (Article 36)

The WSR prohibits the export of specified wastes to non-OECD countries, which may raise practicability or enforceability issues.

Powers of transit countries

Five respondents considered that transit countries need to have powers to be involved in discussions on waste definitions or classifications, because they often stop illegal or suspected shipments, and need to be able to trigger take back and enforcement. A sixth respondent, on the other hand, considered that transit countries should not be involved in discussions on waste definitions or classifications, but should instead demand the use of consignment information or notification.

Lack of clarity / differing interpretations

One respondent stated it is not regulated who has to bear the costs for analyses of the waste, intermediate storage and if necessary re-packaging, if an illegal waste shipment is stopped in a transit state.

One respondent stated that there are issues in particular with countries that are very strict about mixed waste.

Definitions

One respondent stated that the main issues of contention are around waste and non-waste, and whether an operation is recovery or disposal. A second respondent agreed that there can be problems when the various competent authorities do not agree on whether a shipment is waste or non-waste.

One respondent suggested there is conflict with the WFD over the definition of waste.

Other comments

Two respondents referred to previous discussions by NCPs (e.g. a document by TFS NCPs).

Practical examples

England and Wales – Environment Agency cited two examples regarding ELVs. In the first, ELVs sent to Latvia were stopped by the Polish Authorities. On return to the UK they were not waste and therefore were available for re-export. In the second, damaged ELVs were purchased from car auctions and shipped without notification paperwork. A German authority queried the waste status of shipment and German Customs released the vehicles to continue to Bulgaria. The Bulgarian competent authority was informed of the UK's concerns but did not provide a response or objection.

Portugal – IGAOT gave an example of plastic clothes hangers (with a small metal hook) being authorised for sending to China as plastic. CCIC approved, but the Dutch authorities considered them to be a 'mixed waste' and returned the shipment.

Procedures when exporting waste listed in Annex III or IIIA (Article 37)

When waste is to be exported to non-OECD countries it is subject to detailed procedures for consent. This may raise issues of practicability or enforceability.

General comments

One respondent stated that there are no issues regarding this point.

A second respondent raised the enforceability of Article 18 as an issue.

At the workshop, it was suggested that it would be helpful to more systematically exchange information on the outcomes of court cases; IMPEL could instigate a project to encourage cooperation between prosecutors. With regards to enforceability, IMPEL projects with Africa/Asia should help.

Lack of clarity / differing interpretations

At the workshop it was pointed out that there are different views of the types of waste that are of concern. More precision is needed (not necessarily stricter provisions), and definitions would help.

One respondent considered that sometimes a very soft interpretation of the term 'waste' is used by Member States to allow exports of hazardous materials to non-OECD countries and to fulfil recycling/recovery quotas (e.g. lead glass cullet from CRTs which meet the standards for use in the manufacture of CRTs are considered to be products even if the material is used for other processes than CRT production).

One respondent suggested that there is a translation error in the Chapeau of the Annex of the WSR: '*(d) ... As for the waste included in column (c), the general information requirements laid down in Article 18 of the EWSR apply*'. This means that an Annex VII document has to accompany the shipment for all wastes in column (c) or (d). This principle is also mentioned in consideration number 6 of the WSR, stating that if the country of destination wants to follow control procedures under national

law, Article 18 of the WSR should be applied in addition to those control procedures, unless the shipment is subject to a notification procedure. The Dutch translation omits 'As for', so it appears that for shipments of waste in column (d), Article 18 of the WSR does not apply. The same goes for the French translation.

One respondent stated that Article 36(1)(f) is not applicable for green list wastes in column d for which the destination countries have reported that waste is only allowed if it complies with their procedure. This should be in column a as the WSR does not involve the possibility of column d.

One respondent suggested that several issues might be helped by stricter/clearer conditions in the WSR, e.g. forbidding extra loading of waste within used cars and trucks, shipping waste as part of personal goods, clearer tasks and competences for customs services (in/out of the EU) and customs declarations at the point of entry to/exit from the EU (and not in another Member State).

One respondent considered that the link to the chapeau of Annex III should be spelled out so that it is clear that: all shipments must be safe and environmentally sound; and the chapeau concerns only waste listed in Annex III, and not unlisted waste or waste in annex IV (any other waste at all).

One respondent commented that the WSR is amended frequently and has a complex structure, and that border services and mobile groups find it difficult to use the tables contained in the Regulation.

Third countries

One respondent stated this is very difficult to enforce outside the EU. There is generally poor communication and links with competent authorities in non-OECD countries to obtain relevant information about recovery facilities under their jurisdiction. Evidence of 'broad equivalence' is difficult to verify e.g. in China, Hong Kong and India. A second respondent also considered it is sometimes difficult to get answers from the competent authority of the country of destination. In addition, at the workshop it was pointed out that communication from the Basel Secretariat regarding contact details tends to be poor. One respondent stated that the Annex VIII form is rarely completed by the receiving facility when non hazardous waste is exported to non-OECD countries. Another respondent stated that there are issues with related dispositions in Regulations (EC) No 1418/2007 and 740/2008, and that it is difficult to know if the final destination in a non-OECD country is a licensed recycling facility.

One respondent responded that a lot of third countries do not have legislation relating to green listed waste destined for recovery operations, so they do not see the necessity for procedures for this type of waste.

The same respondent also considered that several third countries did not understand the *note verbale* of the European Commission and therefore filled in the

questionnaire incorrectly or not at all, resulting in some shipments being illegal, but the receiving company being allowed to receive this waste.

One respondent stated that the details for Article 37 are fixed in the WSR and its amendments, making it a compilation of responses from non-OECD countries to the *note verbale* of the Commission. The fear is that the Regulation may be putting EU exporters at a disadvantage because of the stricter regulation in the EU.

Other comments

At the workshop, it was mentioned that the WSR does not specify that transit countries can request repatriations, but most shipments do involve transit countries so the WSR needs to include this.

One respondent stated that authorities of destination seldom provide an acknowledgement of receipt.

At the workshop, the issue of false permits/licences (to 'prove' the final destination facility is acceptable) was raised. These are getting cleverer and harder to tackle. Although it may be difficult to keep up to date, IMPEL could share information (via a database or just informal contact if there is a perceived issue of confidentiality) on the operations abroad that they have checked (including contacts).

One respondent considered that extra assessment of the waste with life cycle thinking is necessary for certain fractions of wastes, e.g. WEEE. The waste recovery implications of a product should be considered from the outset; this is more important than following the waste step by step through transit and interim treatment until the end, for final treatment or total recovery.

Practical examples

England and Wales – Environment Agency cited conflicting information between controls implemented in EU Regulations and domestic waste controls/restrictions or freedoms notified by the non-OECD contacts (e.g. conflicting advice was received from different environmental authorities within Malaysia on the import of baled tyres and shredded tyres).

England and Wales – Environment Agency is particularly uneasy about enquiries it is receiving about the export of RDF to non-OECD countries, i.e. whether 19 12 10/19 12 12 waste is still caught by Y46 (the agency thinks the answer is yes if the waste contains any 'household waste'), and the point at which 20 03 01 waste can be converted into 19 12 10 or 19 12 12. The problem for enforcement is the difficulty in proving (from a simple inspection of the contents of the container) whether the waste is from households or not.

The Basel contact points list is not always up to date, leading to difficulties in obtaining a response; it is unclear whether named contacts supplied by notifiers are actually entitled to consider the notification; there would be serious data confidentiality issues if the notification were provided to someone who was not a competent authority.

Scotland – SEPA cited the example of an annual notification covering the shipment of waste to a non-OECD country, where the competent authority requires that the notification be signed off first. This is not provided for in the WSR and consequently there are delays in processing the notification.

The Netherlands cited the example that pre-shipment requirements of China are not enforceable.

Sweden EPA cited examples regarding notifications with India where it was very hard to get any answer to questions or requests for information.

Portugal – IGAOT stated that there are many examples that could be pointed just within flows of plastic waste, e.g. China has plastics under '(d) other control procedures', but those requirements are very confusing; and India has asked only for PET plastics under Article 18, although it has enormous demand for all kinds and (apparently) modern licensed facilities.

2.4 Imports into the Community from third countries (Title V)

Provisions are in place controlling the import of waste from third countries either for disposal or recovery. These may raise practicability or enforceability issues.

General comments

Two respondents stated that there are no issues on this point. One respondent is not aware of any prominent cases in this area. Another respondent stated that it had no experience with imports of waste.

Lack of clarity / differing interpretations

One respondent stated there are different Member State interpretations as to whether imports of wastes from Kosovo into the EU are allowed (some Member States do not recognise Kosovo). Another respondent stated that there is a problem of missing (unavailable) information about bilateral or multilateral agreements with countries such as Kosovo.

Two respondents suggested that the definitions of R and D in the annexes need to be updated and specified as they are not fit to describe modern waste treatment measures. This view was echoed at the workshop.

Other comments

One respondent responded that the management of waste intended for shipment is not covered under Article 49 which concerns proper management only during the period of shipment and operation, not prior to shipment.

One respondent stated that the WSR prohibits imports from countries which are not parties to the Basel Convention, but this is not always environmentally favourable as sometimes there are not adequate waste management facilities in those countries. In future the WSR should have an exemption that at least the import of green listed waste is allowed from non-Basel parties. This view was echoed at the workshop.

One respondent finds it difficult to obtain consents from transit countries outside the EU/OECD, and notes that shipping routes may alter at short notice and new transit countries should be added to the notification.

One respondent pointed out that there can be problems with the financial guarantee, its use and verification of the company establishing the financial guarantee.

Practical examples

Slovenia gave the example of shipments from Kosovo; customs authorities have stopped shipments from Kosovo on the Croatian border and did not allow them to enter the EU.

Portugal – IGAOT stated that Portuguese imports of waste are mainly metals from Portuguese-speaking African countries that do not have facilities for waste treatment. Sometimes containers from those countries can arrive in ports without prior warning, and sometimes the owners cannot be traced. In those cases it is cheaper (and better environmentally) to not enforce take-back.

Portugal – IGAOT cited the problem of car batteries, where in some African exporting countries the acid contents are spilled on the ground to prevent leakage during transfer and to allow them to claim that the waste is not hazardous.

2.5 Other provisions

Protection of the environment (Article 49)

The WSR sets out general obligations for producers, notifiers and other undertakings to manage waste so as to protect health and the environment. Further specific requirements apply to waste exported to third countries. These general obligations may raise practicability or enforceability issues.

General comments

Two respondents did not mention any problems on this point.

Practical enforcement

Two respondents stated that there can be problems with exports to third countries. A third respondent stated that proof of Article 49 is difficult and therefore rarely used practically. It is almost exclusively used in criminal investigations with demonstrable environmental damage.

Several respondents asked how Article 49 can be enforced in practical terms. One respondent argued that for shipments of green listed waste, accompanied by an Annex VII document, it is unclear how to apply Article 49(2) (obligation of the competent authority of dispatch to secure that any waste exported is managed in an environmentally sound manner). No change is required in the text of the WSR, but clarification is needed on what type of information the competent authority should request from the person who organises the shipment, and what standards or best available techniques can be demanded from the foreign recovery facilities. Five respondents agreed that it is difficult to enforce as it is hard to determine whether environmentally sound management of waste will take place at receiving facilities. One of those respondents stated that there is a particular problem with regards to disposal of residual waste (sewage & landfill). Slovenia considered that the competent authorities in countries of destination must also be responsible for ensuring waste is managed properly.

Other comments

One respondent stated that for green listed waste, in many cases the recovery facility is a warehouse (R12/R13) and the actual recycling facility is not known/declared. This warehouse therefore hides any further movements of the waste. If the enforcement bodies are to investigate waste shipments up to the final recycling stages, Article 49(2) should be extended in the same manner as Article 15 regarding interim recovery for notified shipments.

Another respondent considered that the new focus on resource efficiency may help after some time, and may show the importance of proper waste shipments for the benefit of the environments concerned and among industrial parties.

One respondent pointed out that Article 49 has no reference to Articles 11 or 12 (which cover objections to shipments of waste destined for disposal and recovery respectively) as a reason to object to shipments of waste.

Practical examples

England and Wales – Environment Agency cited an example of proposed exports of tyres to Hong Kong, which are subject to local and green list controls; they are then re-exported to China (the export of tyres to China is prohibited) and this cannot be controlled by the competent authority of dispatch.

Scotland – SEPA finds Article 49 generally useful, but considered it would be more

straightforward if it could state that shipments to a facility that is not operating to standards broadly equivalent to those applicable in the EU, are not in accordance with the principle of environmentally sound management.

Scotland – SEPA stated it can be very difficult to determine, even with a verification request, whether shipments to non-OECD countries without a permitting regime in place should be allowed to proceed; it can be difficult to obtain a response from the relevant competent authority as to whether it is satisfied with the operation of the facility.

Enforcement (Article 50)

Member States are required to enforce the WSR, including establishing an inspection regime that may apply to any activities relevant to the WSR, from checking documents to inspection from point of origin of the waste, its shipment and exit from the Community. The requirements and challenges of enforcement may raise practicability or enforceability issues.

Frequency of controls

One respondent considered that the frequency of controls varies among EU Member States to such an extent that a comparison of the situation is not possible. It is clear that less control means less detection of illegal shipments.

Lack of clarity / differing interpretations

One respondent asked what should be understood by ‘focal point(s)’ under Article 50(6); should this be contact persons in the competent authority, or locations where the competent authority will focus their enforcement efforts (e.g. a specific seaport)? The Dutch translation is clearer and tends to the second interpretation.

Another respondent stated there are difficulties when trying to establish what levels of contamination need to be reached before a waste can no longer be classified under Annex III; can the destination countries’ local quality specifications identified under Regulation (EC) No 1418/2007 be used to determine an illegal shipment and take forward a prosecution?

One respondent considered there is more risk of contradiction with *Ne bis in idem* principle.

Another respondent stated that enforcement follow up in the country of dispatch on Article 24 take back situations could need some clarification, and that a general requirement is needed for testing for the burden of proof regarding waste/non-waste (like in the WEEE recast).

Cooperation on enforcement

At the workshop, it was highlighted that the WSR does require cooperation and this is often not happening, although there are good examples. These include current

IMPEL projects on 'waste sites', 'enforcement actions', and 'doing the right things' are all useful to improve enforcement through exchange of experience. It was also pointed out that enforcement on ABP uses Europol, which visits Member States to check how inspections are done. Greater consideration of peer review could be a useful approach and would build on IMPEL experience in other policy areas.

One respondent stated that all port inspections carried out in England and Wales are done so based on intelligence (a National Intelligence Team has been established to monitor, inspect and take a targeted approach to the prevention of illegal waste shipments). There are no random inspections, but the agency works with the shipping industry and others to detect illegal waste shipments. This method means there are no additional costs placed on legitimate exporters. Efforts to educate the shipping industry on how to identify illegal shipments have been very successful and have allowed the focus to be on sites that are carrying out illegal exports. It is estimated that the current methods detect over 90% of illegal shipments.

One respondent suggested that enforcement cooperation should include not only enforcement methods, but also defined waste streams to be followed from country to country, in annual projects, involving police, customs, industrial consultants and transporters.

One respondent stated that it is difficult to ensure good cooperation between all the supervision institutions (agencies, inspectorates, customs, police), and that consequently effective enforcement can be difficult. Staff training in these institutions is crucial.

Another respondent considers that it is hard to establish further requirements in detail through more legislation, as the organisation of enforcement and inspection is very different in different countries due to local conditions (e.g. number of borders, number of shipments). Legislation, e.g. for a minimum number of inspections, may not provide better enforcement in any given country. Work should instead be continued through an active IMPEL-TFS, and encouraging countries that do not currently participate much in projects to do so more often.

Limited resources

At the workshop it was recognised that authorities need enough inspections and quality of inspections. Some Member States clearly have very poor capacity, but it is very difficult to define set criteria as Member States are so different. A simple approach to this in the WSR could be a mistake, but pressure from above would help keep enforcement of the WSR a priority in the Member States.

One stated that resources are limited for effective enforcement in their Member State, which might make it difficult to fulfil any new requirements.

Another respondent considered that the obligation to make effective controls and checks as required in Article 50 is hard to fulfil due to lack of personnel capacity.

Other comments

One respondent considered that the enforcement system will not work if there is not a level playing field between countries. Correct enforcement (especially in ports) just pushes illegal movements to those countries that do not control their waste transit and borders. There are large loop-holes in the enforcement system when some countries fail to enforce.

Another respondent suggested that it is very difficult to monitor waste which is in transit.

Practical examples

There are differing levels of enforcement of the WSR by the EU Member States. One respondent considered that it would not be useful for the focus of enforcement effort to be prescribed at the EU level (e.g. illegal shipments of hazardous wastes), given the diverse range of issues across the Member States.

One Member State cited an example of several loads of paper to China being intercepted in another Member State. A visual inspection indicated they were contaminated and they were returned to the country of dispatch. A sample was taken and the average contamination figure was 5%. As the WSR does not stipulate a percentage contamination it was considered it would be very tenuous to prosecute under the WSR, but enforcement action was taken under national Regulations.

As more countries start to enforce WSR violations, the risk of a company being convicted twice for the same violations is increasing. There is a risk that companies investigate where punishment is the lowest and try to steer that the case is done in a specific court.

Portugal – IGAOT finds that some waste managers and traders choose to send their waste through Spanish ports because although it is more expensive there are fewer (or no) controls. One example is cited, where dozens of waste copper shipments came to Europe (Portugal, Poland) from Tunisia and Morocco via Spain (Ceuta), passing through Spanish Customs in 2008 and 2009 with no appropriate documents. Some traders also avoid ships and routes that pass through Rotterdam, to avoid being controlled in transit.

Some Member States do not contact the country of dispatch to enforce take back but arrange for treatment in the country of transit/destination.

Any other issues

Cooperation / cross-border agreements

One respondent stated that effective enforcement of the Regulation can only happen if all parties involved with the waste movement have the necessary resources.

Another respondent stated that it would be useful to have some guidance on how to set up cross-border agreements (such as the 2008 agreement between Austria and Germany).

Lack of clarity / differing interpretations

One respondent asked for clarification on the meaning of 'in the jurisdiction of' in Article 18(1)(a).

One respondent raised questions about contaminated batches of waste, as allowed for by the chapeau of Annex III. Companies gratefully use this, but the burden of proof rests on the enforcement agencies. In practice, a direct reference to the EWL would make the use of codes in Annex III (derived from Annex IX of the Basel Convention) clearer; the unclear description of codes, lack of hard standards and different interpretations in the Member States cause the majority of problems, and companies often rely successfully on the fact that there are no standards, with the result that there is no conviction.

Burden of proof

One respondent explained how it implements the burden of proof of the regulator with regards to waste or non-waste. Under the national regulations, notices are regularly served on persons who contravene or are reasonably suspected to have contravened the regulations or the EU Regulation; this is a significant deterrent to illegal exporters.

Other comments

One respondent responded that only a small number of shipping lines will export hazardous wastes.

The same respondent also commented that a common problem faced by exporters is that shipping lines are continuously changing the ports of call. This means that approved notifications are either withdrawn or the notifier seeks approval from the new transit countries to change the shipping route, and in most cases this request is refused by one of the countries.

Another respondent suggested that a quick-response (e.g. 48 hours) helpdesk at the EU level that could make binding rulings on questions of interpretation would be extremely useful.

Practical examples

An example is WEEE exports, where many doubtful exports are for items that are described as second hand goods. The exercise of proving that the goods are waste can be time consuming and expensive. Containers have to be unloaded and goods tested, and, if waste, stored as evidence.

One respondent cited an example of difficulty enforcing the WSR on a broker based in the USA, who simply stopped responding to email requests to return illegal waste. The only course of action was to inform INTERPOL.

3. Conclusions and recommendations

The findings of this project have shown that there is a wide range of practicability and enforceability issues that arise in the application of the WSR. The causes of this include:

- The extensive scope and complexity of the Regulation.
- The extensive challenge for all authorities of addressing waste shipment of all kinds.
- Lack of clarity of particular provisions in the WSR.
- Different interpretation or application of some provisions of the WSR which challenges co-operation between Member States.
- Diversity of approaches in Member States, including the use of electronic systems.
- Rapid development of new waste streams or mechanisms of shipment, etc., which may not readily fit the obligations of the WSR.
- Difficulties in communication or co-operation with third countries.

IMPEL members have highlighted practicability and enforceability issues across many aspects of the WSR, including shipments inside the Community, legal shipments to third countries, preventing illegal shipments and many aspects of practical and administrative requirements.

Some of the key specific conclusions that should be highlighted are:

- There is a significant problem with the enforcement of the WSR in some Member States, such as on effective inspection systems. However, circumstances are very different in different Member States. Thus while it is clear that better enforcement is needed, a simple solution is not obvious and care needs to be taken that enhanced enforcement requirements are compatible with the quite different good practice that does exist in Member States.
- The classification system in the Annexes of the WSR does not fit modern waste. There is divergence between competent authorities in the interpretation of some aspects of the WSR, such as classification issues, which leads to practical problems for both competent authorities and business. There would be advantages for EU wide standards for some of the more common wastes as well as information sharing on Member State classifications (as well as of some from outside the EU if possible).
- The practical application of notification requirements would be significantly enhanced by an electronic system. There is urgency for a

common/interoperable system before Member States develop many incompatible systems.

- Registration of brokers and addressing the jurisdiction issue for notifiers would be steps forward in addressing much illegal activity. In this regard, it would be important to restrict brokers to EU countries.
- There are significant problems from the interaction between the WSR and the Animal By-Products Regulation and Member States are not interpreting this interaction in the same way. Additional guidance is needed, but there is also probably a need for there to be a change in the law. It would be a good idea to clearly separate them, e.g. what is in scope of one Regulation is not in the other (as long as the separation is clearly delineated).
- A number of aspects of the WSR are not clear, e.g. the annexes are confusing with lots of cross-referencing and are open to interpretation and some definitions are not clear or are lacking.
- De minimis is limited in the WSR, but there are significant concerns over practical application of the WSR because of this limitation, not least to new waste shipment mechanisms that have become important since adoption of the WSR.
- For Annex VII, electronic systems similar to customs systems would make it more enforceable.
- The practical use of the Financial Guarantee is limited. Improved methodologies for calculation and inclusion of all costs would be beneficial, but it becomes of limited use in a number of circumstances. Consideration should be given to making its use more practical.
- There are a number of issues concerned with transit states in the application of the WSR, but which are either unclear or not addressed by the WSR.

These findings need to be considered by all of those involved in the application of the WSR, from the European Commission to the individual competent authorities. Some of the issues identified here can be addressed through further examination of implementation challenges by competent authorities or by better communication and collaborative working between authorities of different Member States, which can be facilitated by the European Commission and/or IMPEL. However, some of the issues can only be addressed when the WSR is next revised. The European Commission is, therefore, invited to consider these detailed conclusions as legal review and revision is taken forward.

It is, therefore, recommended that:

- The **European Commission** should take careful consideration of the issues raised in any future revision of the WSR (and possibly the Animal By-Products Regulation) and, prior to this, consider whether additional guidance is necessary to support implementation in the Member States.
- The **European Commission** should consider the issues raised on the practical concerns in relationships with third countries and international organisations and support Member States in communicating concerns with the Basel Convention, OECD and third countries.

- The **European Commission** should facilitate co-operation between competent authorities of the Member States to help address divergent interpretations of the WSR and divergence of its application to reduce discrepancies and so reduce practical implementation problems.
- The **European Commission** should facilitate the co-operation between competent authorities of the Member States to help learn from systems (especially electronic) already in place or under development and help to ensure inter-operability of these systems.
- **Competent authorities** of the Member States should consider the conclusions of this report and determine if there are lessons to learn in improving their application of the WSR.
- **Competent authorities** of the Member States should take the initiative in working with partners in other Member States to help reduce divergence in application of the WSR and so reduce some of the practical problems of implementation.

Annex I The Project Questionnaire

**Practicability and Enforceability Questionnaire
to examine the Waste Shipment Regulation**

Please return responses to the questionnaire to Nigel Homer, e-mail nigel.homer@environment-agency.gov.uk

Please also copy responses to Andrew Farmer: afarmer@ieep.eu

Please return responses by 15 September 2011

Introduction

This questionnaire seeks to elicit input from IMPEL members to an IMPEL project to examine the practicability and enforceability of the Waste Shipment Regulation (WSR). This introduction sets out the background to IMPEL's work on practicability and enforceability, introduces the approach to examining the WSR and introduces the questionnaire itself. The introduction also provides links to relevant documents.

IMPEL's work on practicability and enforceability

In order to encourage policymakers to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process IMPEL has produced a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States. The checklist was adopted by the IMPEL Plenary Meeting in December 2006, and published on the IMPEL website:

<http://impel.eu/projects/developing-a-checklist-for-assessing-legislation-on-practicability-and-enforceability>

IMPEL has used the practicability and enforceability (P&E) Checklist to examine the practicability and enforceability issues relating to IMPEL members work in relation to the IPPC Recast Proposal and the WEEE Directive recast proposal. Links to these reports are below:

<http://impel.eu/projects/practicability-and-enforceability-of-the-ippc-recast-proposal>

<http://impel.eu/projects/practicability-and-enforceability-of-the-2008-recast-proposal-of-the-weee-directive>

The experience of undertaking this assessment formed the basis of a workshop between IMPEL members and Commission officials in September 2008 to identify lessons learnt and ways forward for co-operation between the Commission and IMPEL. The workshop concluded that it was important for IMPEL to continue to use the P&E checklist and this project on the WSR, therefore, continues this process.

However, this project on the WSR is a departure from earlier work in that it is not focused on proposed legislation, but on existing legislation.

This IMPEL project uses questions identified in the P&E Checklist to examine key aspects of the WSR. The project **does not intend to interfere with the normal European legislative procedure**, rather it seeks to provide guidance to the co-legislators on the **areas which need particular attention** with regard to the **objectives of practicability and enforceability** based on the **practical experiences** of experts from IMPEL member countries. The project report will highlight the key practicability and enforceability questions and areas which, in the opinion of the IMPEL experts, will need particular attention. By this the project aims at informing and supporting, *inter alia*, the legislative process.

Therefore, it is important for IMPEL members to contribute to the project by providing views on the proposal drawn from their practical experience. For this reason this questionnaire has been developed to enable a more systematic approach to eliciting such views.

Introduction to the Questionnaire

The questionnaire is structured according to elements of the WSR. Each theme is briefly introduced identifying the Articles in the WSR. For a full understanding of the requirements, the reader is referred to the text of the WSR, which can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1013:en:NOT>

For each theme key questions from the P&E Checklist have been used as the basis to develop questions specific to the detailed provisions of the legislation. However, it is important to note that these questions are not meant to be exclusive and there is opportunity to identify other practicability and enforceability issues of concern at the end of the questionnaire.

The questionnaire addresses a wide range of practical implementation of the WSR. It does not address every detail in the WSR, but focuses on those areas which are most likely to raise practicability and enforceability issues. However, at the end of the questionnaire there is space to raise any additional issues, including parts of the WSR not directly addressed by the questions.

Responding to the Questionnaire

In responding to the questionnaire, it is important to focus on those aspects of the WSR where you consider that there are issues or concerns about practicability or enforceability which you wish to stress. If you have limited time or feel certain questions are difficult to answer, please focus on those questions for which you feel you have an important point to make. We would rather you provided one interesting answer than not provide it because you could not complete the rest of the questionnaire.

It is also important to base your answers on practical experience and, wherever possible, clarify and illustrate your answers with practical examples. Indeed, after each question there is space provided for practical examples to illustrate the points you are making. This will enable the conclusions from this IMPEL project to be based on practical evidence.

The questions also include the issue of consistency with other EU waste law. Practical implementation of the WSR interacts with effective implementation of other legislation, such as the WEEE and Waste Framework Directives. The obligations, constraints and opportunities in this legislation may contribute to the practicability or enforceability of the WSR or raise practicability or enforceability problems.

After each question there are two boxes in which to write general comments and provide specific practical examples. Please note the size of the boxes is not meant to indicate any limit on the length of responses. Please feel free to provide as much detail as you think is useful and include links to/copies of relevant reports or documents you consider useful for this project.

The results of the responses to the questionnaire will be collated and analysed into a draft report for a project workshop where key issues will be discussed by IMPEL members. The final project report will bring together the results of the responses to the questionnaire and workshop discussions, including a focus on key conclusions and recommendations.

The Questionnaire

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Contextual information

1. Please give your name(s) and contact details and indicate your position/expertise	
2. Please give the name of your organisation	
3. What territory does your organisation cover?	
4. What field(s) of competence does your organisation cover with regard to the Waste Shipment Regulation?	

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General provisions (Title I)

Scope (Article 1)

Art. 1 sets out the scope of the WSR by defining the range of waste shipments addressed by the WSR and a range of activities excluded from the WSR.

- 1. Is the scope of the WSR clear and are the specific inclusions and exemptions operationally practical? Are there any issues of consistency with other areas of EU waste law?**

General comments

Practical examples

Definitions (Article 2)

The definitions define a very wide range of terms used by authorities to implement the WSR.

- 2. Are there any practicability or enforceability issues that arise from any of the definitions of key terms in the WSR? Are any problematic – are there cases that you are aware of where it is not clear if the definition applies? Are there any issues of consistency with other areas of EU waste law?**

General comments

Practical examples

Shipments within the Community (Title II)

Overall procedural framework (Article 3)

The framework applies to wastes defined in the Annexes to the WSR.

- 3. Are there any practicability or enforceability issues that arise from the definitions of wastes set out in the Annexes to the WSR? Are there any issues of consistency with other areas of EU waste law?**

General comments

Practical examples

Notification (Article 4)

The WSR sets out a detailed notification procedure for waste to be shipped within the Community.

- 4. Are there any practicability or enforceability issues that arise from the application of the notification procedure of the WSR? Are there any issues of consistency with other areas of EU waste law?**

General comments

Practical examples

Financial guarantee (Article 6)

All shipments of waste subject to notification have to be subject to a financial guarantee as defined in the WSR.

5. Are there any practicability or enforceability issues that arise from the application of the financial guarantee requirements of the WSR?

General comments

Practical examples

Consents (Article 9) and conditions of a shipment (Article 10)

Consent procedures apply to competent authorities of destination, dispatch and transit. Conditions may be applied in connection with the consent.

6. Are there any practicability or enforceability issues that arise from the application of the consent procedures, including setting conditions, of the WSR? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Interim recovery (Article 15)

The WSR establishes additional administrative requirements where waste is destined for interim recovery or disposal operations.

7. Are there any practicability or enforceability issues that arise from the application of the requirements regarding the administration of the interim recovery requirements? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

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Requirements following consent (Article 16)

This applies to the undertakings involved in shipment and receipt of waste, including documentation procedures and transmission of information.

- 8. Are there any practicability or enforceability issues that arise from the application of the requirements that undertakings must take following the issuing of consent? Are there any issues of consistency with other areas of EU waste law?**

<i>General comments</i>

<i>Practical examples</i>

Information to accompany waste (Article 18)

Waste that is to be shipped is to be accompanied by specified documentation, including information and contract requirements.

- 9. Are there any practicability or enforceability issues that arise from the application of the obligations relating to information to accompany waste to be shipped? Are there any issues of consistency with other areas of EU waste law?**

<i>General comments</i>

<i>Practical examples</i>

Take back obligations (Chapter 4 – Articles 22-25)

Where waste shipments cannot be completed according to the terms of notification documents, obligations relating to the take back of the waste apply.

- 10. Are there any practicability or enforceability issues that arise from the application of the take back requirements of the WSR? Are there any issues of consistency with other areas of EU waste law?**

General comments

Practical examples

Disagreement on classification issues (Article 28)

The competent authorities of dispatch and destination may not agree on the classification of whether materials are waste. In such cases the WSR requires it to be treated as waste and procedures apply.

11. Are there any practicability or enforceability issues that arise from the WSR requirements regarding disagreement on waste classification? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Exports to non-OECD Countries (Title IV)

Exports prohibited (Article 36)

The WSR prohibits the export of specified wastes to non-OECD countries.

12. Are there any practicability or enforceability issues that arise concerning the definitions of waste that are prohibited from export? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Procedures when exporting waste listed in Annex III or IIIA (Article 37)

When waste is to be exported it is subject to detailed procedures for consent.

13. Are there any practicability or enforceability issues that arise from the application of the procedures relating to export of waste to non-OECD countries? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Imports into the Community from third countries (Title V)

Provisions are in place controlling the import of waste from third countries either for disposal or recovery.

14. Are there any practicability or enforceability issues that arise from the procedures controlling imports of waste from third countries? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Other provisions

Protection of the environment (Article 49)

The WSR sets out general obligations for producers, notifiers and other undertakings to manage waste so as to protect health and the environment. Further specific requirements apply to waste exported to third countries.

15. Are there any practicability or enforceability issues that arise from the application of the obligations relating to protection of the environment? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Enforcement (Article 50)

Member States are required to enforce the WSR, including establishing an inspection regime that may apply to any activities relevant to the WSR, from checking documents to inspection from point of origin of the waste, its shipment and exit from the Community.

[It is relevant to note that the Commission is considering establishing further requirements related to waste shipment inspection and, therefore, IMPEL members may wish to raise particular comments on practicability or enforceability issues on this point.]

16. Are there any practicability or enforceability issues that arise from establishing and implementing an effective enforcement regime for the WSR? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Reports by Member States (Article 51)

The WSR also establishes reporting obligations for Member States.

17. Are there any practicability or enforceability issues that arise from the application of the reporting requirements of the WSR? Are there any issues of consistency with other areas of EU waste law?

General comments

Practical examples

Any other issues

This section of the questionnaire provides an opportunity to make comments on any aspects that have not been covered by the previous questions.

18. Are there any other points relating to practicability and enforceability of the WSR that you wish to raise?

General comments

Practical examples

Annex II Respondents to the Project Questionnaire

In total, 16 separate responses to the questionnaire were received, from 11 EU Member States plus Norway.

Country	Organisation	Territory covered	WSR competence(s)
Austria	Federal Ministry of Agriculture, Forestry, Environment and Water Management	Austria	Permitting procedure (notifications) and practical inspections of waste shipments and controls at waste management facilities
Belgium (Flanders)	Department of Environment, Nature and Energy, Environmental Inspectorate Division, Flanders	Flanders Region	Enforcement. Including: acting as a CA in application of art. 22 and 24 (return shipments) Not including: acting as a CA in application of art. 3-17 (notifications).
	OVAM	Flanders Region	Competent authority
Denmark	EPA	Denmark	CA, inspection, enforcement, policy
Finland	Finnish Environment Institute (SYKE)	Finland	All aspects
Germany	Land Hessen, Ministry of Environment & Land Hessen, Regierungspräsidium Darmstadt (Regional Administration of South Hesse) (joint response)	State of Hessen, Germany	Enforcing, controlling and reporting
	Personal respondent	<i>Not applicable</i>	<i>Not applicable</i>
Ireland	National Transfrontier Shipment Office (NTFSO) Dublin City Council	Republic of Ireland	Implementation and Enforcement
Malta	Malta Environment & Planning Authority	Malta	Regulating Body
The Netherlands	Ministry of Infrastructure and Environment, Inspectorate of Housing,	The Netherlands	Waste shipment inspections (information of Agency NL, dealing with notification procedures is included in this questionnaire)

Country	Organisation	Territory covered	WSR competence(s)
	Spatial Planning and the Environment, Directorate of Operations, Waste Shipment Regulation Programme		
Norway	Climate and Pollution Agency	Norway	Assessment of notifications and shipment cases, and enforcement of Amber Waste Advice for exporters of Green Waste
Poland	Chief Inspectorate of Environmental Protection	Poland	Competent Authority (in accordance with Article 53 of WSR)
Portugal	IGAOT - General Inspectorate for the Environment and Spatial Planning	Continental Portugal	Inspection of TFS, waste sites and industries
Slovenia	Inspectorate of the Republic of Slovenia for the environment and spatial planning	Slovenia	Supervision of the WSR
Sweden	Swedish Environmental Protection Agency	Sweden	Competent Authority
UK	Environment Agency (England & Wales)	England and Wales	Competent Authority - enforcement authority
	Scottish Environment Protection Agency	Scotland	Notification process and all types of inspection
	Northern Ireland Environment Agency	Northern Ireland	Competent Authority for exports and imports of waste to Northern Ireland

Annex III Participants at the Brussels Workshop, 3-4 November 2011

A workshop was held in Brussels on 4 November 2011 to discuss the interim report of the IMPEL project 'Practicability and Enforceability of the Waste Shipment Regulation', which synthesised the responses received from IMPEL members to a questionnaire on this issue.

Participants at the workshop were as follows:

Country	Name	Organisation
Belgium	Bart Palmans	Environment, Nature and Energy Department, Flanders (Belgium)
Estonia	Rene Rajasalu	Environmental Inspectorate, Estonia
Germany	Thomas Ormond	Land Hessen, Germany
The Netherlands	Ton Post	Inspectorate of Housing, Spatial Planning and the Environment, The Netherlands
Slovenia	Marija Koželj Lampič	Inspectorate of the Republic of Slovenia for the environment and spatial planning
Sweden	Ulrika Hagelin	Swedish Environmental Protection Agency
United Kingdom	Nigel Homer	Environment Agency (England & Wales)
United Kingdom	Allison Townley	Northern Ireland Environment Agency
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Annex IV Terms of Reference for the IMPEL Project

No	Name of project
2011/...	<p><i>Using the IMPEL Practicability and Enforceability Checklist to assess the Waste Shipment Regulation</i></p> <p><i>(Joint activity by the IMPEL-TFS and IMPEL-Better Regulation clusters)</i></p>

1. Scope

<p>1.1. Background</p>	<p><u>Assessing Practicability & Enforceability of legislation</u></p> <p>In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, with a view to anticipating and remedying practicability and enforceability problems through a pro-active approach, IMPEL has produced a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States. The checklist was adopted by the IMPEL Plenary Meeting in December 2006.</p> <p>In parallel to the work of IMPEL the Network of Heads of European Environmental Protection Agencies (NEPA) published a report 'Barriers to Good Environmental Regulation'. This also identifies a series of questions that need to be considered in assessing the development and implementation of legislative measures to address issues such as practicability.</p> <p>IMPEL has used the P&E Checklist and the NEPA checklist to examine the practicability and enforceability issues relating to IMPEL members work in relation to the IPPC Recast Proposal and the WEEE Directive Recast Proposal. The experience of undertaking this assessment formed the basis of a workshop between IMPEL members and Commission officials in September 2008 to identify lessons learnt and ways forward for co-operation between the Commission and IMPEL. The workshop concluded that it was important for IMPEL to continue to use the P&E checklist to examine Commission proposals and this project on the Waste Shipment Regulation, therefore, forms the third occasion on which IMPEL will have undertaken such an assessment.</p> <p><u>The review of the Waste Shipment Regulation</u></p> <p>The Directive on the Waste Shipment Regulation was adopted entered into force in 2007.</p> <p>The following reasons lead to the review of the Waste Shipment Regulation:</p> <ul style="list-style-type: none"> - Normally the EC will review legislation after five years of implementation. Especially the implementation of article 12(1)(c) is separately mentioned in the WSR. - Experience with the first years of implementation of the Waste Shipment Regulation has indicated technical, legal and administrative problems that result in unintentionally costly efforts from market
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	<p>actors and administrations, continuing environmental harm, a lack of level playing field or even distortion of competition and unnecessary administrative burden.</p> <ul style="list-style-type: none"> - The Commission is committed to develop better regulatory environment, one that is simple, understandable, effective and enforceable.
1.2. Link to MAWP and IMPEL's role and scope	<p><u>Strategic goal V:</u></p> <ul style="list-style-type: none"> - Providing feedback to policy makers on the practicability and enforceability of environmental legislation; - Contribute in the process of drafting new or revising existing legislation - Ensure activities and fulfill projects necessary for the contribution in reviewing of existing legislation. On the basis of the project results identify recommendations, suggestion for changes and provide feedback to the Commission services. - Communicate the projects and other result to decision makers both at European and national level. <p><u>Strategic goal VI:</u> Strengthening dissemination of results of IMPEL activities and look back by ex-post verification to ensure that the good practices are effectively spread.</p>
1.3. Objective (s)	<p>Providing expertise on the Practicability and Enforceability issues of the Waste Shipment Regulation.</p> <p>This project will be carried out by experts from IMPEL Member Countries</p> <p>This IMPEL project uses questions identified in the practicability and enforceability checklist and the '<i>Barriers to Good Environmental Regulation</i>' report to examine key aspects of the Commission proposal. using the IMPEL P&E checklist.</p> <p>The project by no means intends to interfere with the normal European legislative procedure. With this project IMPEL only seeks to provide guidance to the co-legislators on the areas which need particular attention during the legislative process with regard to the objectives of practicability and enforceability based on the practical experiences of experts from IMPEL member countries. The Project report will highlight the key P&E questions and areas which, in the opinion of the experts, will need particular attention. By this the project aims at informing and supporting the legislative process.</p> <p>Further objectives:</p> <ul style="list-style-type: none"> - To contribute to better implementation and enforcement of the Waste Shipment Regulation; - To contribute to better performance of environmental inspections of the Waste Shipment Regulation in the Member States.
1.4. Definition	<p>The project will be undertaken through the use of a questionnaire and by holding a single workshop. <i>The project will be carried out by the IMPEL cluster TFS and Better Regulation.</i></p>
1.5. Product(s)	<p>A report gathering the Information from IMPEL reps. of Member States on the Practicability and Enforceability issues linked with the revision of the Waste Shipment Regulation.</p>

2. Structure of the project

2.1. Participants	IMPEL TFS member countries. Tbd European Commission is asked to attend the workshop and give input. Assistance will be provided by IMPEL Cluster Better Regulation.
2.2. Project team	Core team: tbd European Commission will contribute
2.3. Manager Executor	Manager: tbd Assistance by IMPEL Cluster Better Regulation
2.4. Reporting arrangements	- Draft report will be submitted to workshop participants in October 2011 - Final report will be submitted to the IMPEL GA in November 2011
2.5 Dissemination of results/main target groups	Commission, IMPEL, Member States. The project will be disseminated through the IMPEL web site after its adoption. The result of this project will be sent as an IMPEL advice to COM and other actors in the Legislative process (Council, Presidency, European Parliament)