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Committee on the Environment, Public Health and Food Safety

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1013/2006 on shipment of waste (COM(2013)0516 – C7-0217/2013 – 2013/0239(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Bart Staes

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1013/2006 on shipment of waste (COM(2013)0516 – C7-0217/2013 – 2013/0239(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0516),
 - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0217/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹³ 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*, gaps have been identified in the enforcement and inspections carried out by the

Amendment

(1) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹³ 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. *Whereas co-ordinated inspections in Member States between 2003 and 2010 have found*

authorities in Member States due to, inter alia, a lack of clear provisions in the Regulation on these matters.

between 20 % and 51 % of inspected waste shipments to be illegal, significant divergences and gaps have been identified in the enforcement and inspections carried out by the ***relevant*** authorities in Member States due to, inter alia, a lack of clear provisions ***and concrete obligations*** in the Regulation on these matters.

¹³ OJ L 190, 12.7.2006, p.1

¹³ OJ L 190, 12.7.2006, p.1

Or. en

Justification

It is important to refer to the very high degree of illegal shipments that has been found consistently over the last years so as to highlight the need for legislative changes.

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Effective enforcement and inspections of waste shipments would not only prevent the serious environmental and health impacts stemming from illegal waste shipments, but would also save high costs and result in direct economic benefits for Member States and compliant industry.

Or. en

Justification

*According to a Commission study *, 1% of illegal shipments amount to a total of 2,8 mio tonnes per year. A rate of 25% as found in the last inspection report results in a total of 70 mio tonnes of illegal shipments per year. Apart from the serious effects on health and the environment, the high rates of illegal waste shipments undermine the legitimate waste treatment and disposal industries. Full implementation of EU waste legislation as a whole was found to mean cost savings of €72 billion/year across the EU. Enforcing the waste shipment regulation is a sine qua non for achieving these benefits.*

* “Implementing EU waste legislation for green growth”, DG ENV, 29 November 2011,

<http://ec.europa.eu/environment/waste/studies/pdf/study%2012%20FINAL%20REPORT.pdf>

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Adequate planning of waste shipment inspections is necessary to establish the capacity needed for waste shipment 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. Planning should include a number of key elements, including risk assessments, strategies, objectives, priorities, numbers and types of planned inspections, assignment of tasks, means of cooperation between authorities and provisions on training of inspectors.

Amendment

(2) Adequate planning of waste shipment inspections is necessary to establish the capacity needed for waste shipment 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 **and their implementation**. Planning should include a number of key elements, including risk assessments, strategies, objectives, priorities, numbers and types of planned inspections, assignment of tasks, means of cooperation between authorities and provisions on training of inspectors.

Or. en

Justification

It is not enough to just make plans – the plans also need to be implemented.

Amendment 4

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) In order to promote access to

environmental information under the Convention of the United Nations Economic Commission for Europe on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), which was approved on behalf of the Union by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters^{13a}, the level and quality of information to the public should be improved. Inspection plans as well as the outcome of the inspections, any remedial actions taken by the relevant authorities as a follow up to those inspections, the names of the operators involved in illegal shipments, and the penalties imposed should be made permanently available to the public, including electronically.

^{13a} OJ L 124, 17.5.2005, p. 1.

Or. en

Justification

It is important to recall the Aarhus Convention that inter alia seeks to promote access to environmental information. Inspection plans, as well as the results of inspections and follow-up actions should be made publicly available. This is an important means to ensure proper plans and to facilitate cooperation between Member States. As there is no sensitive information in the plans, they should be permanently available to the public, and not just on request. This also reduces the workload of Member States..

Amendment 5

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Diverging rules exist throughout the Union as regards the possibility for **competent** authorities in Member States to require evidence from waste exporters in order to check the legality of shipments. Such evidence may concern whether the substance or object is “waste” within the meaning of Regulation (EC) No 1013/2006 or whether 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 **competent** authorities in Member States to require evidence from **suspected illegal** waste exporters in order to check the legality of shipments.

Amendment

(3) Diverging rules exist throughout the Union as regards the possibility for **relevant** authorities in Member States to require evidence from waste exporters in order to check the legality of shipments. Such evidence may concern whether the substance or object is “waste” within the meaning of Regulation (EC) No 1013/2006, **whether the waste shipment falls under Article 36** or whether 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 **relevant** authorities in Member States to require evidence from waste exporters in order to check the legality of shipments.

Or. en

Justification

As checking the legality of shipments involves not only competent authorities, but also police and customs authorities, it is more appropriate to speak of relevant authorities.

The authorities should also be allowed to ask for proof of the nature of the waste to ensure compliance with the export ban.

It is not appropriate to limit checks to ‘suspected illegal shipments’. This could undermine inspections as a whole. Traffic policemen can check anyone’s papers, and not just of those they suspect of non-compliance. The same should apply for the authorities with regard to waste shipments.

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) The power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission **with the objective to adopt** technical and

Amendment

(6) The power to adopt acts in accordance with Article 290 of the Treaty **on the Functioning of the European Union** should be delegated to the Commission **in**

organisational requirements for the practical implementation of electronic data interchange. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

*respect of adapting the Annexes to scientific and technical progress, adopting conditions and requirements in relation to pre-consented recovery facilities and adopting technical and organisational requirements for the practical implementation of electronic data interchange. 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 to the Council.***

Or. en

Justification

The Commission only proposed a partial alignment of the current comitology provisions to Article 290 TFEU, as the rest, i.e. the Annexes, is being proposed to be aligned as part of the so called 'omnibus' proposal. However, this leads to a situation of two partial and uncoordinated alignments. It is preferable to align the whole regulation with this amending act rather than do parts here and parts via the omnibus proposal.

Amendment 7

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) 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^{13b}.

^{13b} 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 mechanism for control by Members States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

Justification

This is necessary due to the introduction of a two new implementing acts, see next recital.

Amendment 8

**Proposal for a regulation
Recital 7 b (new)**

Text proposed by the Commission

Amendment

(7b) The examination procedure should be used for the adoption of a conversion table between customs codes and waste codes used in Annexes III – V of Regulation (EC) 1013/2006 and for the adoption of a harmonised protocol for the collection, registration and reporting of data on the enforcement of this Regulation and the penalisation of breaches.

Or. en

Justification

The procedure for the new implementing act needs to be specified.

Amendment 9

**Proposal for a regulation
Recital 8**

Text proposed by the Commission

(8) The Commission **may** adopt guidelines for the application of Article 12(1)(g) of the Regulation; guidelines on the application of Article 15 of the Regulation; guidelines for the cooperation of competent authorities with regard to illegal shipments; further guidance concerning the use of languages; further clarification of the procedural requirements of Title II of the Regulation as regards their application to exports, imports and transit of waste from, to and through the Community.

Amendment

(8) The Commission **should** adopt guidelines for ***methods for calculating the financial guarantee or equivalent insurance as set out in Article 6 of Regulation (EC) No 1013/2006***, the application of Article 12(1)(g) of the Regulation, guidelines on the application of Article 15 of the Regulation, guidelines for the cooperation of competent authorities with regard to illegal shipments, further guidance concerning the use of languages **and** further clarification of the procedural requirements of Title II of the Regulation as regards their application to exports, imports and transit of waste from, to and through the Community, ***guidelines on what constitutes effective, proportionate and dissuasive penalties as referred to in Article 50(1) of Regulation (EC) No 1013/2006 and guidelines on how to conduct a risk assessment pursuant to Article 50(2a) point (b) of Regulation (EC) No 1013/2006.***

Or. en

Justification

The impact assessment identified that a combination of legislative requirements as well as guidance would have the most positive economic, social and environmental impact with the lowest net costs. The adoption of guidance should thus be binding.

A recent coordinated audit on the enforcement of the waste shipment regulation revealed wide discrepancies among the 8 countries how infringements are penalised and that most countries only make limited use of sanctions.

The risk assessment is a central element of the inspection planning; as such it would be beneficial to have guidance thereon.

Amendment 10

Proposal for a regulation

Article 1 – point 1

Regulation (EC) No 1013/2006

Article 2 – point 36

Text proposed by the Commission

‘36. ‘re-use’ means **any operation by which products or components that are not waste are used again for the same purpose for which they were conceived.**

Amendment

‘36. ‘re-use’ means **re-use as defined in Article 3(13) of Directive 2008/98/EC of the European Parliament and of the Council¹.**

*** 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).’**

Or. en

Justification

In line with analogous definitions in the Waste Shipment Regulation, it is more appropriate to have a dynamic definition by reference to the definition given in the Waste Framework Directive.

Amendment 11

Proposal for a regulation

Article 1 – point 1 a (new)

Regulation (EC) No 1013/2006

Article 2 – point 36 a (new)

Text proposed by the Commission

Amendment

(1a) in Article 2, the following point is added:

‘36a. ‘inspection’ means actions undertaken by the relevant authorities to verify that an establishment, an undertaking, or a shipment of waste complies with the relevant requirements laid down in this Regulation.’

Or. en

Justification

It is appropriate to give a definition for the term inspection.

Amendment 12

Proposal for a regulation

Article 1 – point 1 b (new)

Regulation (EC) No 1013/2006

Article 14 – paragraph 6

Text proposed by the Commission

Amendment

(1b) in Article 14, the following paragraph is added:

‘6. The Commission shall be empowered to adopt delegated acts in accordance with Article 59 concerning further conditions and requirements in relation to pre-consented recovery facilities.’

Or. en

Justification

This carries over the implementing measure of Art. 59(2b) of the current regulation into the alignment, which is missing in the Commission proposal. Further conditions and requirements in relation to pre-consented recovery facilities issues are still relevant, so the Commission should retain powers to act thereon via delegated acts.

Amendment 13

Proposal for a regulation

Article 1 – point 3 – point a

Regulation (EC) No 1013/2006

Article 50 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall, by way of measures for the enforcement of this Regulation, provide, *inter alia*, for inspections of establishments and undertakings in accordance with Article 34 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste¹⁴, and for ***spot checks on*** shipments of waste ***or on*** the related recovery or disposal.

2. Member States shall, by way of measures for the enforcement of this Regulation, provide, *inter alia*, for inspections of establishments and undertakings in accordance with Article 34 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste¹⁴, and for ***inspections of*** shipments of waste ***and*** the related recovery or disposal.

Or. en

Justification

Consequential change due to the new definition for inspections. Member States should not inspect either waste shipments or related recovery or disposal, but both.

Amendment 14

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

'2a. Member States shall ***ensure that their competent authorities*** establish plans for inspections aimed at checking compliance with this Regulation. The plans shall cover the entire geographical ***area*** of the Member State concerned and shall apply to ***all waste shipment*** inspections carried out pursuant to paragraph 2, ***including inspections of establishments and undertakings, road- and railway transports and consignments in ports.*** Those plans shall include the following:

'2a. Member States shall establish plans for inspections aimed at checking compliance with this Regulation. The plans shall cover the entire geographical ***territory*** of the Member State concerned and shall apply to inspections carried out pursuant to paragraph 2. Those plans shall include the following:

Or. en

Justification

Editorial changes and simplification of the text without changing the content.

Amendment 15

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – point b

Text proposed by the Commission

Amendment

(b) a risk assessment covering specific waste streams and sources of illegal shipments, **and considering intelligence-based data, such as police investigations and analyses of criminal activities;**

(b) a risk assessment covering specific waste streams and sources of illegal shipments;

Or. en

Justification

Amendment is linked to the new subparagraph after this subparagraph. Intelligence based data might be sensitive, so it should not be included in the plan, unless generally available.

Amendment 16

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – point d

Text proposed by the Commission

Amendment

(d) information on the numbers and types of planned inspections concerning waste sites, road and railway transports and consignments in ports;

(d) information on the numbers and types of planned inspections concerning **establishments and undertakings in accordance with Article 34 of Directive 2008/98/EC**, waste sites, road, **air, waterway** and railway transports and consignments in ports, **including the number of planned physical checks of facilities and waste shipments;**

Or. en

Justification

The number and types of inspections should also explicitly refer to establishments and undertakings in line with the new Article 50(2). Air transport and waterway transport also need to be considered. The information on number and types of inspections should also include information on the planned number of physical checks of facilities and/or waste shipments, as such checks are most important to detect illegal shipments.

Amendment 17

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The risk assessment referred to in point (b) in the first subparagraph shall consider intelligence-based data, such as police investigations and analyses of criminal activities, where relevant. Where such intelligence-based data is not publicly available, it shall not be referred to in the plans.

Or. en

Justification

Amendment linked to the amendment of point b) of the previous subparagraph. Intelligence-based data should be considered for the risk assessment, but the data itself should not be referred to in the plan, unless generally available.

Amendment 18

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

The plans shall include a minimum number of physical checks of facilities and waste shipments in line with the strategy and objectives adopted and the risk assessment conducted. The plans shall not contain any details about operational programming.

Or. en

Justification

It should be clarified that the plans need to contain a minimum number of physical checks, as such checks are the most important means to detect illegal shipments. As the plans are to be made public as an important instrument to ensure that they are properly established, it needs to be clarified that sensitive information such as the operational programming of inspections should not be included in the plans.

Amendment 19

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – subparagraph 3

Text proposed by the Commission

The plans shall be made publicly available by the competent authority in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹⁵.

Amendment

Member States shall ensure that the plans are permanently available to the public, including electronically.

¹⁵ OJ L 41, 14.2.2003, p. 26.

Or. en

Justification

The success of waste shipment inspections to prevent illegal shipments depends on proper planning by all Member States. Diverging approaches only help illegal actors to choose the path of least control by 'port-hopping'. The main purpose of making inspection plans public is to ensure good quality of these plans and to facilitate cooperation between Member States. There is no sensitive information in them as such. They should thus be permanently available to the public, and not just on request. This also reduces the workload of Member States.

Amendment 20

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 1013/2006

Article 50 – paragraph 2a – subparagraph 3 a (new)

Member States shall ensure that the outcome of the inspections carried out pursuant to the plans referred to in this Article, any remedial actions taken by the relevant authorities as a follow up to those inspections, the names of the operators involved in illegal shipments, and the penalties imposed are permanently available to the public, including electronically.

Or. en

Justification

It is important to know the success or failure of the inspection plans, therefore the results of the inspections carried out need to be made public. Moreover, Member States should inform about the remedial action taken, the names of those caught with illegal shipments, and the penalties applied. Such public reporting is likely to have a major deterrent effect.

Amendment 21

Proposal for a regulation

Article 1 – point 3 – point (b a) (new)

Regulation (EC) No 1013/2006

Article 50 – paragraph 3

Present text

Amendment

3. ***Checks on*** shipments may take place in particular:

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

(ba) 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 collection, storage and sorting facilities;***
 - (c) ***at the destination, carried out with the consignee or the facility;***
 - (d) ***at the frontiers of the Union; and/or***

(e) during the shipment within the Union.'

Or. en

(the original point (b) changed to point (c), original point (c) to point (d) and original point (d) to point (e))

Justification

Alignment with the new Article 50(2) and Recital 4 as proposed by the Commission. The possibility of checks as collection, storage and sorting facilities should be explicitly added to the list where inspections on shipments may take place.

Amendment 22

Proposal for a regulation

Article 1 – point 3 – point b b (new)

Regulation (EC) No 1013/2006

Article 50 – paragraph 4

Present text

Amendment

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

(bb) paragraph 4 is replaced by the following:

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

Or. en

Justification

Consequential change due to the new definition for inspections.

Amendment 23

Proposal for a regulation

Article 1 – point 3 – point c

Regulation (EC) No 1013/2006

Article 50 – paragraph 4a – introductory part

Text proposed by the Commission

'4a. In order to ascertain ***that a shipment does not contain waste within the meaning of Article 2(1)***, the ***competent authority*** may:

(i) verify that appropriate protection of the shipment against damage during transportation, loading and unloading has been foreseen; and

(ii) in cases of a suspected illegal shipment, require the person in charge of the shipment to submit a copy of the invoice and contract relating to the sale or transfer of ownership of the substance or object, which states that it is destined for re-use within the meaning of Article 2(36) and to prove that it is fully functional.'

Amendment

'4a. In order to ascertain ***whether a substance or object being shipped by road, rail, air, sea or inland waterway is waste or not***, the ***relevant authorities*** may, ***without prejudice to Directive 2012/19/EU of the European Parliament and of the Council****, ***require the natural or legal person who is in possession, or who arranges the shipment, of the substance or object, to:***

(i) submit a copy of the invoice and contract relating to the sale or transfer of ownership of the substance or object, which states that it is destined for re-use ;
or

(ii) submit documentary proof that is not waste or that has ceased to be waste in accordance with Article 6(1) of Directive 2008/98/EC.

Where appropriate, the relevant authorities may require those persons to provide adequate proof that the substance or object is fully functional.

The relevant authorities may also verify that appropriate protection of the substance or object against damage during transport, loading and unloading, in particular through sufficient packaging and appropriate stacking of the load has been provided.

**** Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE), OJ L 197, 24.7.2012, p. 38.'***

Or. en

Justification

Clarification that the relevant authorities should be entitled to check any shipment whether it constitutes waste or not and not just suspected illegal shipments, as that could undermine the very purpose of inspections.

Amendment 24

Proposal for a regulation

Article 1 – point 3 – point c

Regulation (EC) No 1013/2006

Article 50 – paragraph 4a a (new)

Text proposed by the Commission

Amendment

4aa. In order to ascertain that a shipment does not contain waste referred to in Article 36, the relevant authority may require the natural or legal person who is in possession, or who arranges the shipment, of the waste to submit documentary evidence about the nature of the waste and the contract, letter or other document signed by the recovery facility specifying the waste treatment methods, technologies and standards applied by the recovery facility in the country of destination.'

Or. en

(Amendment inserts a new point 4aa. (which becomes the new 4b), 4b. of the COM proposal becomes the new 4c. but is otherwise unchanged.)

Justification

The relevant authorities should also be entitled to check the nature of the waste so as to make sure that the export ban of hazardous and other waste as referred to in Article 36 is complied with.

Amendment 25

Proposal for a regulation

Article 1 – point 3 – point c

Regulation (EC) No 1013/2006

Article 50 – paragraph 4b a (new)

Text proposed by the Commission

Amendment

'4ba. In the absence of proof as required pursuant to paragraphs 4a, 4aa and 4b, or in the absence of adequate protection of the substance or object against damage during transport, loading and unloading as referred to in paragraph 4a, the relevant authorities shall presume that the load is an illegal shipment. In these circumstances, the load will be dealt with in accordance with Articles 24 and 25.'

Or. en

Justification

In line with the provisions of the WEEE Directive, it should be clarified that in the absence of proof as required or in the absence of adequate, the shipment should be considered as an illegal shipment and be dealt with accordingly.

Amendment 26

Proposal for a regulation

Article 1 – point 3 – c

Regulation (EC) No 1013/2006

Article 50 – paragraph 4b b (new)

Text proposed by the Commission

Amendment

'4bb. The Commission shall, no later than [OJ insert date one year after entry into force], by means of implementing acts, adopt the following:

(a) a conversion table between customs codes and waste codes used in Annexes III - V of this Regulation;

(b) a harmonised protocol for the collection, registration and reporting of data on the enforcement of this Regulation and the penalisation of breaches thereof.

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

Justification

A recent coordinated audit on the enforcement of the waste shipment regulation showed that enforcement of the waste shipment regulation is complicated by the existence of two different code systems: the waste codes in this regulation and the international tariff codes used by customs authorities. It called for practical solutions such as a conversion table so that tariff codes can be used to select high-risk shipments for inspections by customs. Moreover, it also called for an EU protocol for data collection on enforcement, as such data form the very basis for the inspection planning.

Amendment 27**Proposal for a regulation****Article 1 – point 3 – point a (new)**

Regulation (EC) No 1013/2006

Article 50 – paragraph 5

Present text

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

Amendment

(ca) 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 information on waste shipments, waste flows, operators and facilities and share experience and knowledge on enforcement measures. The Commission shall create a common platform that includes all Member States for these purposes.'**

Justification

A recent coordinated audit on the enforcement of the waste shipment regulation based on eight national audits recommended consolidating and intensifying international cooperation and exchange of such information. The very good work of the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) is based on voluntary cooperation and lacks the participation of key Member States (e.g. Italy, France and Greece). Illegal transboundary shipments can only be tackled effectively if all Member States work together, so a common platform should be created.

Amendment 28

Proposal for a regulation

Article 1 – point 3 –a (new)

Regulation (EC) No 1013/2006

Article 51 – paragraph 4

Present text

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

Amendment

(3a) in Article 51, paragraph 4 is replaced by the following:

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

Or. en

Justification

A recent coordinated audit on the enforcement of the waste shipment regulation revealed wide discrepancies among the eight countries in the way in which infringements are penalised and that most countries only make limited use of sanction instruments. It called for an assessment of whether the sanctions policy is proportionate and dissuasive and for more information on the use of sanctions. It is thus important that the Commission specifically includes the actual penalties applied by Member States in its report, which is not yet the case.

Amendment 29

Proposal for a regulation

Article 1 – point 3 b (new)

Regulation (EC) No 1013/2006

Article 58

Present text

1. The Commission may amend the Annexes to take account of scientific and technical progress. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure

Amendment

(3b) Article 58 is replaced by the following:

'The Commission ***shall be empowered to adopt delegated acts in accordance with Article 59:***

with scrutiny referred to in Article 59a(3).

In addition:

(a) Annexes I, II, III, IIIA, IV and V shall be amended to take account of changes agreed under the Basel Convention and the OECD Decision;

(b) unclassified wastes may be added to Annex IIIB, IV or V on a provisional basis pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision;

(c) following the submission of a request by a Member State, mixtures of two or more wastes listed in Annex III may be considered for inclusion in Annex IIIA in the cases referred to in Article 3(2) on a provisional basis pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision. Annex IIIA may contain the proviso that one or more of the entries therein shall not apply for exports to countries to which the OECD Decision does not apply;

(d) the exceptional cases referred to in Article 3(3) shall be determined and, where necessary, such waste shall be added to Annexes IVA and V and deleted from Annex III;

(e) Annex V shall be amended to reflect agreed changes to the list of hazardous waste adopted in accordance with Article 1(4) of Directive 91/689/EEC;

(f) Annex VIII shall be amended to reflect relevant international conventions and agreements.

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

(a) to amend the Annexes to take account of scientific and technical progress;

(b) to amend Annexes I, II, III, IIIA, IV and V to take account of changes agreed under the Basel Convention and the OECD Decision;

(c) to add unclassified wastes to Annex IIIB, IV or V on a provisional basis pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision;

(d) following the submission of a request by a Member State, in the cases referred to in Article 3(2) to include on a provisional basis, pending a decision on their inclusion in the relevant Annexes to the Basel Convention or to the OECD Decision, in Annex IIIA to this Regulation mixtures of two or more wastes listed in Annex III, establishing when necessary the condition that one or more of the entries therein shall not cover exports to countries to which the OECD Decision does not apply;

(e) to determine the exceptional cases referred to in Article 3(3) and, where necessary, move such waste from Annex III to Annexes IVA and V;

(f) to amend Annex V to reflect agreed changes to the list of hazardous waste adopted in accordance with Article 7 of Directive 2008/98/EC;

(g) to amend Annex VIII to reflect relevant international conventions and agreements.'

Justification

The Commission only proposed a partial alignment of the current comitology provisions to Article 290 TFEU, as the rest is being proposed to be aligned as part of the so called 'omnibus' proposal. However, this leads to a situation of two partial and uncoordinated alignments. It is preferable to align the whole regulation with this amending act rather than do parts here and parts via the omnibus proposal.

Amendment 30

Proposal for a regulation

Article 1 – point 4

Regulation (EC) No 1013/2006

Article 59

Text proposed by the Commission

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 26(5)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of power referred to in **Article 26(5)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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

Amendment

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 14(6), Article 26(5) and Article 58** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of power referred to in **Articles 14(6), Article 26(5) and Article 58** may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 26(5) 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 the Council.

Articles 14(6), Article 26(5) and 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 the Council.

Or. en

Justification

Alignment in line with the amendments proposed to Articles 14(6) and 58.

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Regulation (EC) No 1013/2006

Annex IX – table 5

Present text

Measures taken including *possible* penalties

Amendment

(4a) In Annex IX, Table 5, the heading of the last column is replaced by the following:

'Measures taken, including penalties imposed'

Or. en

Justification

A recent coordinated audit on the enforcement of the waste shipment regulation revealed wide discrepancies among the eight countries in the way in which infringements are penalised and that most countries only make limited use of sanction instruments. There needs to be more transparency with regard to the penalties actually applied so as to facilitate a convergence of their use and of the levels applied. This would contribute to better enforcement of this Regulation across the EU.

EXPLANATORY STATEMENT

1. Background

According to the European Environment Agency (EEA), in 2009, EU Member States generated 74 million tonnes (Mt) of hazardous waste (28 % more than in 2000)¹. According to Eurostat, in 2010, EU Member States generated 101 Mt of hazardous waste, and in total 927 Mt of waste excluding major mineral wastes².

Exports of hazardous waste to non-OECD countries are prohibited under the Waste Shipment Regulation (WSR). Exports for recovery of non-hazardous waste to non-OECD countries are allowed, provided that the importing country has not notified an objection to such imports and that the facility which receives the waste will be operated in accordance with human health and environmental protection standards that are broadly equivalent to standards established in Community legislation.

According to the Commission's impact assessment, in 2009, Member States reported around 400 cases of illegal shipments of waste (half were between Member States, half were into or out of the EU). The most common reasons for illegality found were that the shipment of waste was effected without notification to the relevant competent authorities or contrary to a prohibition on shipments under the WSR. However, according to a 2009 report by the EEA, the reported cases represent a fraction of the actual number, and the number of illegal shipments was concluded to be considerable³.

In fact, three joint enforcement projects carried out by the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) between 2003 and 2010, which checked a certain number of shipments in several Member States, found 20-51% of waste shipments to be illegal.

A Commission study from 2011 found that if only 1% of all waste shipments were illegal, the total tonnage of illegal waste shipments would amount to 2,8 Mt per year⁴. A non-compliance rate of 25% as found in the latest IMPEL study would result in a staggering volume of 70 Mt of illegal waste shipments every year.

2. The problems caused by illegal shipment:

The Commission summarizes the problems due to illegal shipments as follows:

- dumping or substandard treatment of waste following an illegal shipment usually has severe implications for environment and health,
- high clean-up or repatriation costs,

¹ Movements of waste across the EU's internal and external borders, EEA report No 7/2012

² Environmental statistics and accounts in Europe, Eurostat 2010 edition

³ Waste without borders in the EU? Transboundary shipments of waste, EEA report No 1/2009

⁴ Assessment and guidance for the implementation of EU waste legislation in Member States, BiPRO, 16 November 2011

- significant loss of resources,
- distortion of the internal market (lack of a level playing field for industry).

According to the Commission, waste generation, including that of hazardous waste, continues to grow. Shipments of notified waste out of Member States have steadily increased, and Europol has also identified an increase in the volume of illegal shipments. The major problem of an already high level of illegal waste shipments is thus likely to increase further if no action is taken.

Moreover, a Commission study found that full compliance with eight pieces of EU waste legislation, including the WSR, by 2020 would increase the turnover of waste management and recycling industries by €42 billion/year and create over 400,000 new jobs

⁵

Decisive action against illegal shipments is thus a win-win solution for environment and health as well as for industry and the economy.

3. The causes for illegal shipments

The Commission indicates the following drivers of illegal shipments:

- significantly lower costs in developing countries for waste treatment/disposal,
- organised environmental crime wide-spread with regard to waste issues,
- gaps in enforcement in some Member States (with enforcement of WSR being a low priority in many Member States).

According to the impact assessment, out of a total of 26,251 inspections of transports conducted inter alia in 22 Member from October 2008 to November 2010, 3,334 contained waste, and 23% thereof were non-compliant. The number of transport inspections and the number of violations found varies significantly between Member States. Some countries do almost no inspections whatsoever (e.g. France had total of 26 inspections with 24 physical inspections compared to Poland with 4264 inspections and 3391 physical inspections). The non-compliance rate varied from 14,8 to 100%, with an average of 23 %.

These major discrepancies were found to lead to "port hopping", i.e. exporters of illegal waste choose to send their waste through Member States with the last control.

Importantly, when companies were inspected rather than transports, 79% of the companies were found to be non-compliant (95 out of 120). This points to the urgent need for more upstream checks of waste generation and collection sites to try to address the problem at its origin, and not only via border controls of shipments.

4. Commission proposal

The Commission proposes several measures to overcome the significant gaps in enforcement in Member States. In summary, it proposes the following:

⁵ Study "Implementation of EU waste legislation for green growth, BioIntelligence Service, 2011

- all Member States to make a risk-based inspection plan, setting out the strategy and objectives for waste shipment inspections and the necessary resources for it,
- inspection plans to be publicly available according to Directive 2003/4 on public access to environmental information,
- competent authorities to be allowed to request proof in cases of suspected illegal shipments about the nature of the shipment (waste vs. non-waste) or about the nature of the recovery operation (environmentally sound management).

5. Proposals by the rapporteur

Your rapporteur fully supports the objectives of the Commission proposal. As indicated earlier, strong action against illegal shipments is a win-win solution for environment and health as well as for industry and the economy.

Your rapporteur therefore suggests strengthening the Commission proposal further:

- a) Improve the knowledge basis about illegal shipments
- b) Inspection plans to include a minimum number of physical checks,
- c) Inspection plans and inspection results to be permanently available to the public,
- d) More powers to relevant authorities,
- e) Improve cooperation between Member States.

Ad a) Current enforcement of the WSR was found to suffer from inadequate information management by the relevant authorities ⁶.

A harmonised protocol for the collection, registration and reporting of data on the enforcement of the WSR and a conversion table between customs codes and waste codes to better intertwine customs with waste shipment controls are necessary. Furthermore, information about the penalisation of violations is necessary as a means towards more harmonisation in the area.

Ad b) Member States should include a minimum number of physical checks of facilities and/or waste shipments in line with the strategy and objectives and the risk assessment conducted so as to ensure a minimum level of inspections.

Ad c) It is of prime importance that inspection plans are permanently available to the public, not just upon request. This serves as an external quality control of these plans and facilitates cooperation between Member States. There is no sensitive information in them as such, as they will not include the operational programming, so publication of the plans does not harm the purpose of inspections. Making them available permanently available also reduces the workload for Member States. The results from the application of the plans should also be published.

Ad d) The relevant authorities should not need to have a suspicion to be able to ask for supplementary information to check the nature of the shipment (waste vs. non-waste) or its destination (environmentally sound recovery). The same should apply for supplementary checks about the nature of the waste (e.g. hazardous or not), so as to be able to properly enforce the relevant export bans.

⁶ Report of the Commission on the enforcement of the European Waste Shipment Regulation, Joint report on national audits, October 2013

Ad e) Illegal shipments can only be tackled effectively if all Member States work together. Member States should therefore be obliged to exchange information on waste shipments, waste flows, operators and facilities and share experience and knowledge on enforcement measures. Moreover, the Commission should create a common platform that includes all Member States for these purposes.

Finally, your rapporteur suggests aligning all current comitology provisions to Article 290 TFEU in this amending act so as to ensure coherence, rather than doing part here and part via the so called 'omnibus' proposal.