Manual of European Environmental Policy

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Shipment of waste

Regulation (EC) No 1013/2006 (OJ L190 12.7.2006)	Regulation on shipments of waste
Proposed 30.06.2003 COM(2003)379, Amended 08.03.2004 by COM(2004)172)	
Legal base	Article 192 TFEU (originally Article 175 TEC)
See Table 1 for amending and supplementary legislation	
Binding dates	
Entry into force	15 July 2006
Applicable from	12 July 2007
Amended by	
Regulation (EU) No 664/2011 (OJ L182 12.7.2011)	Regulation amending Regulation (EC) No 1013/2006 on shipments of waste, to include certain mixtures of wastes in Annex IIIA
Repealed Regulation:	
Regulation (EEC) No 259/93 (OJ L30 06.02.1993)	Regulation on the supervision and control of shipments of waste within, into and out of the European Community
Proposed 26.10.90 – COM(90)415	Note: Regulation (EC) No 1013/2006 repealed Regulation (EEC) No 259/93 and Decision 94/774/EC/EC on 12.7.07. It also repealed Decision 1999/412/EC on 1.1.08. Regulation (EC) No 1547/1999 repealed Decision 94/575/EC on 16.8.99. Note: Regulation (EEC) No 259/93 repealed the following Directives on 6.5.94: 84/631/EEC. 85/469/EEC. 86/279/EEC. 87/112/EEC.

Table 1. Regulations amending or supporting Regulation (EC) No 1013/2006

Formal reference	Scope of the Regulation
Regulations amending Regulation (EC) No 1013/2006	
Commission Regulation (EC) No 1379/2007 of 26 November 2007 amending Annexes IA, IB, VII and VIII of Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, for the purposes of taking account of technical progress and changes agreed under the Basel Convention. OJ L 309 27.11.2007	The Regulation revises the forms for notification and movement documents and for the information to accompany shipments of green-listed waste (Corrigendum OJ L299 8.11.08 – change to model forms for notification and movement

	documents)
Corrigendum to Regulation (EC) No 1379/2007 (OJ L318 28.11.08)	
Commission Regulation (EC) No 669/2008 of 15 July 2008 on completing Annex IC of Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste. OJ L 188 16.7.2008	The Regulation includes specific instructions for completing the notification and movement documents (Annexes IA and IB) of Regulation (EC) No 1013/2006
Commission Regulation (EC) No 308/2009 of 15 April 2009 amending, for the purposes of adaptation to scientific and technical progress, Annexes IIIA and VI to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste. OJ L 97 16.4.2009	This Regulation amends Annex IIIA on mixtures of two or more wastes and Annex VI on pre-consented facilities
Commission Regulation (EU) No 413/2010 of 12 May 2010 amending Annexes III, IV and V to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste so as to take account of changes adopted by OECD Council Decision C(2008)156. OJ L 119 13.5.2010	
Commission Decision of 10 August 2010 extending the derogation period for Bulgaria to raise objections to shipments of certain waste to Bulgaria for recovery under Regulation (EC) No 1013/2006 of the European Parliament and of the Council (notified under document C(2010) 5434). OJ L 210 11.8.2010	
Regulations concerning green list waste	
Commission Regulation (EC) No 801/2007 of 6 July 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply. OJ L 179 7.7.2007	Repealed by Commission Regulation (EC) No 1418/2007
Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply. OJ L 316 4.12.2007	The Regulation takes into account recent answers by non-OECD countries concerning their rules on import of green-listed non-hazardous wastes
Commission Regulation (EC) No 740/2008 of 29 July 2008 amending Regulation (EC) No 1418/2007 as regards the procedures to be followed for export of waste to certain countries. OJ L 201, 30.7.2008	The Regulation takes account of additional answers by non-OECD countries concerning their rules on import of green-listed non-hazardous wastes
Commission Regulation (EC) No 967/2009 of 15 October 2009 amending Regulation (EC) No 1418/2007 concerning the export for recovery of	The Regulation takes account of additional answers by non-OECD countries concerning their rules on

certain waste to certain non-OECD countries. OJ L 271 16.10.2009	import of green-listed non-hazardous wastes
Commission Regulation (EU) No 661/2011 of 8 July 2011 amending Regulation (EC) No 1418/2007 concerning the export for recovery of certain waste to certain non-OECD countries. OJ L 181 9.7.2011	The Regulation takes account of additional answers by non-OECD countries concerning their rules on import of green-listed non-hazardous wastes
Commission Regulation (EU) No 135/2012 of 16 February 2012 amending Regulation (EC) No 1013/2006 to include certain unclassified wastes in Annex IIIB. OJ L 46 17.2.2012	The Regulation adds to Annex IIIB, on a provisional basis, certain unclassified green-listed waste which is awaiting inclusion in the relevant annexes to the Basel Convention or the OECD Decision.

Purpose of the Regulation

Regulation (EC) No 1013/2006, commonly known as the Waste Shipment Regulation, establishes systems to monitor and control the shipment of waste within, into and out of the Community. The Regulation states that its main objective is protection of the environment, and that its effects on international trade are only incidental. It replaced the previous Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community. Regulation (EC) No 1013/2006 streamlines the previous control procedures, incorporated changes in international law and strengthens the provisions on enforcement and cooperation between Member States in case of illegal shipments.

Summary of Regulation (EC) No 1013/2006

The Regulation implements in EC law the provisions of the Basel Convention and the OECD Decisions on transfrontier movements of waste. Regulation (EC) No 1013/2006 replaced Regulation (EEC) No 259/93 in July 2007. It aims to reinforce, simplify and specify the existing procedures for controlling waste shipments, in order to reduce the risk of illegal waste shipments.

The Regulation applies to shipments of waste: within the Community with or without transit through third countries; exclusively within Member States; exported from the Community to third countries; imported into the Community from third countries; and in transit through the Community. The Regulation does not apply to: most ship-generated waste; waste generated on board vehicles, trains, aeroplanes and ships (until offloaded); shipments of radioactive waste; shipments subject to the approval requirements of Regulation (EC) No 1774/2002 on animal by-products; waste from extractive industries, waste water and decommissioned explosives (where these are covered by other Community legislation); and imports of waste generated by armed forces or relief organizations.

Exports to third countries of waste intended for disposal are prohibited, except to EFTA countries, which are party to the Basel Convention. Exports of hazardous waste intended for recovery are prohibited, except those directed to countries to which the OECD Decision applies, and to third countries which are party to the Basel Convention or countries which

have concluded a bilateral agreement with the Community. Imports from third countries of waste intended for disposal or recovery are subject to the same rules as exports.

The Regulation has two waste shipment control procedures:

- A procedure for prior written notification and consent (for all waste shipments intended for disposal and hazardous and semi-hazardous waste intended for recovery).
- A procedure whereby waste shipments are accompanied by certain information (applicable to non-hazardous waste intended for recovery).

Annex IA provides the template of the notification document.

The Regulation has two lists of waste authorized for shipment, corresponding to the two control procedures. The 'amber list' (Annex IV) includes waste subject to notification and consent, while waste referred to for information purposes only is in the 'green list' (Annex III). Annex V lists waste that is prohibited from shipment.

Waste shipments must be the subject of a contract between the person responsible for shipping the waste, or having it shipped, and the consignee, a notification is required and the contract must include a financial guarantee. The details of the operation of these requirements are given below. Interim recovery and disposal facilities are under the same obligations as final recovery and disposal facilities.

When a duly authorized shipment cannot be completed, the competent authority of dispatch is required to ensure that the notifier returns the waste to the state of dispatch within 90 days, unless it was satisfied, the waste can otherwise be dealt with in an environmentally sound manner. Article 22 sets out the detailed notification requirements for different options relating to return, or alternative disposal/recovery, of such waste. If a shipment cannot be completed (including recovery or disposal), the notifier must take back the waste, normally at his own expense.

Member States are required to lay down rules of penalties applicable for infringement of the provisions of the Regulation. Member States shall provide for inspections of establishments and undertakings in accordance with Directive 2006/12/EC on waste, and for spot checks on shipments of waste or on the related recovery or disposal (Article 50). Inspections may take place: at the point of origin; at the destination; at the frontiers of the Community; and/or during the shipment within the Community. Checks on shipments shall include the inspection of documents, the confirmation of identify and, where appropriate, physical checking of the waste. The Regulation also requires that Member States shall cooperate with one another in order to facilitate the prevention and detection of illegal shipments. To support this, Member States shall identify those members of their permanent staff responsible for the cooperation and send this information to the Commission.

Member States are to produce an annual report in accordance with Article 13(3) of the Basel Convention before the end of each calendar year and send it to the Commission and to the Secretariat of the Basel Convention. Member States are also to draw up a report on the additional reporting requirements set out in Annex IX. The Commission is to produce a report on implementation every three years.

Requirements of the different regimes

1. Shipments of waste between Member States within the EU:

- 1A – for disposal:
    - Notification by means of consignment note.
    - Contract between notifier and consignee.
    - Decision by competent authority of destination within 30 days of acknowledging receipt of notification; any objections to be raised by competent authorities of dispatch and transit within 30 days, and conditions laid down.
    - Financial guarantee or equivalent insurance covering costs of transport, of recovery or disposal and of storage for up to 90 days.
    - Shipment to proceed only after notifier receives authorization from competent authority of destination.
    - Consignee to send copies of completed consignment note within three days of receipt of wastes, and of certificate of disposal as soon as possible and within one year.
    - Member States may prohibit generally or partially or object systematically to shipments if planned shipment or recovery is not in accordance with Directive 2006/12/EC on Waste or in accordance with national law protecting the environment, public order or health.
    - Competent authorities may raise reasoned objections to planned shipments, for example, if shipments do not accord with waste management plans, conflict with international conventions, or involve a notifier or consignee previously found guilty of illegal trafficking.
- 1B – for recovery:
- For amber list wastes:
    - Notification by means of consignment note.
    - Contract between notifier and consignee.
    - Conditions on transport to be laid down within 20 days of acknowledgment of receipt of notification; objections to be raised within 30 days, on specified grounds.
    - Financial guarantee or equivalent insurance covering costs of transport, of recovery or disposal and of storage for up to 90 days.
    - Shipment may proceed after receipt of written consent.
    - Consignee to send copies of completed consignment note within three days of receipt of waste, and of certificate of recovery as soon as possible and within one year.
    - Recovery facility to provide written confirmation of receipt and, then, of final recovery.
    - Competent authorities may raise reasoned objections to planned shipments, for example, if shipments do not accord with national waste management plans, national laws or international conventions, involve a notifier or consignee previously found guilty of illegal trafficking, or involve wastes that do not make recovery justifiable under economic and environmental considerations.
- 1C – for disposal and recovery with transit via third States:
    - In addition to the requirements of 1A and 1B, notifiers must send copies of notifications to the competent authorities of any third State(s) involved.

- The competent authority of destination must ask the competent authorities of any third State(s) whether they wish to give written consent within a specified time period and, where appropriate, wait for consent before authorizing shipment.

2. Shipments within Member States:

- Provisions of other regimes do not apply.
- Member States to establish appropriate supervision and control systems, notifying the Commission, which informs other Member States.

3. Exports from the EC:

- 3A – for disposal:
  - Prohibited, except to EFTA states which are party to the Basel Convention, have not prohibited imports, and have given written consent; also prohibited if a competent authority of dispatch has reason to believe waste will not be managed in environmentally sound ways.
  - The competent authority of dispatch is to require waste to be managed in an environmentally sound manner during shipment and in the state of destination.
  - Notification by means of consignment note; the notifier is also to provide copies of the written consent of country of destination and confirmation from that country of the existence of a contract between notifier and consignee, specifying environmentally sound management.
  - The contract must also require the consignee to send copies of the completed consignment note within three days of receipt of the waste and the certificate of disposal as soon as possible and within one year.
  - Shipments may proceed only after the notifier receives authorization from the competent authority of dispatch.
  - The consignment note is to be delivered to customs when the shipment leaves the EC, and forwarded to the authorizing competent authority.
  - The authorizing competent authority is to inform the competent authority of destination, if no information about receipt of the waste is received from the consignee or the certificate of disposal is not received.
- 3B – for recovery:
  - All exports of 'hazardous' waste (defined by the Hazardous Waste Directive 91/689/EEC – now Directive 2006/12/EC on waste) are prohibited, except to OECD countries.
  - Exports for recovery are also prohibited to a country, which prohibits imports or has not given consent, and if competent authority of dispatch has reason to believe the waste will not be managed in environmentally sound ways.
  - The competent authority of dispatch is to require waste to be managed in an environmentally sound manner during shipment and in state of destination.
  - For shipments of amber list wastes to, or through, countries to which the OECD Decision applies, the provisions of 1B apply: in such cases the consignment note is to be delivered to customs on leaving EC, and forwarded to the competent authority of export.
  - For shipments of amber list wastes to or through countries to which the OECD Decision does not apply, the notification and consent provisions of 3A apply.

4. Imports into the EC:

- 4A – for disposal:
    - Prohibited, except from countries which are party to the Basel Convention or have concluded compatible agreements or arrangements with the EC and/or Member States.
    - Member States are authorized to conclude bilateral agreements and arrangements in advance of EC-level arrangements in exceptional cases for the disposal of specific wastes, where they will not be managed in an environmentally sound manner in the country of dispatch.
    - Competent authorities of destination are to prohibit imports if they believe waste will not be managed in an environmentally sound manner.
    - Notification by means of consignment note.
    - The first and last competent authorities to consent to the shipment.
- 4B – for recovery:
    - Prohibited, except from countries to which the OECD Decision applies and from other countries, which are party to the Basel Convention and/or have concluded compatible agreements or arrangements with the EC and/or Member States.
    - Member States are authorized to conclude bilateral agreements and arrangements in exceptional cases in advance of EC-level agreements for the recovery of specific wastes in order to avoid interruption of waste treatment.
    - For shipments of amber list wastes the provisions of 1B apply.

5. Transit from outside and through the EC for disposal or recovery outside the EC:

- 5A – for disposal and recovery (except transit covered by 5B):
    - Notification by means of consignment note.
    - Decision by the last competent authority of transit to be taken within 60 days of acknowledgement of receipt of the notification.
    - A shipment may proceed after the notifier receives authorization, and must be accompanied by consignment note.
    - The consignment note must be supplied to customs when the shipment leaves the EC and forwarded to the last competent authority of transit.
- 5B – for recovery from and to a country to which the OECD Decision applies:
    - Notification, by means of consignment note.
    - The first and last competent authorities to consent to the shipment.

Structure of Regulation (EC) No 1013/2006

As the Regulation is complex and detailed, the overall structure is set out below to aid the reader.

- Title I Scope and definitions.
- Title II Shipments within the Community with or without transit through third countries:
    - Chapter 1 Prior written notification and consent.
    - Chapter 2 General information requirements.
    - Chapter 3 General requirements.
    - Chapter 4 Take-back obligations.

    - Chapter 5 General administrative provisions.
    - Chapter 6 Shipments within the Community with transit via third countries.
- Title III Shipments within MS
- Title IV Exports of waste:
    - Chapter 1 disposal.
    - Chapter 2 recovery.
    - Chapter 3 general provisions.
- Title V Imports of waste:
    - Chapter 1 disposal.
    - Chapter 2 recovery.
    - Chapter 3 general provisions.
- Title VI Transit through the Community from and to third countries:
    - Chapter 1 disposal.
    - Chapter 2 recovery.
- Title VII Other provisions:
    - Chapter 1 additional obligations.
    - Chapter 2 other provisions.

Correspondents' Guidelines also support the implementation of the Regulation. These are documents that have been agreed by the waste shipment correspondents of the EU Member States. They represent their understanding of specific areas of interpretation of the requirements of Regulation (EC) No 1013/2006. They are not legally binding. The Correspondents Guidelines adopted are as follows:

- Revised Correspondents' Guidelines No 1 on shipments of waste electrical and electronic equipment (WEEE) – to apply under the new Regulation No 1013/2006 from 12 July 2007.
- Correspondents' Guidelines No 2 concerning information on imports into the Community of waste generated by armed forces or relief organizations according to Article 1(3)(g) of Regulation (EC) No 1013/2006 on shipments of waste.
- Correspondents' Guidelines No 3 on a certificate for subsequent non-interim recovery or disposal according to Article 15(e) of Regulation (EC) No 1013/2006 on shipments of waste.
- Correspondents' Guidelines No 4 on classification of WEEE and fly ash from coal-fired power plants according to Annex IV, part I, note (c) of Regulation (EC) No 1013/2006 on shipments of waste.
- Correspondents' Guidelines No 5 on classification of wood waste under entries B3050 or AC170.
- Correspondents' Guidelines No 6 on classification of slags from processing of copper alloys under entries GB040 and B1100.
- Correspondents' Guidelines No 7 on classification of glass waste originating from cathode ray tubes (CRT) under entries B2020 or A2010.
- Correspondent' Guidelines No 8 on classification of waste cartridges containing toner or ink, according to Regulation (EC) No 1013/2006 on shipments of waste.

Summary of Regulation (EEC) No 259/93

A brief summary of Regulation (EEC) No 259/93 is provided here to provide information on the historical background leading to Regulation (EC) No 1013/2006. Regulation (EEC) No 259/93 replaced a number of earlier Directives concerned with the shipment of hazardous waste. It broadened the scope to all waste, not only hazardous waste. It aimed to bring EC policy into line with the provisions of the Basel Convention and with OECD Decisions on transfrontier movements of waste, as well as giving effect to a ban on waste exports to African, Caribbean and Pacific (ACP) countries covered by the fourth Lomé Convention (1989).

In respect of shipments of waste for recovery, the Regulation originally set out three main control regimes based on the so-called 'green', 'amber' and 'red' lists of waste detailed in Annexes to the Regulation. The controls were generally most strict for the red list and least strict for the green list. However, shipments to certain non-OECD countries of some green list wastes were subject to stricter-than-normal controls. These stricter controls were set out in Regulations (EC) No 1420/1999 and 1547/1999, the latter repealing an earlier set of controls in Decision 94/575/EC.

Amending and supplementary legislation to Regulation (EEC) No 259/93 is set out in Table 2. The first amending Regulation, (EC) No 120/97, introduced a complete prohibition on the export of 'hazardous waste' for recovery in non-OECD states (export of any waste, hazardous or otherwise, for disposal in non-OECD states was already banned). This reflected Decision III/I made by the Conference of the Parties to the Basel Convention in September 1995. The term 'hazardous waste' was not delineated by this decision, however, so Regulation (EC) No 120/97 simply applied the prohibition to the amber and red waste lists in the first instance. The second amending Regulation, (EC) No 2408/98, then extended the scope of the prohibition on exports of hazardous waste for recovery in non-OECD states. It established a new scheme of wastes considered to be hazardous, comprising those listed by Decision IV/9 which was adopted by the Conference of the Parties to the Basel Convention in February 1998, plus additional wastes covered by the Hazardous Waste Directive 91/689/EEC. Wastes on the amber list (with limited exceptions) and on the red list also continue to be treated as hazardous.

Regulation (EEC) No 259/93 used the definition of waste in the framework Directive 75/442/EEC, and did not apply to shipments of some categories of waste (e.g. radioactive waste covered by Directive 92/3/EURATOM). It established a complex system of controls on waste shipments, with detailed provisions varying according to the countries of dispatch, destination and transit, the intended purpose of the waste shipment (disposal or recovery), and the type of waste involved. Some imports and exports were prohibited, with specified exceptions. In particular, exports of waste from the EC for disposal were prohibited, except where the export was to an EFTA state which is also a party to the Basel Convention, and all exports of hazardous waste for recovery in non-OECD states were prohibited.

With respect to shipments intended for recovery, waste types were classified on the same basis as OECD Decisions on the control of transfrontier movements of wastes destined for recovery operations. Annexes to Regulation (EEC) No 259/93 therefore contained the 'green', 'amber' and 'red' lists of wastes, the last of these being subject to the greatest restrictions, and the first exempt from many requirements. Regulation (EEC) No 259/93 originally reflected the Annexes of the OECD Decision of 30 March 1992. Decisions

94/721/EC, 96/660/EC, 98/368/EC and 1999/816/EC modified the Annexes in accordance with OECD revisions of the green, amber and red waste lists. Regulation (EC) No 2557/2001 amended Annex V in relation to 'amber' wastes. The prohibition on the export of hazardous waste for recovery in non-OECD countries was given effect by Regulation (EC) No 120/97, which applied the ban to the amber and red lists, and was then elaborated by a more detailed list of hazardous wastes in Regulation (EC) No 2408/98.

Table 2. Amending and supplementary legislation to Regulation (EEC) No 259/93

Formal reference	Title
Regulation (EC) No 120/97	Amendment
Regulation (EC) No 2408/98	Amendment
Regulation (EC) No 1420/1999	Regulation establishing common rules and procedures for shipments to certain non-OECD countries of certain types of waste
94/721/EC	Decision modifying the green, amber and red waste lists
94/774/EC	Decision creating a standard consignment note
96/660/EC	Decision modifying the green waste list
98/368/EC	Decision modifying the green and amber waste lists
1999/412/EC	Decision creating a reporting questionnaire
Regulation (EC) No 1547/1999	Regulation determining control procedures for shipments of certain wastes to certain countries (Corrigenda (OJ L323 15.12.1999)
1999/816/EC	Decision modifying the green, amber and red waste lists
Regulation (EC) No 1208/2000	Regulation amending (EC) No 1420/1999 and (EC) No 1547/1999 in relation to certain countries
Regulation (EC) No 1552/2000	Regulation amending (EC) No 1547/1999 in relation to certain countries
Regulation (EC) No 2630/2000	Regulation amending (EC) No 1420/1999 in relation to certain countries
Regulation (EC) No 77/2001	Regulation amending (EC) No 1547/1999 and (EC) No 1420/1999 in relation to certain countries
Regulation (EC) No 2243/2001	Regulation amending (EC) No 1420/1999 and (EC) No 1547/1999 in relation to certain countries
Regulation (EC) No 2557/2001	Regulation amending annex V of (EC) No 259/93 in relation to amber list wastes

Development of the Regulations

The development of the first Directive 84/631/EEC on transfrontier shipment of waste has been described elsewhere[1]. That Directive was adopted following well publicized incidents, particularly one involving the temporary disappearance in transit between Italy and France of drums thought to contain material contaminated with dioxins originating from the Seveso accident (see section on major accident hazards).

The need for changes became clear as Member States' implementation of Directive 84/631/EEC proved late and patchy. Furthermore, interpretation of some of the Directive's provisions differed between Member States, thus failing to create the harmonized systems for transfrontier movements originally envisaged. As completion of the internal market loomed nearer, the EC's policy makers had to try to regulate more effectively this key area of environmental and trade interest. In addition, other international obligations (the Basel and Lomé Conventions), and the 1992 OECD Decision required legislation at the EC level. New legislation also provided an opportunity to extend the scope of the controls provided by Directive 84/631/EEC, by covering additional forms of waste, and by introducing new provisions on matters such as the return of shipments and financial guarantees.

At the same time, the Commission realized that proposing a Regulation (rather than a Directive) could help limit previous difficulties over implementation, at least in legal terms. In 1990 the Commission had brought a case against Belgium, concerning a Walloon Region decree introduced to prohibit the storage and disposal of foreign waste. The Commission's argument was that the decree contravened EC waste Directives and the Treaty of Rome's principles of free movement of goods. The European Court of Justice's judgment in July 1992 (Case C–2/90) ruled that Wallonia's blanket prohibition infringed Directive 84/631/EEC in respect of toxic waste, but not Directive 75/442/EEC in respect of other types of waste, since it held that Directive 75/442/EEC did not cover waste movements. The Court also ruled that although waste had to be treated as a good and so its movement could not in principle be restricted, the special nature of waste had to be considered: Article 130r(2) (Article 191 TFEU) implied that authorities had obligations to ensure that waste was treated and disposed of locally, as close as possible to its source. France had also been pressing for greater emphasis on self-sufficiency in waste disposal, and in August 1992 issued a decree to ban the import of domestic waste intended for disposal to landfill.

The Commission pressed initially for provisions on shipments across administrative boundaries within Member States to be made similar to those for international shipments, but was forced to back down. The European Parliament tabled numerous amendments to the proposed Regulation, including proposals to change its legal base to Article 100a (Article 114 TFEU) and place stricter limits on exports of waste for recovery. Most of its suggestions were not taken up. After the Regulation had been adopted, the Parliament sought to have it annulled by the Court of Justice on the grounds that the wrong legal base had been used. However, the Court held (Case C-187/93) that Article 130s (Article 192 TFEU) was the correct legal base, as it had previously done with the Waste Framework Directive.

Within the Council, the principles of self-sufficiency and proximity (in disposal) provided a major source of disagreement. The United Kingdom and France argued for the swift application of these policy concepts, whilst smaller Member States expressed concern over possible disproportionate costs they might face as a result, particularly where small volumes of hazardous waste were involved. The final form of the Regulation represented a compromise, providing for a conditional ban on shipments by Member States on the grounds of proximity, self-sufficiency, and priority for disposal at source, but also ruling out the introduction of such bans for small quantities of hazardous waste where ‘the provision of new specialized disposal installations … would be uneconomic’.

Development of Regulations (EC) No 120/97 and (EC) No 2408/98

During the negotiation of Regulation (EEC) No 259/93, Denmark called for a complete ban on exports of hazardous waste to developing countries even for recovery. This was a controversial issue which had also been of concern to some environmental groups[2]. Some EC Member States had originally sought to protect legitimate trade with non-OECD countries wishing to import hazardous waste for recovery. However, at the Conference of the Parties to the Basel Convention in March 1994, the G77 nations were unanimous in their view that a ban was the best way to protect the environment in non-OECD countries. This was initially given effect in EC law by Regulation (EC) No 120/97, which banned the export of wastes on the amber and red lists for recovery in non-OECD countries. At the same time, Regulation (EC) No 120/97 itself noted that some materials on the green list – which could be exported for recovery – were simultaneously classified as 'hazardous' under the Hazardous Waste Directive 91/689/EEC. Accordingly, the Regulation imposed an obligation on the Commission to amend the Annex which defined hazardous waste for the purposes of the ban.

The amended definition of hazardous waste was due to be adopted by 1 January 1998. In the event, this date was missed as the Commission was awaiting relevant developments in the Basel Convention. The new Annex was eventually brought into effect by Regulation (EC) No 2408/98 in November 1998.

Development of Regulations (EC) No 1420/1999 and (EC) No 1547/1999

Regulations (EC) No 1420/1999 and (EC) No 1547/1999 were concerned with the determination of the appropriate procedures for the control of shipments of green list wastes for recovery outside the EC. Their development – and in particular that of Regulation (EC) No 1420/1999 – proved highly controversial.

The Regulations stemmed from Article 17(1) of Regulation (EEC) No 259/93. This required the Commission to send the green list of wastes to non-OECD countries and ask if they were content for the normal green list controls to apply, or if they would wish to see stricter controls applied instead. The Commission set out the first results of this exercise in Decision 94/575/EC, which was published in July 1994, just over two months after Regulation (EEC) No 259/93 became applicable. However, the Decision only contained information for 15 countries, representing a very small proportion of the number of non-OECD countries. There were two reasons for this. One was that a large number of countries simply had not responded to the Commission at the time Decision 94/575/EC was developed. The other was that some countries had responded by indicating that they did not want to receive any shipments of certain green list wastes for recovery. This possibility had not been foreseen by Article 17 of Regulation (EEC) No 259/93, which had recognized that non-OECD countries could request the application of stricter controls (e.g. those applicable to the amber or red lists) for green list wastes, but not outright prohibitions. The Commission responded to this situation by developing the proposal that led, after furious debate, to Regulation (EC) No 1420/1999.

The proposal (COM(94)678) was tabled by the Commission on 8 February 1995. It contained two main, and inter-related, points of contention. These were concerned with the way the Commission had responded to those countries that had said they did not wish to receive shipments of green list waste, and the legal base of the proposal.

In relation to countries that had indicated they did not wish to receive shipments of green list waste, the Commission's proposal would not have prohibited such shipments, but rather would have permitted them under the control of the red list procedure. The Commission sought to justify this approach on a number of grounds. It indicated that prohibiting such shipments would have unduly adverse effects on trade. It also stated the opinion that some countries that had expressed their desire not to receive green list wastes 'may not be fully aware of the significance of their decision'. The Commission then went on to say that, in any case, the red list procedure would 'have the same practical effect as an export prohibition', because it would allow shipments only where the country of destination had given its prior written consent. In making this statement, the Commission appeared to overlook the risk of consent for unwanted shipments being granted through corruption or fraud, a potential factor behind the desire of some non-OECD countries to remove the possibility of shipments in the first place.

The Commission proposed the Regulation on the legal base of Article 113 (Article 207 TFEU). This reflected the Commission's assertion that the proposal concerned 'solely trade with third countries'. This immediately drew attention to itself, not only because it suggested there was no environmental dimension to the proposal, but also because Regulation (EEC) No 259/93, which had provided the basis for the proposal, had been based on Article 130s (Article 192 TFEU). It additionally meant that responsibility for the proposal fell to the Directorate General of the Commission responsible for international trade, rather than to Directorate General in charge of environmental policy.

The main significance of the suggested legal base, though, lay in its impact on the role of the European Parliament in the negotiation of the proposed Regulation. Given the high-profile nature of policy on waste shipments, it was always likely that the Parliament would wish to be involved in any new developments in this area. Moreover, given the stance that the Parliament had taken in attempting to shape Regulation (EEC) No 259/93, it was not difficult to anticipate that it would oppose the proposal now put forward by the Commission. However, the proposed legal base of Article 113 did not provide for any input by the Parliament. This was in contrast to the use of Article 130s, which would have involved the Parliament through the cooperation procedure. The Commission may legitimately have considered that Article 113 was the right legal base. Nevertheless, the combination of likely Parliament opposition to the proposal, and the possible use of Article 130s following the precedent of Regulation (EEC) No 259/93, also raised the question of whether Article 113 had been cited in order to exclude the Parliament from the negotiation process.

Not surprisingly, the proposal provoked an angry response. The Commission was attacked in strong terms by Greenpeace[3,4]. The legitimacy of the proposal was also challenged vigorously by a question from a Hiltrud Breyer MEP (OJ C209 14.8.95), who asked how the Commission could justify the proposal which sought 'to evade the Basel Convention', would give rise to 'a watering down and breach of international law' and was 'an affront to the position of the democratically elected European Parliament, … [which was] now to be excluded by the change in the legal basis from Article 130s to Article 113'. The answer from the Trade Commissioner argued that the proposal was entirely consistent with the Basel Convention and reflected an approach 'that is both conservative and responsive to the wishes expressed by third countries' as regards shipments of green list wastes. On the alleged affront to the Parliament, the Commissioner simply replied that the Commission would 'take into account the position of the Parliament in accordance with the inter-institutional distributions

of competencies in the Treaties'. However, as noted above, Article 113 did not provide for any participation by the Parliament.

Opposition to the proposed legal base of Article 113 was shared by the Member States. An initial discussion of the proposal by a working group comprising Member States' representatives reportedly took the unanimous view that Article 130s was more appropriate, not least because this was the base of the 'parent' Regulation (EEC) No 259/93[5]. The Commission was apparently unwilling to accept this in the first instance. A compromise was eventually reached based on a joint legal base of Articles 113 and 130s. This was endorsed by the Council on 25 June 1996 – some 16 months after the original proposal had been tabled.

The change of legal base opened the way for the European Parliament to participate in the development of the proposal. In its first reading (OJ C286 22.9.97) the Parliament sought to amend the proposal so that shipments of green list wastes would be prohibited to those countries that had expressed their wish not to receive them. The Parliament also suggested an amendment to the Commission's proposals in respect of non-OECD countries that had not replied to the Commission's original request for information under Article 17(1) of Regulation (EEC) No 259/93. The Commission had proposed that shipments of green list wastes to these countries should be permitted, but only following the application of the red list procedure. The Parliament wanted to go further by prohibiting these shipments altogether.

The Council reached a common position on the proposal on 4 June 1998 (OJ C333 30.10.98). This contained a joint legal base of Articles 113 and 130s, reflecting the Decision made some two years previously that this was the right approach. Otherwise, the common position maintained the Commission's revised proposals that shipments of green list waste should be prohibited for countries of destination that had requested this, and allowed subject to the red list procedure for countries that had not replied.

The European Parliament's second reading was a much quieter affair, leading to relatively minor suggestions for amendments (OJ C150 28.5.99) which were almost all accepted by the Commission. The only exception was in relation to a provision requiring the Commission to review the operation of the control procedures that would be established and, if necessary, make new proposals. The Parliament wanted any such proposals to be made not only to the Council, as the common position text already provided, but also to the Parliament itself. However, the Commission's re-examined proposal (COM(1999)150) of 13 April 1999 rejected this, on the grounds that the Commission still favoured Article 113 as the sole legal basis. This was despite the fact that the joint legal base of Articles 113 and 130s was now well established.

Regulation (EC) No 1420/1999 was eventually adopted on 29 April 1999, more than four years after it was first proposed. Aside from the changes in its substantive content, the length of time taken for adoption also led to some unusual features. For example, the eighth recital in the preamble to the Regulation provides that the Commission is to review and amend Annex V to Regulation (EEC) No 259/93 'as soon as possible and at the latest before 1 July 1998', some 10 months before the Regulation was adopted. There is another curiosity in Article 5, which provides that the Commission is to 'review and amend this Regulation in order to bring it into line with Regulation (EEC) No 259/93'. It was not clear what the misalignment implied here involved.

The adoption of Regulation (EC) No 1420/1999 was soon followed by Regulation (EC) No 1547/1999. The latter Regulation was adopted by the Commission, not the Council, which meant that it could be developed much faster. In any case, the content of Regulation (EC) No 1547/1999 appeared to be uncontroversial. It essentially represented a parallel instrument to Regulation (EC) No 1420/1999, setting out the controls applicable to those countries that had replied positively to the Commission by indicating their desire to receive shipments of green list waste subject to certain control procedures. The previous controls introduced in this respect under Decision 94/575/EC were repealed.

Regulations (EC) No 1420/1999 and (EC) No 1547/1999 were amended by Regulations (EC) No 1208/2000 and (EC) No 1552/2000 to allow certain non-OECD countries to accept the import of certain waste following an indication by these countries of their wish to do so.

Development of Regulation (EC) No 1013/2006

The Commission proposed a further revision to the Waste Shipment Regulation in 2003 (COM(2003)379). Part of the reason for a revision was that there had been developments under the Basel Convention (in particular the adoption of two detailed lists of wastes as new Annexes VIII and IX) which led the OECD to revise its 1992 Decision in order to harmonize lists and certain other requirements with the Basel Convention (OECD Council Decision C(2001)107 of 14 June 2001). Also since the entry into force of Council Regulation (EEC) No 259/93, several difficulties had been found regarding its application, administration and enforcement. From 1999 the Commission organized various discussions with Member States and stakeholders and concluded that the Regulation needed revision. The proposal had four main objectives:

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

The proposal, therefore, sought to amend Council Regulation (EEC) No 259/93 in the following areas:

- Changes to its structure.
- Changes and clarifications as regards definitions, and clarification of its scope (Title I).
- Changes and clarifications as regards the procedures applicable to shipments of waste (Titles II–VI):
    - between Member States (Title II);
    - within Member States (Title III); and
    - for exports out of and imports into the Community (Titles IV, V and VI).
- Changes in other provisions of the Regulation (Title VII).

The proposal introduced clarifications on the application and implementation of the Regulation. It did not change the requirement that shipments of waste must follow specific procedures, depending on the type of waste shipped, whether it is hazardous waste or not, and the type of treatment that will be applied to the waste at its destination: recovery or disposal.

The Commission proposed a procedure requiring prior written notification and consent for all shipments of waste destined for disposal, and of hazardous and semi-hazardous waste destined for recovery. The 1993 Regulation had two procedures for such shipments, one based on tacit and the other one on written consent. The proposal aimed to ensure the control of a shipment until completion of final recovery and disposal.

The Commission made its proposal under Article 175 of the EC Treaty (192 TFEU) (environment), except for the provisions of Titles IV, V and VI on exports out of, imports into and transit through the Community to and from third countries, for which the proposed legal basis was Article 133 of the EC Treaty (207 TFEU).

The European Parliament in its first reading in November 2003 proposed 103 amendments to the proposal. These included:

- Within 18 months from the entry into force of the Regulation, the Commission had to establish guidelines to determine when a ship or a vehicle becomes a waste pursuant to Directive 75/442/EEC.
- A new definition of notifier.
- The authorities of dispatch and destination could oblige the consignee to draw up reports on a regular basis, setting out all the waste treatment operations, containing details of all incoming and outgoing waste for each treatment method, so as to enable the authorities to check at any time that shipments are being carried out as set out in the notification.
- The facility that received the waste would have to keep incoming and outgoing volume records for each specific treatment line and for each sub-section of each treatment line.
- The competent authority of dispatch could also invoke its national environmental protection laws to oppose planned shipments.
- In exceptional cases, and if the specific geographical situation warranted such a step, Member States could conclude bilateral agreements relaxing the notification procedure for shipments of specific flows of waste in respect of cross-border shipments to the nearest suitable facility located in the border area between the two Member States concerned of notifiable waste generated in that border area.
- The competent authority of the exporting or importing Member State would have to make publicly available by appropriate means, such as the Internet, all notifications of shipments it had consented to, and all related documents, at the latest 7 days after consent was given.
- That the legal basis of Regulation be only Article 175 of the EC Treaty.

The Council unanimously adopted a common position in June 2005, which incorporated 41 of the European Parliament's proposed amendments. The main amendments it proposed were:

- Changes concerning the general procedural framework (prior written notification and consent; obligations by way of information).
- Changes and specifications concerning the scope and the definitions.
- Provisions concerning shipments of waste between and within Member States.
- Provisions concerning exports and imports.

The Council also set aside the dual legal basis proposed by the Commission as it also considered Article 175(1) of the Treaty sufficient. Specific amendments incorporated in the

common position concerned the following issues: the exclusion from the scope of the Regulation of waste generated by the armed forces of a Member State in certain situations; provisions applicable to Annex III waste intended for recovery; mixtures of waste for which no single entry exists; certain operations constituting interim recovery and interim disposal; the definition of notifier; definition of 'country of transit'; subject shipments of mixed municipal waste collected from private households to prior notification and consent; enabling all competent authorities to require additional information and documentation within a certain time period; the moment which the financial guarantee shall be established and evidence or equivalent insurance of this to be supplied; requests for information and documentation and the acknowledgment and transmission of notifications within a certain time limit; extended power to Member States to object to shipments of waste for disposal; objections to shipments of waste for recovery on the basis that the planned shipment is destined for disposal and not for recovery; setting out the procedures that apply to a general notification; information from the notifier to the competent authorities and the consignee; completion of recovery or disposal; emphasizing the need for cooperation between authorities in relation to all cases of illegal shipment; electronic exchange of data; border-area agreements; environmentally sound management; situations of crisis or war; the method for calculating the financial guarantee; guidelines for the application of a provision on 'sham recovery'.

In its second reading in October 2005, the European Parliament made several amendments to the common position. The Parliament had negotiated a series of compromise amendments with the Council. The main points were as follows:

- Parliament strengthened proposed provisions guaranteeing public access to the decision-making process and legal redress in accordance with the Aarhus Convention and that information on shipment notifications should be made public.
- An amendment relating to the safe and environmentally sound management of ship dismantling and the work going on to establish mandatory requirements at the global level in this regard.
- The application of the Regulation to be excluded in certain cases where it would be disproportionate with regard to waste generated on board vehicles, trains, ships and airplanes.
- The implementation of take-back schemes for non-hazardous waste to be facilitated.
- The competent authorities of transit to be able to raise certain objections to shipments of waste where this would be justified.
- That the competent authority of destination may also, within the 30-day time limit, lay down a condition that the receiving facility shall keep a regular record of inputs, outputs and/or balances for wastes and their associated recovery or disposal operations as contained in the notification, and for the period of validity of the notification.
- The authorities in reception states to be able object to shipments of mixed municipal waste from private households so as to encourage local recycling of household waste.
- That the legal basis of the whole Regulation should be Article 175 of the EC Treaty.

The Regulation was finally adopted in 2006 and published in the *Official Journal* on 12 July.

Implementation of the Regulation

As the measure is a Regulation, it is directly applicable in the national law of the Member States.

The Commission has yet to publish a report on the implementation of Regulation (EC) No 1013/2006. Work supporting the implementation of the Regulation has been was taken forward by IMPEL (TFS Cluster) (see section on networking). IMPEL has noted widespread irregularities and gaps in enforcement. In response many Member States have agreed to increase their monitoring and enforcement activities by undertaking of joint and coordinated inspections with respect to transfrontier shipments of waste. Further information about the exchange of experience by IMPEL members can be found on their website: (http://impeltfs.eu/)

Two reports were published by the Commission on implementation of the preceding Regulation (EEC) No 259/93: (COM(2009)282), adopted in June 2009 and covering the period 2001–2006; and (COM(2006)430), adopted in August 2006 and covering the period 1997–2000. The most recent of these drew the following conclusions:

- Member States had generally submitted **sufficient information** on waste shipments within, out of and into the Community. Very little information was however available on inbound shipments for the EU-10.
- The **quality of** data in the Member States' responses was variable: with a few exceptions, reporting on incidents/accidents and/or illegal shipments was deemed inadequate. The overall data quality for waste 'exports' was higher than for 'imports'.
- Regarding **waste classification**, Member States used the Y-codes for waste under the Basel Convention very differently, and a significant amount of 'not classified' waste was reported. Member States used codes from the two different systems of waste classification interchangeably (European waste legislation vs. Basel Convention).
- The chronological development of **waste generation** over the period 2001–2006 was difficult to assess. The amount of hazardous waste generated by the EU-15 rose by 22 per cent in 2000–2005 (by 4 per cent per annum). Available data indicated that the amount of waste generated within EU-25 has not increased significantly since 2002.
- From 1997 to 2001, **shipments of hazardous waste** out of Member States doubled and from 2001 to 2005 they almost doubled again. In spite of this, 91 per cent of the Community's hazardous waste in 2005 was treated in the country of origin. Inbound shipments increased in similar fashion. According to their reports, the EU-10 countries played a minor role in waste shipment.
- The **major part of the shipped waste was treated in a recovery operation** (on average 85 per cent of that shipped into the EU-15 in 2001–2005).
- From 1997 to 2005, the **vast majority of waste shipments took place within the EU's borders**. In 2000–2005, more than 90 per cent of the shipped waste remained within the EU-15; at least 98 per cent of the EU-15 shipments since 2001 went to EU-25 and EFTA countries. The data for inbound shipments indicated that 96 per cent of all EU-15 'imports' came from EU-25 and EFTA countries, while only 1 per cent came from non-OECD countries.

The European Environment Agency published a report in 2009 on transboundary shipments of waste[6]. It noted that almost all waste generated in the EU that required disposal was disposed of within the EU, which it considered to be 'in accordance with the EU political

target to establish a self-sufficient network of disposal installations in the EU'. However, it noted the following developments not consistent with the general EU waste management objectives or Regulation (EC) No 1013/2006:

- Member States had not made progress toward individual Member State self-sufficiency in waste disposal.
- Member States collected many data and much information on the shipment of waste, but these data did not allow an assessment of their environmental consequences.
- It was not possible, due to aggregated reporting, to document at EU level what specific kind of hazardous and problematic waste was shipped across boundaries.
- Also it was not possible to determine whether shipment of waste results in better, more environmentally friendly treatment of the waste.
- The EU exported a significant quantity of used electrical and electronic products to developing countries that did not have an adequate waste management infrastructure, with resulting environmental and health concerns.

Enforcement and court cases

Only one case specifically concerning the Regulation (EC) No 1013/2006 has so far been concluded by the European Court of Justice (ECJ). Case C-411/06 was an action, brought by the Commission and supported by France, Austria and the United Kingdom, for annulment of the Regulation, on the grounds that the choice of legal basis (solely Article 175(1) TEC on environment and not on Articles 175(1) and 133 TEC on common commercial policy) was flawed. The Court asserted that the primary objective of the Regulation was clearly protection of the environment, that the legal basis was therefore correct, and that the Commission's action was to be dismissed.

The following cases concerning the previous Regulation (EEC) No 259/93 were concluded by the ECJ:

- C-259/05. This judgement related to criminal proceedings brought against Omni Metal Service for exporting scrap electrical cable from Spain to China via the Netherlands without giving the Netherlands authorities prior notification of that shipment. The question was whether the particular type of cable could be counted as Heading GC020 of the green list, or more specifically whether the rules on shipment in relation to green list waste applied to a composite-type waste which, although not referred to in that list, was a combination of two materials both of which appear on that list. The Court ruled that the Regulation did not have the effect of making the rules laid down by the Regulation concerning the wastes mentioned on that list applicable to such composite waste.
- C-215/04. This judgement related to proceedings between Marius Pedersen A/S, a Danish undertaking authorized to collect electronic scrap, and the Miljøstyrelse (Environment Agency), concerning transport to Germany of that waste for recovery. The Court ruled that a licensed collector did not necessarily have the status of notifier of a shipment of waste for recovery, but that it could be justified in some cases (e.g. if the producer of the waste was unknown, or the number of waste producers was so great and the individual contribution of each of them so small that it would have been unreasonable for each individually to be required to notify the transport of the waste. It also ruled that the notifier could not be required to prove that recovery in the State of destination would be equivalent to that required by the rules in the State of

dispatch. ‘Electronic scrap’ was deemed to be not acceptable as information relating to the composition of the waste to be shipped.

- C-277/02. This judgement related to proceedings between EU-Wood-Trading GmbH and Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH. The Court ruled that: the objections to a shipment of waste for recovery which the competent authorities of dispatch and of destination could raise could be based on considerations connected not only to the actual transport of the waste but also on the recovery planned for that shipment. The competent authority of dispatch could, in assessing the effects on health and the environment of the recovery envisaged at the destination, rely on the recovery of waste criteria in the State of dispatch, even where those criteria were stricter than those in the State of destination. A competent authority of dispatch could not rely on the provisions of second indent of Article 7(4)(a) of Regulation (EC) No 259/93 (as amended) to raise an objection to a shipment of waste based on the fact that the planned recovery did not comply with the national laws and regulations for protection of the environment, public order, public safety or health protection.
- C-472/02. This judgement related to a case brought by the Commission against Siomab. A Belgian company was shipping salt residues to a German mine exploitation company; the Belgian company stated the shipment as for recovery; but the Belgian competent authority of dispatch classified it was a shipment for permanent storage, and therefore disposal. The German competent authority of destination objected to the shipment on that basis. The Court however ruled that the competent authority of dispatch was not entitled to reclassify the purpose of a shipment and refuse to transmit the original consignment note to the other authorities and the consignee; the competent authority of dispatch had to follow the procedure laid out in the Regulation for raising an objection.
- C-113/02. The Court agreed with the Commission that the Netherlands had failed to fulfil its obligations under the Regulation and under the Waste Framework Directive. National legislation was deemed incompatible with the Regulation in terms of the ability to raise an objection against a shipment of waste where at least 20 per cent of the waste is recoverable in the Netherlands and the percentage of recoverable waste in the Member State of destination was lower than that in the Member State of dispatch (this was deemed to go beyond the Regulation's requirements); the Netherlands had also failed properly to distinguish recovery (by incineration) from disposal (by incineration).
- C-116/01. In proceedings between SITA EcoService Nederland BV and the Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, the Court ruled that where a waste treatment (recovery or disposal) process comprises several distinct stages, it had to be classified as a disposal operation or a recovery operation within the meaning of the Waste Framework Directive, for the purpose of implementing the Waste Shipment Regulation, taking into account only the first operation that the waste was to undergo subsequent to shipment.
- C-389/00. The Court agreed with the Commission that Germany could not force exporters of waste to other Member States to make a mandatory contribution to the solidarity fund for the return of waste; it was deemed to have an equivalent effect to an export customs duty, which was prohibited by the Waste Shipment Regulation.
- C-458/00. In a case between the Commission and Luxembourg, the Court ruled that competent authorities could not reclassify ex officio the purpose of the shipment of waste included in a consignment note; they had to follow the objections procedure in the Regulation. The case also led to a clarification related to incineration: combustion

of household waste could be classified as a recovery operation if the main purpose was to enable the waste to be used as a means of generating energy and if the combustion is efficient; if heat generated by the combustion was only a secondary effect of the operation, that operation had to be classified as a disposal operation.

- C-228/00. In another case dealing with a conflict in classification of a shipment as for recovery or disposal, the Court agreed with the Commission that by raising unjustified objections to certain shipments of waste to other Member States to be used principally as a fuel, Germany had failed to fulfil its obligations under the Regulation.
- C-6/00. This judgement related to another case dealing with the qualification of shipments as for recovery or otherwise, between Abfall Service AG (ASA) and Bundesminister für Umwelt, Jugend und Familie. The Court ruled against ASA, stating that the competent authority of dispatch was competent to verify whether a proposed shipment classified in the notification as a 'shipment of waste for recovery' did, in fact correspond to that classification, and that, if that classification was incorrect, the authority had to oppose the shipment by raising an objection following the procedure outlined in the Regulation. The Court also ruled that the deposit of waste in a disused mine did not necessarily constitute a disposal operation; it constituted a recovery if its principal objective for the waste to serve a useful purpose in replacing other materials which would have had to be used for that purpose.
- C-324/99. DaimlerChrysler AG argued, against the Land Baden-Württemberg, that a decree in German law was restricting freedom of trade (and harming the company economically by incurring additional transport costs) by obliging it to offer special waste to an incineration centre in Hamburg as opposed to exporting the waste for incineration in Belgium. The Court was therefore asked to decide whether, when a national measure generally prohibiting exports of waste for disposal was justified by the principles of proximity, priority for recovery and self-sufficiency, it was also necessary for that national measure to be subject to a further and separate review of its compatibility with Articles 34 and 36 (Articles 67 TFEU and 87/88 TFEU) of the Treaty. The Court ruled it was not necessary for such national measures to be subject to a further and separate review of compatibility with the Treaty.
- C-209/98. This was a case between Entreprenørforeningens Affalds/Miljøsektion (FFAD), acting for Sydhavnens Sten & Grus ApS, and Københavns Kommune. The Court ruled that a system for the collection and receipt of non-hazardous building waste destined for recovery, under which a limited number of undertakings were authorized to process the waste produced in a municipality, was not allowed if that system constituted an obstacle to exports of waste. Such local systems with a limited number of specially selected undertakings were allowed, however, in order to resolve an environmental problem resulting from the absence of processing capacity for non-hazardous building waste destined for recovery. Neither Directive 75/442/EEC nor Regulation (EEC) No 259/93 required that Member States conclude contracts with all the undertakings authorized, within the meaning of Article 10 of Directive 75/442/EEC, to receive and recover environmentally non-hazardous building waste.
- C-304/94, C-330/94, C-342/94 and C-224/95. These were cases between Pretura Circondariale di Terni (Cases C-304/94, C-330/94, C-342/94)/Pretura Circondariale di Pescara (C-224/95) (Italy) and Euro Tombesi/Adino Tombesi (C-304/94), Roberto Santella (C-330/94), Giovanni Muzi and Others (C-342/94), Anselmo Savini (C-224/95). The 'Tombesi ruling' arose with domestic criminal proceedings against individuals in Italy accused of handling, storing and moving waste without receiving authorization. The individuals argued that the scrap material they were using were not waste as they had an economic value. The Court ruled that the concept of 'waste' was

not to be understood as excluding substances and objects which were capable of economic reutilization, even if the materials in question could be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constituted disposal or recovery operations. The fact that a substance was classified as a re-usable residue without its characteristics or purpose being defined was irrelevant in that regard. The same applied to the grinding of a waste substance.

Further developments

Commission Recommendation 2001/331/EC providing for minimum criteria for environmental inspections does not cover the inspections required by Article 50 of the Waste Shipment Regulation. However, in its review of the Recommendation, the Commission stated that it was 'considering proposing specific legally binding rules for inspections of waste shipments'. This noted the different nature of waste shipment inspections (such as not being focused on stationary installations and involving different authorities) and concluded, therefore, that 'specific criteria should be defined to ensure sufficient quality and frequency of inspections and provide for appropriate training and cooperation among authorities'. Subsequently, the Commission published a report exploring potential criteria for waste shipment inspections[7].

Related legislation

There are a number of other pieces of EU legislation which have a strong interaction with the Waste Shipment Regulation. These include:

- Waste Framework Directive 2008/98/EC.
- Council Decision 93/98/EEC on the conclusion, on behalf of the Community, of the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal.
- Council Decision 97/640/EC on the approval, on behalf of the Community, of the amendment to the Basel Convention, as laid down in Decision III/1 of the Conference of the Parties.
- Directive 2002/96/EC on WEEE.

The revised Directive 2008/98/EC sets the basic concepts and definitions related to waste management and lays down waste management principles such as the 'polluter pays principle' and the 'waste hierarchy'. The WEEE Directive interacts strongly with the Waste Shipment Regulation by seeking to control regimes for the management of WEEE, which is a major part of illegal waste shipments from the EU.

Other pieces of EU legislation are complementary to the Waste Shipment Regulation, such that they provide specific legal regimes for types of waste shipments that are exempted from the Regulation. These include: the Directive on port reception facilities for ship-generated waste and cargo residues (2000/59/EC), the Directive on the supervision and control of shipments of radioactive waste and spent fuel (2006/117/EURATOM), and the Regulation on animal by-products (1774/2002/EC).

Two pieces of international law are also strongly related to EU legislation on waste shipment. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1989, and set up a framework for controlling international movements of hazardous wastes, and developed criteria for 'environmentally sound management' and a control system based on prior written notification. Since 2000, The Convention has been placing a greater focus on minimization of hazardous waste generation. The OECD Decision C(2001)107 (as amended by C(2004)20[8]) on the control of transboundary movements of wastes destined for recovery operations applies to shipments of green-listed wastes for recovery.

References

1 Haigh, N (1990) *EEC Environmental Policy and Britain*, 2nd edn., Longman, London.

2 MacKenzie, D (1993) Europe's green channel for toxic waste. *New Scientist*, 13 March 1993.

3 Environmental data services (ENDS) Europe (1995) *Report 242 Conflicts Intensify over Waste Trade*, March 1995.

4 Europe Environment No 449 Greenpeace weighs in on toxic waste export proposal, 21 February 1995.

5 Department of the Environment (1996) supplementary explanatory memorandum 8179/95, 30 August 1996.

6 EEA (2009) Waste without borders in the EU? Transboundary shipments of waste, *EEA Report* No 1/2009, http://www.eea.europa.eu/publications/waste-without-borders-in-the-eu-transboundary-shipments-of-waste.

7 IEEP, Bio and Ecologic (2009) *Study on Waste Shipment Inspections, Report to DG Environment*, http://ec.europa.eu/environment/waste/shipments/pdf/report_august09.pdf.

8 CEC (2010) Consolidated version of C(2001)107/FINAL and C(2004)20, http://www.oecd.org/dataoecd/37/49/30654501.pdf, Accessed 27.01.2010