

**PE-CONS No/YY - 2013/0239(COD)**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**amending Regulation (EC) No 1013/2006 on shipments of waste**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

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

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>1</sup> lays down requirements for shipments of waste both within the Union and between the Member States and third countries, in order to protect the environment. However, *divergences and* gaps have been identified in the enforcement and inspections carried out by the ■ authorities *involved in inspections* in Member States ■ .
- (2) Adequate planning of waste shipment inspections is necessary to establish the capacity needed for ■ inspections and effectively prevent illegal shipments. The provisions on enforcement and inspections in Article 50 of Regulation (EC) No 1013/2006 should therefore be strengthened with a view to ensuring regular and consistent planning of inspections. *Inspection plans should be based on a risk assessment and* include a number of key elements, *such as* objectives, priorities, *the geographical area covered, information on* planned inspections, *tasks assigned to authorities involved in inspections, arrangements for cooperation between those authorities involved in inspections in a Member State, in different Member States, as well as, where appropriate, between those authorities in Member States and in third countries, and information on the* training of inspectors *as well as on the human, financial and other resources for the implementation of the inspection plan concerned.*

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<sup>1</sup> OJ L 190, 12.7.2006, p.1.

- (3) *Inspection plans may either be drawn up separately or as a clearly defined part of other plans.*
- (4) *As inspection plans are covered by Directive 2003/4/EC, the provisions of that Directive, including the exceptions in its Article 4, where applicable, apply to these plans.*
- (5) *The outcome of inspections and measure taken, including any penalties imposed, should be made available to the public, including electronically via the internet.*

- (6) Diverging rules exist throughout the Union as regards the *power and* possibility for ■ authorities *involved in inspections* in Member States to require evidence *to ascertain* the legality of shipments. Such evidence may concern, *inter alia*, whether the substance or object is "waste" within the meaning of Regulation (EC) No 1013/2006, *or the waste has been correctly classified or* the waste will be shipped to environmentally sound facilities according to Article 49 of the Regulation. Article 50 of the Regulation should therefore provide the possibility for ■ authorities *involved in inspections* in Member States to require *such* evidence. *Such evidence may be requested either generally or on a case-by-case basis. Where such evidence is not made available or is deemed insufficient, the carriage of the substance or object or the shipment of waste concerned should be considered as an illegal shipment and be dealt with in accordance with the relevant provisions of this Regulation.*

- (7) Illegal waste shipments frequently stem from uncontrolled collection, *sorting and* storage. *Carrying out inspections for waste shipments in a systematic manner should therefore contribute to identifying and addressing those uncontrolled activities, thereby promoting the implementation of this Regulation.*
- (8) *In order to allow sufficient time for Member States to prepare for the application of the measures required under amended Article 50 of the Regulation, it is appropriate that the first inspection plans are adopted by 1 January 2017.*
- (9) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred on the Commission under Regulation (EC) 1013/2006 should be aligned to Article 290 *and* 291 of the Treaty *on the Functioning of the European Union (TFEU)*.

- (10) The power to adopt acts in accordance with Article 290 of the *TFEU* should be delegated to the Commission ***in respect of the amendment of certain non-essential elements of Regulation (EC) 1013/2006***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (11) ***In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing power<sup>1</sup>.***
- (12) Regulation (EC) No 1013/2006 should therefore be amended accordingly,

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HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> *OJ L 55, 28.2.2011, p 13.*

## Article 1

Regulation (EC) No 1013/2006 is amended as follows:

(1) in Article 2, the following *points 7a and 36* are added:

**7a.** *'re-use' is as defined in Article 3(13) of Directive 2008/98/EC of the European Parliament and of the Council<sup>1</sup>.*

**36.** *'inspection' means actions undertaken by the involved authorities to verify that an establishment, an undertaking, a broker, a dealer, a shipment of waste or the related recovery or disposal complies with the relevant requirements set out in this Regulation.'*

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<sup>1</sup> *Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).*



(2) Article 26, paragraph 4 is replaced by the following:

'4. *Subject to agreement of the competent authorities concerned and of the notifier, the information and documents listed in paragraph 1 may be submitted and exchanged by means of electronic data interchange with electronic signature or electronic authentication in accordance with Directive 1999/93 of the European Parliament and of the Council\*, or a comparable electronic authentication system which provides the same level of security.*

*With a view to facilitating the implementation of this paragraph, the Commission shall, where feasible, adopt implementing acts establishing the technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information. The Commission shall take into consideration any relevant international standards, and ensure that the requirements are in conformity with Directive 1999/93, or provide at least the same level of security as that Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59a(2).'*

(3) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall, by way of measures for the enforcement of this Regulation, provide, *inter alia*, for inspections of establishments **■**, undertakings, **brokers and dealers** in accordance with Article 34 of Directive 2008/98/EC, and for **inspections of** shipments of waste **and of** the related recovery or disposal.'

(b) the following paragraph 2a is inserted:

'2a. Member States shall **by 1 January 2017**, ensure that, ***in respect of*** their ***entire geographical territory, one or more plans are established, either separately or as a clearly defined part of other plans, for*** inspections carried out pursuant to paragraph 2 (***"inspection plan"***). ***Inspection plans shall be based on*** a risk assessment covering specific waste streams and sources of illegal shipments and considering, ***if available and where appropriate***, intelligence-based data such as ***data on investigations by police and customs authorities*** and ***analysis*** of criminal activities. ***The risk assessment shall aim, inter alia, to identify the minimum number of inspections required, including physical checks on establishments, undertakings, brokers, dealers and shipments of waste or the related recovery or disposal. An inspection plan*** shall include the following:

- (a) ***the objectives and priorities of the inspections, including*** a description of how ***those*** priorities have been ***identified***;
- (b) ***the geographical area covered by that inspection plan***;
- (c) information on **█** planned inspections, ***including on physical checks***;
- (d) ***the tasks assigned*** to each authority involved in **█** inspections;
- (e) ***arrangements for*** cooperation between **█** authorities involved in inspections;**█**
- (f) ***information on*** the **█** training of inspectors on **█** matters relating to ***inspections***; and
- (g) ***information on the human, financial and other resources for the implementation of that inspection plan.***

***An inspection plan*** shall be reviewed at least ***every three years*** and, where appropriate, updated. ***That*** review shall evaluate to which extent the objectives and other elements of ***that inspection plan*** have been implemented.'

**(c) paragraph 3 is replaced by the following:**

**'3. Inspections of shipments may take place in particular:**

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

**(d) paragraph 4 is replaced by the following:**

**'4. Inspections of shipments shall include the verification of documents, the confirmation of identity and, where appropriate, physical checking of the waste.'**

(e) the following paragraphs ■ are inserted:

'4a. In order to ascertain that a *substance or object being carried by road, rail, air, sea or inland waterway is not waste, the authorities involved in inspections may, without prejudice to Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment<sup>1</sup>, require the natural or legal person who is in possession of the substance or object concerned, or who arranges the carriage thereof, to submit documentary evidence:*

(a) *as to the origin and destination of the substance or object concerned; and*

(b) ■ *that it is not waste , including, where appropriate, evidence related to functionality.*

*The protection of the substance or object against damage during transportation, loading and unloading, such as adequate packaging and appropriate stacking, shall also be ascertained.*

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<sup>1</sup> *OJ L 197, 24.7.2012, p. 38.*

- 4b. *The authorities involved in inspections may conclude that the substance or object concerned is waste, if*
- *the evidence referred in paragraph 4a or required under other Union legislation to ascertain that a substance or object is not waste, has not been provided within the period specified by them, or*
  - *the evidence and information available to those authorities are deemed to be insufficient to reach a conclusion or the protection provided against damage is deemed to be insufficient.*

*In such circumstances the carriage of substance or object concerned, or the shipment of waste, shall be considered as an illegal shipment. Consequently, it shall be dealt with in accordance with Articles 24 and 25 of this Regulation and the authority involved in inspections shall, without delay, inform the competent authority of that country accordingly.*

- 4c. *In order to ascertain that a shipment complies with this Regulation, the authorities involved in inspections may require the notifier, the person who arranges a shipment, the holder, the carrier, the consignee and the facility that receives the waste to submit relevant documentary evidence within a period specified by them.*
- 4d. *In order to ascertain that a shipment of waste falling under the general information requirements of Article 18 of this Regulation is destined for recovery operations which are in accordance with Article 49, the authorities involved in inspections may require the person who arranges the shipment to submit documentary evidence, provided by the interim and non-interim recovery facility and, if necessary, approved by the competent authority of destination.*
- 4e. *In cases where the evidence referred in paragraph 4c or 4d has not been provided within the period specified by the authorities involved in inspections, or the evidence and information available to those authorities are deemed to be insufficient to reach a conclusion, those shipments shall be considered as illegal shipments. Consequently, those cases shall be dealt with in accordance with Articles 24 and 25 of this Regulation and the authority involved in inspections shall, without delay, inform the competent authority of that country accordingly.*

**4f. No later than [OJ insert date one year after entry into force], the Commission shall adopt, by means of implementing acts, a preliminary correlation table between codes of the combined nomenclature, provided in Council Regulation (ECC) No 2658/87, and entries in Annexes III - V to this Regulation. The Commission shall maintain that correlation table up to date, to reflect changes to the aforementioned nomenclature and Annex entries, as well as any new waste-related Harmonized System codes that the World Customs Organization may adopt.**

***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59a(2).'***

**(f) Paragraph 5 is replaced by the following:**

**'5. Member States shall cooperate, bilaterally and multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. They shall exchange relevant information on waste shipments, waste flows, operators and facilities and share experience and knowledge on enforcement measures, including the risk assessment carried out pursuant to paragraph 2a of Article 50, within established structures, in particular through the network of correspondents designed according to Article 54 of the Regulation.'**

**(4) As from 1 January 2018, paragraph (2) in Article 51 is replaced by the following:**

**'2. Before the end of each calendar year, Member States shall also draw up a report for the previous year based on the additional reporting questionnaire in Annex IX, and shall send it to the Commission. Within a month from the transmission of that report to the Commission, Member States shall also make publicly available, including electronically via the internet, the section of that report that relates to Article 24 and paragraphs (1), (2) and (2a) of Article 50, including Table 5 of Annex IX, together with any explanation the Member States consider appropriate. The Commission shall compile a list of the Member States' hyperlinks referred to in Annex IX and make it publicly available on its website.'**



**(5) Article 58 to be replaced by the following:**

**'Article 58**

***Amendment of Annexes***

**1. The Commission shall be empowered to adopt delegated acts in accordance with Article 59 to amend the following:**

- (a) Annexes IA, IB, IC, II, III, IIIA, IIIB, IV, V, VI and VII to take account of changes agreed under the Basel Convention and the OECD Decision;**
- (b) Annex V to reflect agreed changes to the list of waste adopted in accordance with Article 7 of Directive 2008/98/EC;**
- (c) Annex VIII to reflect decisions taken under relevant international conventions and agreements.'**

(6) *Article 59 to be replaced by the following:*

'Article 59

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article **58** shall be conferred on the Commission for *a* period of **five years** from the date of entry into force of this Regulation. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

3. The delegation of power referred to in Article **58** may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article **58** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or *of* the Council.'

(7) *Article 59a* is replaced by the following:

'Article 59a

Committee procedure

1. The Commission shall be assisted by the *committee* established by Article 39 of Directive 2008/98/EC. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

***Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.'***

**(8) In Article 60, the following new paragraph 3 is added:**

**'3. By no later than 31 December 2020, the Commission shall, taking into account, inter alia, the reports drawn up in accordance with Article 51, carry out a review of this Regulation and report the results to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. In this review, the Commission shall consider, in particular, the effectiveness of Article 50(2a) in combating illegal shipments, taking into account environmental, social and economic aspects.'**

**(9) Annex IX is amended as follows:**

**(a) the section relating to Article 50(2) is replaced by the following:**

**'Summary information on the outcome of the inspections carried out pursuant to Article 50(2), including:**

- Number of inspections, including physical checks, of establishments, undertakings, brokers and dealers related to waste shipments;**
- Number of inspections of shipments of waste, including physical checks;**
- Number of supposed illegalities on establishments, undertaking, brokers and dealers, related to waste shipments;**
- Number of supposed illegal shipments ascertained during these inspections.**

**Additional remarks:'**

**(b) the following section relating to Article 50(2a) is inserted:**

**'Article 50(2a)**

**Information on the inspection plan(s):**

- **number of inspection plan(s) for the entire geographical territory;**
- **the date of adoption and the period covered by the inspection plan(s);**
- **the latest review date of the inspection plan(s); and**
- **the authorities involved in inspections and the cooperation amongst those authorities.**

**Information where concerns or irregularities can be reported.'**

**(c) *The following section related to Article 50(2) and (2a) is inserted:***

***'The link where the information made publicly available via the internet by Member States, pursuant to paragraph 2 of Article 51, can be accessed electronically.'***

**(10) *In Annex IX, Table 5, the heading of the last column is replaced by the following:***

***'Measures taken, including any penalties imposed'***

## Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from **1 January 2016**.

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

Done at [...],

*For the European Parliament*

*For the Council*

*The President*

*The President*