EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Frequently Asked Questions (FAQs) on

Regulation (EC) 1013/2006 on shipments of waste

Foreword

Proper implementation, application and enforcement of EU waste legislation and in particular on waste shipments are among the key priorities of EU environmental policy. Regulation (EC) No. 1013/2006 on shipments of waste[1] is a relatively new regulation, which applies from 12 July 2007. Closely linked with the implementation and application of this regulation is Directive 2006/12/EC on waste[2]. Issues concerning the interpretation of the waste definition are essential since items falling within its scope are also within the scope of the Waste Shipment Regulation. Since the date of application of the Waste Shipment Regulation, many questions regarding its interpretation and application have been raised by national authorities and stakeholders.

This document on Frequently Asked Questions is intended to assist national authorities and economic operators with the aforementioned legislation. The answers reflect the views of the Commission services and as such are not legally binding. The binding interpretation of EU legislation is the exclusive competence of the European Court of Justice.

This document may be revised in the future, according to the further development of European waste management policy.

September 2010 *Karl Falkenberg*

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[1] Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.07.2006, p. 1). In the text referred to as “Waste Shipment Regulation”.

[2] Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9). In the text referred to as the "Waste Framework Directive". Note that Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3) will be applicable for Member States by 10 December 2010.

Notice:

1. These FAQs were produced over a period of more than one year (January 2009 to February 2010).

2. To facilitate searching, keywords are listed directly after each question.

3. The FAQs reflect the European legislation in force at the time of writing. Note that the documents cited may not be the latest version. For ease of reading, we have tried to avoid footnotes showing legal references.

The two legal instruments mentioned in most FAQs are:

- the Waste Shipment Regulation (WSR)
  (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1), last amended by Directive 2009/31/EC of 23 April 2009 (OJ L 140, 5.6.2009, p. 114).)

and

- the Waste Framework Directive (WFD)
  (Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9); last amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ L 140, 5.6.2009, p. 114). Note that this Directive will be repealed by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3) by 11 December 2010. Any differences between Directive 2006/12/EC and Directive 2008/98/EC are, where appropriate, outlined and discussed in the text). The acronym WFD should be understood as referring to Directive 2006/12/EC unless otherwise specified.

Although not addressed in these FAQs, it is reminded that road, rail and inland waterways transport of certain wastes is regulated by Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods.

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1. CLASSIFICATION ISSUES RELATED TO SINGLE WASTE STREAMS

1.1. When can plastic waste be regarded as plastic waste coming under entry B3010 in Annex V, Part 1, List B to Regulation (EC) No 1013/2006, including the fact that it must be 'prepared to a specification'?

Keywords: Classification of plastic waste; prepared to a specification

Plastic waste can be regarded as plastic waste coming under entry B3010 if

- it is scrap plastic of non-halogenated polymers and copolymers, cured waste resins or condensation products and certain fluorinated polymer wastes (i.e. perfluoroethylene/propylene (FEP) and certain perfluoro alkoxyl alkanes) or mixtures thereof;
- it is not mixed with other wastes;
- it is prepared to a specification;
- it is not contaminated by other materials to an extent which
    - increases the risks associated with the waste sufficiently to render it appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Hazardous Waste Directive 91/689/EEC; or
    - prevents the recovery of the waste in an environmentally sound manner.

There is no definition of 'prepared to a specification' in the Basel Convention, OECD Decision C (2001)/107/Final or the WSR.

Plastic scrap specifications are shown on the websites of organisations such as ISRI (Institute of Scrap Recycling Industries) and BIR (Bureau International de Recyclage).

However, they are not legally binding, so references to these specifications may not be accepted by authorities or courts.

In cases of disagreement between the countries of dispatch and destination on the classification of the waste, Article 28 of the WSR applies.

1.2. How should plastic waste containing brominated flame retardants (BFRs) be classified?

Keywords: Classification of plastic waste; prepared to a specification

Brominated flame retardants that have been used in the manufacture of plastics often include chemicals of potential concern like polybrominated biphenyl ethers (PBDE), such as penta-, octa- and decabromodiphenyl ether.

To assess the hazardousness of waste, refer to Note 1 of Annex III to Directive 2008/98/EC on waste. This note says that the hazardous properties 'toxic' (and 'very toxic'), 'harmful', 'corrosive', 'irritant', 'carcinogenic', 'toxic to reproduction', 'mutagenic' and 'eco-toxic' are based on the criteria laid down by Annex VI to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances. The same Annex VI also indicates that if the concentrations of impurities, additives or individual constituents of substances are greater than or equal to:

- 0.1 % % for substances classified as very toxic, toxic, carcinogenic (category 1 or 2), mutagenic (category 1 or 2), toxic to reproduction (category 1 or 2), or dangerous for the environment (assigned the symbol 'N' for the aquatic environment, dangerous for the ozone layer), or
- 1 % for substances classified as harmful, corrosive, irritant sensitising, carcinogenic (category 3), mutagenic (category 3), toxic to reproduction (category 3), or dangerous for the environment (not assigned the symbol 'N', i.e. harmful to aquatic organisms, may cause long-term adverse effects),

then the waste should be classified in line with the requirements of Articles 5, 6 and 7 of Council Directive 1999/45/EC concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations.

Therefore plastic waste containing PBDE can only be classified on a case-by-case basis.

Until 31 May 2015, you may still use Annex VI of Directive 67/548/EEC to classify waste in terms of its hazardousness, as an alternative to the new Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP Regulation). The criteria for classification in hazard classes appear in Annex I of the new Regulation. On 1 June 2015, Directives 67/548/EEC and 1999/45/EC will be repealed and only the new CLP Regulation will apply.

1.3. There may be enforceability problems if mixtures of BFR-rich plastic waste containing penta- and octa-BDE above the threshold level of 0.1 % are not classified as B3010. Is a threshold level in wastes enforceable at all? How could the associated enforceability problems be dealt with?

Keywords: Classification of plastic waste; brominated flame retardants, enforceability problem

The question is about mixtures of BFR-rich plastics **and other plastic wastes**. It assumes that if the concentration of penta- and octa-BDE in the BFR-rich fraction in the mixture exceeds 0.1 % then this mixture should not be classified as B3010. This answer deals with the shipment of plastic waste from electric and electronic equipment containing brominated flame retardants and related enforcement problems.

The Waste Electrical and Electronic Equipment (WEEE) Directive, Annex II, requires selective treatment for plastics containing brominated flame retardants (referred to as 'BFR-rich plastics') using the best available treatment, recovery and recycling techniques.

Plastic wastes from electrical and electronic equipment contain mainly BFR-poor plastics and only a smaller amount of BFR-rich plastics, if the separation step (as required by the WEEE Directive) has not been carried out.

In practice the separation step (removal) of the BFR-rich plastics sometimes takes place in the country of destination. So a mixture of two plastic waste fractions is shipped: a "BFR-rich" and a "BFR-poor" plastic waste fraction.

Enforcement depends on the sorting of plastic waste (such as plastic components of TVs, computers, etc.). Once the plastics are shredded, it will be difficult to identify PBDEs in a mixed plastic fraction. However, a recycling plant that receives the WEEE and mixes different BFR-rich (thus hazardous) and BFR-free fractions is guilty of diluting hazardous wastes.

Inspectors can request further information from the producer or trader of the waste:

- Asking for a confirmation/certificate that removal has been carried out (as required by the WEEE Directive).
- If the waste has already been treated in a treatment facility, its permit could be requested. The permit will show if the facility is equipped to carry out the removal needed. However it will not show whether or not the separation has actually been carried out.
- Companies are not required by law to supply a chemical analysis of the waste shipped. However, the classification into waste types has to be based on the waste characteristics. Both the origin and the chemical characteristics of the waste have to be considered. In certain cases chemical analysis will be needed to categorise waste

correctly. The producer of the waste should keep records of the reasons for categorisation. In an inspection these records can be asked for.

To solve enforcement problems in the shipment of plastics from electrical and electronic equipment, detailed documentation of previous treatment processes would be essential.

1.4. What is the correct classification for waste from 'white goods' (large household appliances such as stoves, dishwashers, refrigerators etc.), which have been decontaminated by removing any hazardous components and are free of any cables, printed circuit cards, capacitors and so on?

Keywords: Classification; decontaminated white goods

GC020 of Annex III Part II WSR does not appear to be the right classification for 'white goods' as it includes electronic scrap (e.g. printed circuit boards, electronic components, wire etc.) and reclaimed electronic components suitable for base and precious metal recovery (these parts have been already removed).

Instead, 'white goods' should be classified as GC010 ('Electrical assemblies consisting only of metals or alloys') as long as

- they have been decontaminated by removing any hazardous components and are free of any cables, printed circuit cards, capacitors etc. and
- the non-metal parts have been removed (cooling devices have a metal content of 60 % and a plastic content of 35 %).

If non-metal components have not been removed, 'white goods' are not listed, even if they have been decontaminated to remove hazardous components and are free of any cables, printed circuit cards, capacitors and so on.

This is in line with the revised Correspondents' Guideline No 1 on Shipments of Waste Electrical and Electronic Equipment (WEEE): 'A precautionary approach should be taken to the classification of WEEE. If it is not clear that the WEEE in question is covered by an entry in Annex III ('Green' listed waste), IIIA or IIIB of the WSR, the shipment should be notified.'

1.5. Plastic waste is often contaminated with other types of waste (adhering foodstuffs, sterilising agents, bleaches). Is post-consumer plastic waste excluded from entry B3010 unless it is properly sorted and cleansed, because of the phrase 'not mixed with other wastes'?

Keywords: Classification of post consumer plastic waste; mixing of wastes

Entry B3010 states that plastic or mixed plastic materials, provided they are not mixed with other wastes, come under this entry. Entry B3010 specifies three main groups of plastics (all of them including several sub-groups): Scrap plastic of non-halogenated polymers and

copolymers, Cured waste resins or condensation products and Fluorinated polymer wastes. For fluorinated polymer wastes, post-consumer wastes are explicitly excluded from this entry.

The WSR prohibits the mixing of different **waste entries** (unless they are included in Annex IIIA; otherwise for mixtures of waste the notification procedure has to be applied). Therefore, the phrase 'not mixed with other wastes' in the wording of B3010 cannot refer to mixing with other waste **entries**.

'Not mixed with other wastes' should be interpreted in terms of the defined content of wastes in Annex V Part 1, List B B3 'Wastes containing principally organic constituents, which may contain metals and inorganic materials'. Wastes in Category B3 contain principally organic constituents and may contain metals and inorganic materials. For B3010 Category B3 is further restricted: B3010 must not be mixed with other wastes (this includes mixtures with hazardous as well as non-hazardous organic constituents, metals and inorganic materials mentioned in B3). Therefore other wastes must be separated.

Post-consumer plastic waste may be classified as B3010:

- if the plastic waste is not mixed with other wastes (this includes mixtures with hazardous as well as non-hazardous metals and inorganic materials mentioned in B3)
- if the plastic waste is prepared to a specification
- if polymers and copolymers are not halogenated.

Post-consumer plastic waste fractions consisting predominantly of PVC are included in entry GH013 if the waste is not contaminated and the waste can be recovered in an environmentally sound manner.

As for the meaning of 'prepared to a specification': Plastic scrap specifications are shown on the websites of organisations such as ISRI (Institute of Scrap Recycling Industries) and BIR (Bureau International de Recyclage). However, they are not legally binding, so references to these specifications may not be accepted by authorities or courts. In cases of disagreement between the countries of dispatch and destination on the classification of the waste, Article 28 of the WSR applies.

1.6. How should post-consumer plastic waste be classified?

Keywords: Classification of post consumer plastic waste; contamination

While there is no Basel code to explicitly cover post-consumer plastic waste, these may be classified as B3010:

- if the plastic waste is not mixed with other wastes (this includes mixtures with hazardous as well as non-hazardous metals and inorganic materials mentioned in B3)
- if the plastic waste is prepared to a specification
- if polymers and copolymers are not halogenated.

Post-consumer plastic waste fractions consisting predominantly of PVC are included in entry GH013 if the waste is not contaminated and the waste can be recovered in an environmentally sound manner.

Specifications are for example limits on contamination (e.g. 2% by weight of non-specified plastic or non-plastic material). Further requirements are e.g. 'essentially free of dirt, mud, stones', or 'no free-flowing liquid'. Current plastic scrap specifications are shown on the websites of organisations such as ISRI and BIR.

Separately collected plastic waste from households is not prepared to a specification. Therefore post-consumer plastic waste collected from households should be classified as 'plastics' according Annex V, Part 2 WSR, LOW code 20 01 39.

1.7. How does the wording of entry B3010 compare with some of the other entries, such as glass (B2020, which can also be packaging material) and paper (B3020, provided it is not mixed with hazardous wastes), where there is no explicit requirement such as 'not mixed with other wastes'?

Keywords: Classification of plastic, glass and paper; entry B3010

Wastes in Category B2, and therefore B2020, contain principally inorganic constituents and may contain metals and organic materials (e.g. screw caps, labels).

Wastes in Category B3 contain principally organic constituents and may contain metals and inorganic materials (e.g. composite materials).

For B3010 and B3020 Category B3 is further restricted:

- B3010 must not be mixed with other wastes (this includes mixtures with hazardous as well as non-hazardous organic constituents, metals and inorganic materials mentioned in B3). These fractions have to be separated from the plastic waste.
- B3020 must not be mixed with hazardous wastes. This means that this waste can include non-hazardous fractions of organic constituents, metals and inorganic materials (e.g. a beverage carton which can be listed as B3020 consists of paper, plastic and metal). Hazardous fractions have to be separated from paper, paperboard and paper product wastes.

In general, the entries B2020, B3010 and B3020 are not restricted to packaging materials. Moreover, the phrase 'not mixed with other wastes' is also used in entries not typically applied to waste collected separately (e.g. B3040).

For the entries B3010 and B3020, it is obvious that these wastes are often generated in mixed form with other wastes. The explicit requirement 'not mixed with other wastes (B3010)' and 'not mixed with hazardous waste (B3020)' could be interpreted as a way to guarantee unmixed waste fractions and well-defined assignment.

Moreover, the explicit requirements mentioned could be interpreted as a way to ensure that only separately collected waste fractions with low impurities are assigned to B3010 and B3020. Typical impurities in separately collected plastic waste amount to 20–30 % by weight. These amounts are far above the allowable contamination of plastic wastes prepared to a specification.

1.8. If there are stricter standards with regard to plastic waste, are these stricter standards meant to exclude post-consumer plastic waste from entry B3010 unless it is properly sorted to remove other materials and cleansed?
Keywords: Classification of post consumer plastic waste; contamination; prepared to a specification

The answer to question 1.6 states that post-consumer plastic collected from households cannot be classified as B3010 as this waste is not prepared to a specification. Specifications include for example limits on contamination (e.g. 2 % by weight of non-specified plastic or non-plastic material). Further requirements are e.g. 'essentially free of dirt, mud, stones', or 'no free-flowing liquid'.

Sorting and/or cleansing will be necessary to meet the specifications of the categories.

The answer to question 1.7 states that the phrase 'not mixed with other wastes' means that it is necessary to remove organic constituents, metal and inorganic wastes, which may be contained in wastes of category B3 (Annex V Part 1, List B).

Post-consumer plastic waste is excluded from entry B3010 if other wastes have not been removed and if the solid plastic waste is not prepared to a specification.

1.9. What is the relationship between the term 'mixture' as defined in Article 2 (3) of the WSR, the phrase 'not mixed with other wastes' in entry B3010, and the term 'contamination'?
Keywords: Classification; Plastic waste; Definition of mixture and contamination

'Mixture of wastes' means waste that results from an intentional or unintentional mixing of two or more different wastes and for which mixture no single entry exists in Annexes III, IIIB, IV and IVA. (Article 2 (3) of the WSR)

For waste shipment, mixtures of waste not classified under one single entry in Annex III, or of two or more wastes listed in Annex III, have to be listed in Annex IIIA, provided that the composition of these mixtures does not impair their environmentally sound recovery, This is in accordance with Article 58 (Amendment of Annexes).

'Not mixed with other wastes' comprises two aspects:

- The heading of Annex V Part 1, List B B3 ('Wastes containing principally organic constituents, which may contain metals and inorganic materials') suggests that wastes

within Category B3 contain principally organic constituents and may contain metals and inorganic materials. For B3010, Category B3 is further restricted: solid plastic waste can only be classified as B3010 if it is unmixed with other waste (organic constituents, metals and inorganic materials in the sense of B3).

- In plastic waste from households (separate collection system) the impurities can amount to 20–30%. Here 'not mixed with other wastes' means that these impurities have to be removed.

A definition of 'contamination' can be derived from the introductory notes of WSR Annex III:

Contamination by other materials

(a) increases the risks associated with the wastes sufficiently or

(b) prevents the recovery of the wastes in an environmentally sound manner.

'Not mixed with other wastes' in entry B3010 means that all other wastes not listed in that entry should be removed. The contamination of the solid plastic waste should be below the thresholds given by specifications. Only plastic waste prepared to a specification should be classified as B3010.

1.10. How should clean, separated beverage cartons with plastic and/or metallic coatings, such as TetraPaks, be classified?

Keywords: Classification, Laminated Cardboard; TetraPak

Classification as B3020

The WSR includes in its Annex V, part I, list A (Annex VIII to the Basel Convention) the entry B3020 'Paper, paperboard and paper product wastes' including laminated paperboard.

Consequently, laminated paperboard comes under entry B3020.

Neither the WSR nor the Basel Convention, the WFD or the European Waste List provide a definition of what exactly is meant by the term 'laminated paperboard'. A general, non-binding definition of lamination is as follows:

> A **laminate** is a material that can be constructed by uniting two or more layers of material together. The process of creating a laminate is **lamination**, which in common parlance refers to the placing of something between layers of plastic and glueing them with heat and/or pressure, usually with an adhesive.
>
> […]The materials used in laminates can be the same or different. [3]

Consequently, following this definition, the lamination is not restricted to one material. There is no indication of binding definitions to the contrary.

[3]The free encyclopedia Wikipedia, http://en.wikipedia.org/wiki/Laminate.

TetraPak is described as in several information sources as follows:

> 'TetraPak — The packaging material for carton-based packages is composed of a laminate of paper, polyethylene and, for aseptic packages, aluminium foil.[4]
>
> A Tetra Pak carton is typically made from 75% paperboard, and between 10% and 25% low density polyethylene (LDPE), which is used to laminate the inside and outside of the carton. The HDPE is used to make the caps and closures. Long-life and aseptic cartons also contain a thin layer of aluminium, typically around 5%[5] .
>
> The printed paper is then **laminated** with polyethylene on the outside and with foil (for aseptic cartoons) and polyethylene on the inside.[6]'

Consequently, following these explanations, beverage cartons such as TetraPak can be classified as laminated paperboard falling under entry B3020 of the Waste Shipment Regulation.

Classification as EWC 19 12 12

The European Waste List (EWL) includes in its Annex the entry 19 12 12 'other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11'. Entry 19 12 11 is defined as other wastes (including mixtures of materials) from mechanical treatment of waste containing dangerous substances.

Following the classification system, entry 19 12 12 of the EWL includes wastes (including mixtures of materials) from waste management facilities (code 19), in particular from mechanical waste treatment plants including sorting, crushing, compacting and pelletising facilities (code 19 12) not containing dangerous substances (code 19 12 11).

The question is based on the assumption that the beverage cartons are cleaned and separated from household waste, thus implying cleaning and sorting in a mechanical treatment plant.

If the beverage cartoons have firstly been cleaned and sorted in a mechanical treatment plant, they can be classified as EWC 19 12 12.

However, the WSR clearly prioritises using the Basel code rather than the EWC code, as stated in the introductory note to Annex V of the WSR.

Code B3020 is listed in part 1, list B of Annex V of the WSR while the EWC code 19 12 12 is listed in part 2 of the Annex V of the WSR. Code B3020 does sufficiently describe clean, separated beverage cartons.

Consequently, clean, separated beverage cartons such as TetraPak should be classified as entry B3020 rather than EWC 19 12 12.

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[4] Development in brief, Brochure, download at: http://www.tetrapak.com/Document%20Bank/9704en_low.pdf.

[5] Packagingnews.co.uk, http://www.packagingnews.co.uk/News/MostEmailed/969611/Tetra-Pak-plans-bioplastic-trials-2011/.

[6] Information about TetraPak at http://www.tetrapakrecycling.co.uk/tp_howaretheymade.asp.

However, the extent of cleaning and sorting of the beverage cartons might play a major role in the classification, according to the introductory note of Annex V of the WSR

If the beverage cartons are sufficiently contaminated with consumption residues to prevent recovery in an environmentally sound manner, they should not be classified as B3020. In such cases other classification codes should be used.

So code B3020 would not apply to beverage cartons such as TetraPak if they are contaminated to the extent described in the introductory note of Annex V of the WSR.

The origin of the beverage cartons (households, mechanical treatment plants, wastes from carton production process) might then be decisive for the further classification.

Final answer:

Clean and separated beverage cartons with plastic and/or metallic coatings such as TetraPak should be classified as B3020, provided they are not contaminated to an extent which

- increases the risks associated with the waste sufficiently to render it appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 91/689/EEC; or
- prevents the recovery of the waste in an environmentally sound manner.

1.11. In the final process of textile manufacture, rolls of textiles are edge-trimmed. The resulting edge-trim (weft) is intended for use in the manufacture of rags. Assuming that this weft meets the conditions of Article 5 (1) [(a) to (d)] of the WFD, what other additional criteria, if any, would need to be met for such textile edge trim to be regarded as a by-product?
Keywords: Definition of by-product, waste textiles

So far, no additional criteria for textiles to be regarded as a by-product have been determined by a regulatory committee as referred to in Article 5 and 7 of Decision 1999/468/EC.

Article 5 of the new WFD defines the conditions for classification as a by-product. Annex II of the communication COM (2007) 59 final gives a decision tree for waste versus by-product decisions. The guidelines of COM (2007) 59 final may be taken into consideration.

Consequently, if edge-trim (weft) meets the conditions of Art.5 (1) [(a) to (d)] of Directive 2008/98/EC on waste, there are at present no additional criteria to be met for such textile edge trim to be regarded as a by-product.

1.12. Does the code B1120 refer to catalytic converters used in vehicles containing lanthanides or transition metals (e.g. cerium, iron, or manganese)?
Keywords: Classification issues related to single waste streams; Catalysts

The WSR includes in its Annex V part 1, list B, as entry B 1120:

> 'Spent catalysts excluding liquids used as catalysts, containing any of:
>
> – transition metals, excluding waste catalysts (spent catalysts, liquid used catalysts or other catalysts) on list A (…)
>
> – lanthanides (rare earth metals)(…)'

Annex V part 1, list B, entry B1130 reads:

> 'B1130 Cleaned spent precious-metal-bearing catalysts'

Annex V part 1, list A, entry A2030 comprises:

> 'Waste catalysts but excluding such wastes specified on list B'.

The wording of entry B1120 is not entirely unambiguous. For this answer, it is understood that the clause 'Spent catalysts excluding liquids used as catalysts, containing any of ...' means that

- Liquids used as catalysts are excluded from this entry regardless of their composition;
- Spent catalysts are subject to entry B1120 only if they contain transition metals (but excluding waste catalysts on list A) or Lanthanides.

The term '**catalyst**' is not defined in the WSR. Following EIONET, the term is generally defined as:

> 'A catalyst is a substance whose presence alters the rate at which a chemical reaction proceeds, but whose own composition remains unchanged by the reaction. Catalysts are usually employed to accelerate reactions (positive catalyst), but retarding (negative) catalysts are also used.'[7]

The term '**catalytic converter'** is not mentioned in the WSR. Following EIONET:

> 'Catalytic converters are designed to clean up the exhaust fumes from petrol-driven vehicles […]. Converters remove carbon monoxide, the unburned hydrocarbons and the oxides of nitrogen. […]Exhaust gases pass through the cellular ceramic substrate, a honeycomb-like filter. While compact, the intricate honeycomb structure provides a surface area of 23 000 square metres. This is coated with a thin layer of platinum, palladium and rhodium metals,

[7] European Environmental and Observation Network (EIONET), at: http://www.eionet.europa.eu/gemet/concept?cp=1210&langcode=en&ns=1.

which act as catalysts that simulate a reaction to changes in the chemical composition of the gases. Platinum and palladium convert hydrocarbons and carbon monoxide into carbon dioxide and water vapour. Rhodium changes nitrogen oxides and hydrocarbons into nitrogen and water, which are harmless.' [8]

However, this definition describes common types of catalytic converters, and is not to be understood to exclude other types of catalytic converters used in automotives.

The general definition of the term 'catalyst' covers catalytic substances and the question is whether catalytic **converters** containing lanthanides or transition metals are covered by entry B1120, or if it only refers to catalytic **substances**, excluding catalytic converters.

Hence, two possible interpretations are possible:

(1) The term 'catalyst' as applied in the WSR is restricted to catalytic substances and excludes catalytic converters.

(2) The term 'catalyst' as applied in the WSR includes catalytic converters.

(1) The term 'catalyst' as applied in the WSR is restricted to catalytic substances

Several entries in the WSR refer to the term 'catalyst' (entry GC050, A1140, A2030, B1120, B1130). Entries 16 08 01 to 16 08 07 in Annex V, part 2 of the WSR, referring to the European Waste List, also use the term 'catalyst'. However none of those entries defines or includes the term 'catalytic converter'.

One could argue that, if it had been the intention to include catalytic converters in these entries, the term would have been used, or even a more specific wording such as 'catalytic converters from vehicles'.

(2) The term 'catalyst' as applied in the WSR includes catalytic converters

Even though the term 'catalytic converter' is not used in the WSR, there are several arguments in favour of this second interpretation:

- The terms 'catalytic converter' and 'converter' are not included in the WSR or the EWL. Following the first interpretation would lead to a situation where wastes from catalytic converters are classified as unlisted waste. But catalytic converters from used vehicles are a type of waste that is generated regularly and in large amounts. It is unlikely that this waste is supposed to be classified as unlisted.

[8] European Environmental and Observation Network (EIONET), at: http://www.eionet.europa.eu/gemet/concept?cp=1210&langcode=en&ns=1.

- The wording ‘spent catalysts excluding liquids used as catalysts, containing any of […]’ as used in entry B1120 in the WSR, indicates that the entry also refers to catalytic converters, when the liquid catalytic substance is removed.
- In several languages one word is used for both the chemical substances and the technical equipment inside which the chemical process takes place (e.g. Polish ‘katalizator’, German ‘Katalysator’, Spanish ‘catalizador’). In the versions of the WSR in these languages the term used would therefore cover both the substance and the equipment.
- Member States do interpret the term to include catalytic converters. For example, a guidance document provided by the Austrian Ministry of Environment on the WSR includes catalytic converters from vehicles (‘KFZ Katalysatoren’, explicitly mentioned in the explanation of entry B1130).[9]

Consequently, the wording of the entries using the term ‘catalyst’ in the WSR does not specifically mention ‘catalytic converters’. But in view of the arguments above it does not seem correct to explicitly exclude converters from the entries either.

For classification purposes, please note two further aspects:

1. The catalytic converters used in vehicles must be classified either as code B1120 or as B1130, depending on whether they contain transition metals or lanthanides as listed in entry B1120 or not.

2. Annex V, introductory note 3 of the WSR must be observed.

The Austrian Ministry of Environment, in the Guidance Document cited, explains that[10],

> ‘Catalysts, if not contaminated by substances listed in the ‘amber waste list’ (e.g. contamination by mineral oil), are part of the ‘green waste list’, even if the intrinsic substance-specific properties of the catalyst (e.g. carcinogenic nickel content) are classified as dangerous. The European Waste list classifies used catalysts, containing transition metals or other substances, as hazardous. However such catalysts are classified as waste under the ‘green waste list’ if not additionally contaminated with hazardous substances (e.g. mineral oil, tar residues.)’

[9] Anwendungshinweise zu den Anhängen III bis V der EG Abfallverbringungsverordnung Nr. 1013/2006, Aktualisierung des Kapitels 5.3. — Version 2009, BUNDES-ABFALLWIRTSCHAFTSPLAN 2006, Lebensministerium, page 89, at: http://www.bundesabfallwirtschaftsplan.at/.

[10] Translated from: Anwendungshinweise zu den Anhängen III bis V der EG Abfallverbringungsverordnung

Nr. 1013/2006, Aktualisierung des Kapitels 5.3. — Version 2009, BUNDES-ABFALLWIRTSCHAFTSPLAN 2006, Lebensministerium, page 87-88, at: http://www.bundesabfallwirtschaftsplan.at/.

Consequently, it does seem to be in line with the WSR to regard catalytic converters used in vehicles, and containing lanthanides or transition metals (e.g. cerium, iron, or manganese), as 'catalysts' in the meaning of code B1120 and to classify them accordingly if the other conditions are met.

1.13. Does the code B1130 also refer to catalytic converters used in vehicles containing precious metals such as platinum, rhodium, palladium (most common)?

Keywords: Classification issues related to single waste streams; Catalysts

The two possible interpretations given in the answer to question 1.12 apply here too.

Additionally, to support the view that the term 'catalyst' in the WSR includes catalytic converters, one could argue that

- Member States do interpret the term to include catalytic converters. For example an Austrian guidance document on the WSR includes catalytic converters from vehicles ('KFZ Katalysatoren' in entry B1130 explicitly). The Austrian Ministry of Environment clarifies further on entry B1130[11]:

> 'Catalysts, if not contaminated by substances listed in the 'amber waste list' (e.g. due to the process in which they are used) are part of the 'green waste list', even if the intrinsic substance-specific properties of the catalyst are classified as dangerous.'

Consequently, the wording of the entries using the term 'catalyst' in the WSR does not specifically mention 'catalytic converters'. But in view of the arguments above it does not seem correct to explicitly exclude converters from the entries either.

Spent catalytic converters used in vehicles have either to be classified as code B1120 or as B1130, depending on whether they are cleaned and precious-metal-bearing as listed in entry B1130 or not. Please note that Annex V, introductory note 3 must be observed when classifying catalytic converters.

Consequently, it does seem in line with the WSR to regard catalytic converters used in vehicles and containing precious metals such as platinum, rhodium and palladium as 'catalysts' in the meaning of code B1130 and to classify them accordingly if the other conditions are met.

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[11] Translated from: Anwendungshinweise zu den Anhängen III bis V der EG Abfallverbringungsverordnung

Nr. 1013/2006, Aktualisierung des Kapitels 5.3. — Version 2009, BUNDES-ABFALLWIRTSCHAFTSPLAN 2006, Lebensministerium, page 89, at: http://www.bundesabfallwirtschaftsplan.at/.

1.14. Code B1130 is defined as: 'Cleaned spent precious-metal-bearing catalysts'. What does the word 'cleaned' mean in reference to vehicle catalytic converters?

Keywords: Classification; Catalysts

Please refer to the answers to questions 1.12 and 1.13 above.

The WSR includes in its Annex V part 1, list B, as entry B1130:

'Cleaned spent precious-metal-bearing catalysts'

The WSR does not include an interpretation for the term 'cleaned' nor is any guidance at EU level in place.

Bearing in mind the introductory note 3 of Annex V, it can be concluded that the term 'cleaned' goes beyond the requirements in this paragraph, i.e. that these catalysts must, as a minimum requirement, be cleansed of mineral oil and tar residues and must not contain residues of organic substances, e.g. aromatic residues.

It must always be checked whether

1) the classification as 'Cleaned spent precious-metal-bearing catalysts' is justified *and*
2) a) no risk as mentioned in Annex III, introduction paragraph (a) is present *and*

   b) no risk as mentioned in Annex III, introduction paragraph (b) is present.

The extent to which the said criteria are fulfilled in cases of waste contamination must be checked by the notifier, and any tests must be supervised by the authorities for each type of waste on a case-by-case basis.

Consequently, the term 'cleaned' is open to interpretation. As a minimum, all parts and substances have to be removed if they increase the risks associated with the waste sufficiently to necessitate prior written notification and consent, because classified as hazardous by Annex III of Directive 91/689/EEC on hazardous waste, or if they prevent the recovery of the waste in an environmentally sound manner. However, the additional specification for 'cleaned' catalysts seems to go beyond this requirement.

1.15. What would be the correct classification of vehicle catalytic converters according to WSR: A2030 or unlisted waste?
Keywords: Classification; Catalysts

Annex V part 1, list A, entry A2030 covers:

'Waste catalysts but excluding such wastes specified on list B'.

For the question whether the term ‘catalyst’ in Annex V of the WSR also includes catalytic converters used in vehicles, please note the previous draft replies. The position defended here is that the term does include catalytic converters.

Therefore any waste catalytic converters not classified under B1120 or B1130 should be classified as A2030.

1.16. Basel entry A1190 reads: ‘Waste metal cables coated or insulated with plastics containing or contaminated with coal tar, PCB, lead, cadmium, other organohalogen compounds or other Annex I constituents, to the extent that they exhibit Annex III characteristics’. Does the word ‘containing’ refer to the plastic part only, or does it apply to the total cable?
Keywords: Classification; Waste metal cables coated or insulated with plastics

In 2003 India suggested introducing new entries for plastic-coated cable scrap in Annexes VIII and IX of the Basel Convention.

Plastic-coated cables consist of two main fractions: ‘metal’ (mainly copper) and ‘plastic’ (mainly PVC, partly PE and to a small extent other resins).

The documentation available on the introduction of the new entries focuses strongly on the mirror entry B1115 stressing that cables coated with PVC/PE should contain only environmentally friendly materials. Oil and coal-tar-filled cable scrap has to be treated differently and should be placed on list VIII (of the Basel Convention). The substances listed in A1190 (coal tar, PCB, lead, cadmium, other organohalogen compounds) are/ have been used for the coating of cables, either contained in the plastic coating (e.g. PCB was used as a flame retardant, lead and cadmium as stabilisers), or as a further insulation layer.

There was strong concern that the plastic coating would not be treated in an environmentally friendly manner (e.g. uncontrolled thermal processes).

It can therefore be assumed that the restrictions given for B1115 (substances listed in A1190 have to be below levels exhibiting Annex III characteristics) relate to the plastic coating and not to the total cable.

Further, ‘Green listed waste’ is destined for recovery (B1115 explicitly excludes wastes destined for Annex IVA operations). Consequently, both fractions of the plastic-coated cable (‘metal’ and ‘plastic’) have to be recovered. The separation of these two fractions and the recovery of the separated fractions is state of the art. If the concentration of substances differs between the two fractions ‘metal’ and ‘plastics’ the concentrations within one of the fractions would exhibit Annex III characteristics after separation. Consequently, this fraction could no longer be considered as a non-hazardous fraction.

Accordingly, the word ‘containing’ in Basel entry A1190 must refer only to the plastic part.

1.17. If the word 'containing' within Basel entry A1190 refers to the plastic part only, does this mean that old ground cables without plastic coating/insulation are not classified in this entry?

Keywords; Classification; Waste metal cables coated or insulated with plastics

In the answer to question 1.16 above, it was argued that the word 'containing' in Basel entry A1190 refers only to the plastic covering of the cables. It was also pointed out that entry A1190 includes only cables coated or insulated with plastics. Accordingly, old ground cables without plastic coating/insulation are not classified under this entry.

This understanding is supported by the following:

In 2003 India suggested introducing new entries for plastic-coated cable scrap in Annexes VIII and IX of the Basel Convention.

The wording proposed by India in 2003 was:

- 'Cables containing oil, coal tar and other dangerous substances: Annex VIII'
- 'Cables other than those mentioned above: Annex IX'

The name of the waste was specified as 'Plastic coated cables (excluding an appropriate incineration disposal)'.

The Secretariat of the Basel Convention received several comments from different countries on the application from India to place plastic-coated cable scrap in Annexes VIII and IX. Canada proposed the following: '*The use of the word 'insulated cable or wire scrap' is far too broad an entry. There is a wide array of insulating materials others than plastics used to produce cable or wire, such as paper or cardboard which would be captured under this entry. This also ensures only those cables or wire scrap coated with plastics or plastic insulation captured.'*

In 2004 the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal approved the inclusion of the new A1190 entries and the corresponding mirror entry B 1115 in Annex VIII and Annex IX of the Basel Convention.

Basel entry A1190 refers only to cables coated or insulated with plastics. Consequently, old ground cables without plastic coating/insulation cannot be classified under this entry.

2. GENERAL CLASSIFICATION AND PROCEDURAL ISSUES

2.1. For a waste shipment to come under a specific waste entry in Annex V of the WSR with several indents, should the shipment contain only one of the specific indents or may the shipment contain several of the indents mixed together?

Keywords: Mixing of wastes; indents; contamination

The question is whether a mixture of several indents can be classified as green listed waste or as a 'mixture of wastes', usually classifiable as 'green listed' as long as the mixture of different wastes (indents) is not included in Annex IIIA.

In the Omni Metal Case C-259/05, the European Court of Justice held, in a strict interpretation of the WSR, that the waste management conditions and potential environmental risks associated with each type of waste in a mixture are not necessarily the same as those associated with the mixture. Consequently, a blend of different 'green listed' substances indented under the same code cannot possibly be automatically assigned the same code and therefore characterised as 'green listed'.

In view of the environmental and health objectives of the WSR, and in line with the Court's ruling, it is appropriate to interpret the WSR in a cautious and restrictive fashion. Before shipments of certain types of waste can be exempted from the Regulation's supervision and control procedures by putting them on the green list, there must be a prior assessment of the environmental risks associated with their processing and handling.

Consequently, if the WSR is interpreted in a cautious and restrictive fashion, shipments containing several indents from the same waste entry must be regarded as mixtures of waste.

2.2. Competent authorities of some Member States refuse to accept using a single Basel or OECD waste identification code in the notification document in cases where a number of similar codes from the 'European Waste List' (EWL) can be put under the umbrella of one single Basel code. What should the legitimate practice be and under what rules can this practice be used?

Keywords: General classification issues; classification in case of several EWL codes under one Basel code

The WSR requires the notification and movement documents to display information on the identity of the waste in Block 14 according to the description given in Annex IC, paragraph 25 of the WSR. In particular the code adopted under the Basel Convention (subheading (i)) and, where applicable, the systems adopted in the OECD Decision (subheading (ii)) and other accepted classification systems (subheadings (iii) to (xii)) also have to be inserted.

The codes from the EWL are specified as subheading (iii).

Following Article 4(6) of the WSR only one waste identification code shall be covered for each notification, except for waste not classified under one single entry in either Annex III, IIIB, IV or IVA or in the case of mixtures of waste not listed in one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA.

The question suggests three situations that have to be distinguished:

- The first situation relates to wastes classified under one single entry in either Annex III, IIIB, IV or IVA of the WSR.
- The second relates to wastes not classified under one single entry in either Annex III, IIIB, IV or IVA of the WSR.
- The third concerns mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA of the WSR.

In cases where a number of similar codes from the EWL can be put under the umbrella of one single Basel code, two interpretations are possible:

1. One code/one type of waste relates to *one* EWL code, thus requiring a single notification form for every single EWL code;
2. The one code/one type refers to the Basel code and EWL codes are used as additional information, so the notification form relates to the Basel code.

It is argued that interpretation number 1 would simplify the procedure for the authorities concerned and would support enforcement, as all the processing and reporting of waste data could be done for a single EWL code and such a procedure would also simplify controls and enforcement.

However, if the first interpretation were correct, Article 4(6) of the WSR referring explicitly to 'single entry in either Annex III, […] or IV […]' would be superfluous.

In addition the wording of Annex IC paragraph 25 of the WSR provides strong arguments in favour of the second interpretation. This suggests that the Basel Convention codes have priority, which is in line with the scope of this legislation. Identification by means of EWL codes is to be added for further information.

Consequently for waste shipments subject to the notification procedure, the **one waste identification code** used to identify waste in Block 14 of the notification document laid down in Annex IA of the WSR for all wastes classified under one single entry in either Annex III, IIIB, IV or IVA of the WSR **is to be based primarily on the Basel Convention (or where applicable on the OECD classification system)**.

For shipments of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA of the WSR **one type of waste must be specified according to the Basel Convention, or where applicable the OECD classification system**. If there is an appropriate EWL, the notification might then be related to one EWL code.

Further information relevant for the rules under which this practice can be used is provided in Annex IC paragraph 25(c) of the WSR:

- ‘(iii): European Union Member States should use the codes included in the European Community list of wastes (see Commission Decision 2000/532/EC as amended). Such codes may also be included in Annex IIIB of this Regulation.’
- ‘(vi): If useful or required by the relevant competent authorities, add here any other code or additional information that would facilitate the identification of the waste.’

There is no specific statement that only one code shall be used under subheadings (iii) to (xii) of Annex IC paragraph 25(c) of the WSR. Furthermore subheading (vi) of the same paragraph allows Member States to request any other additional information that would facilitate the identification of the waste.

Consequently, the legitimate practice should be an interpretation of the one code as the Basel (or where applicable according to Annexes III and IV of the WSR, the OECD) code with a listing of all relevant EWL codes and inclusion of other information under subheading (vi) of Annex IC paragraph 25(c) of the WSR in cases where a number of similar codes can be put under the umbrella of one single Basel code.

2.3. **If an entry in Annex III (green list) is contaminated, should it no longer be subject to the general information requirement, if the contamination levels are too high? Or should the basic principle be that contaminated waste cannot be regarded as ‘green’ except in cases of minor contamination?**
Keywords: General classification issues; procedure; contamination of waste; selecting appropriate procedure

Annex III of the WSR says in the introductory paragraph that

> ‘Regardless of whether or not wastes are included on this list, they may not be subject to the general information requirements laid down in Article 18 if they are contaminated by other materials to an extent which
>
> > (a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 91/689/EEC; or
> >
> > (b) prevents the recovery of the wastes in an environmentally sound manner. ‘

Following the system as introduced by Article 3(1) and (2) of the WSR together with the introductory paragraph of Annex III, the information procedure under Article 18 can only be applied in cases of waste which:

- fulfils the criteria referred to in Article 3(2) (a) or (b)

  NB for some types of wastes it is explicitly required that they must not be contaminated with other material if classified in the respective ‘B’ entry (for example: plastic wastes can only be classified under entry B3010 ‘(…)

provided they are not mixed with other wastes and are prepared to a specification'; further example: entry B1020 reads 'Clean, uncontaminated metal scrap')

- is not contaminated in a way that
  a) increases the risks associated with the waste as described in the relevant paragraph, or
  b) prevents the recovery of the wastes in an environmentally sound manner.

In all other cases, the Article 18 procedure is not applicable and the notification procedure has to be completed.

Thus, in cases of contaminated waste, it should always be checked whether

- the Article 18 procedure is (still) applicable for that waste *and*
- a) a risk as mentioned in Annex III, introductory paragraph, (a) is not in place *and*
  b) a risk as mentioned in Annex III, introductory paragraph, (b) is not in place.

In all other cases a shipment of this waste is subject to the notification procedure and it may not be shipped under the Article 18 procedure. No other 'basic principle' is outlined in the WSR. Notifiers must check the extent to which the named criteria are fulfilled in cases of waste contamination, and the authorities must verify each type of waste on a case-by-case basis.

Some Member States take the view that, in the spirit of a harmonised approach, the basic principle for 'green listed' wastes should be minor contamination, independently of subsequent recovery operations and of whether they will take place in an EU Member State with best available technology or in a non-OECD country with low environmental standards. In their opinion, the concept of 'green listing' would be seriously undermined if the final destination and type of recovery were the decisive factors. However, the WSR does not prescribe any way of assessing these criteria, nor is any binding legislation or EU guidance in place.

Notifiers can consult the competent authorities of dispatch (and destination) in cases of doubt.

If the authorities involved do not agree, the procedure as outlined in Article 28 WSR applies.

2.4. What are the current requirements in ensuring that waste exported to recovery facilities in third countries is treated in an environmentally sound management?

Keywords: General classification issues; procedure; contamination of waste; selecting appropriate procedure

Article 2(8) of the WSR defines environmentally sound management as

> '(…) taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste'

Notifiers and/or authorities should first check whether the criteria outlined in answer 2.3 above are fulfilled. If they still have doubts about the soundness of recovery in the country of destination, the benchmarks are the standards of Union legislation on waste and, where applicable, the standards as laid down in the IPPC Directive 2008/1/EC.

In the case of shipments outside the EU, the guidelines on environmentally sound management listed in Annex VIII of the WSR may be considered. As regards the enforcement of Article 49 of the WSR, the Commission is currently exploring the option for a development of a particular guidance.

2.5. It is often possible to recover heavily contaminated wastes in an environmentally sound manner. In such cases should the waste only be subject to the general information requirements laid down in Article 18?
Keywords: General classification issues; procedure; contamination of waste; selecting appropriate procedure

If waste is 'heavily contaminated', notifiers and/or authorities should not rely solely on statements by the receiving facilities but should carefully check whether the criteria outlined in answer 2.4 are met.

If classification within the 'green-list' regime is straightforward, if there is no risk, and if the receiving facility meets the IPPC standard, then the Article 18 procedure applies.

2.6. Is a shipment of 'green listed' waste (e.g. metal scrap) where radioactive contamination is detected, considered to be legal, illegal, or incomplete?
Keywords: General classification issues; scope of WSR; radioactive contamination of waste

Is a shipment of green listed waste where radioactivity is detected considered to be an illegal shipment under the WSR?

The question is whether a shipment

- of ‘green listed’ waste (i.e. waste listed in Annex III to WSR)
- containing radioactive contamination
- shipped without notification but under the Article 18 / Annex VII procedure

is to be considered an illegal shipment under the WSR.

It could be claimed that

- such waste may only be shipped under the Article 18 / Annex VII procedure if environmentally sound recovery (as defined in the introductory paragraph of Annex III to WSR) is possible;
- radioactive contamination would increase the risks associated with the wastes sufficiently to require prior written notification and consent and/or prevent the recovery of the wastes in an environmentally sound manner;
- therefore legally, the shipment would require prior written notification and consent;
- therefore, according to Article 2(35) (a) of the WSR, the shipment would be illegal because it was shipped without notifying all the competent authorities concerned.

However, ‘radioactive’ is not one of the properties listed in Annex III to Directive 91/689/EEC on hazardous waste, so the first alternative in the introductory paragraph of Annex III to WSR (indent (a)) is not applicable.

It could be argued that the second alternative in the introductory paragraph of Annex III to WSR (indent (b)) is applicable, because radioactive contamination might prevent the recovery of the wastes in an environmentally sound manner. It might also be assumed that such a shipment could hardly be deemed ‘legal’ and that the consequences for illegal shipments would apply if detected.

On the other hand, it might be argued that ‘legal shipment’ is to be understood purely in terms of the scope of the WSR. According to Article 1(3) (c) of the WSR,

> *‘shipments of radioactive waste as defined in Article 2 of Council Directive 92/3/Euratom of 3 February 1992’*

(now: Article 5 of Directive 2006/117/Euratom) are excluded from the scope of the WSR. Taken together with Article 1(1), this means that the WSR does not apply to radioactive waste as defined in the relevant respective paragraph. Article 5 of Directive 2006/117/Euratom gives the following definition:

> *‘1. ‘radioactive waste’ means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a natural or legal person whose decision is accepted by these countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin and destination;’*

which makes it possible to determine which kinds of wastes are within the scope of Directive 2006/117/Euratom and, consequently, outside the scope of the WSR.

Directive 2006/117/Euratom introduces an idiosyncratic system of supervision of radioactive waste shipments between Member States, supervised by radiation protection authorities and applied independently alongside and separately from the WSR. This system may be further complemented by Member State legislation.

If one interprets the wording '*prevents the recovery of the wastes in an environmentally sound manner*' in the introductory paragraph of Annex III to WSR as if it included radioactivity of waste, this would introduce a system outside of the requirements of the Hazardous Waste Directive and radiation protection legislation, which is not intended by European legislation.

Consequently, a shipment

- of green listed waste (i.e. waste listed in Annex III to WSR)
- with radioactive contamination
- shipped without notification but under the Article 18 / Annex VII procedure

is not considered to be an illegal shipment under the WSR.

Is such a shipment considered to be incomplete and, thus, subject to the take-back-procedure (Article 22 WSR)?

Article 22 of the Waste Shipment Regulation reads:

> *'(1) Where any of the competent authorities concerned becomes aware that a shipment of waste, including its recovery or disposal, cannot be completed as intended in accordance with the terms of the notification and movement documents and/or contract referred to in the second subparagraph, point 4 of Article 4 and in Article 5, it shall immediately inform the competent authority of dispatch. (…)'*

Article 22 applies, following its unambiguous wording, only to shipments where a notification was required. It is not applicable in cases where a waste shipment takes place under the Article 18 / Annex VII procedure.[12]

Consequently, a shipment of green listed waste where radioactivity is detected is not considered as incomplete under the WSR**.**

If radioactivity levels are below the threshold of radiation protection as defined in Euratom legislation, is the shipment considered as 'unlisted waste' on the grounds that

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[12] It should be added that Article 18(2) of the WSR does provide that

> *'The contract referred to in Annex VII between the person who arranges the shipment and the consignee for recovery of the waste shall be effective when the shipment starts and shall include an obligation, where the shipment of waste or its recovery cannot be completed as intended or where it has been effected as an illegal shipment, on the person who arranges the shipment or, where that person is not in a position to complete the shipment of waste or its recovery (for example, is insolvent), on the consignee, to:*
>
> *(a) take the waste back or ensure its recovery in an alternative way; and*
>
> *(b) provide, if necessary, for its storage in the meantime.'.*

environmentally sound recovery may be impaired and the shipment should therefore be subject to the procedure for prior written notification and consent?

The question is whether a shipment

- of green listed waste (i.e. waste listed in Annex III to WSR)
- with radioactive contamination
- shipped without notification but under the Article 18 / Annex VII procedure

is to be considered an illegal shipment under the WSR because environmentally sound recovery may be impaired due to the radioactive contamination.

The WSR uses the wording *'impair their environmentally sound recovery'* only with regard to the composition of mixtures of waste (see Article 3(2) (b) of the WSR). The criterion for deciding whether a single entry on the green list is exempt from the Article 18/Annex VII procedure in the event of contamination is the introductory paragraph of Annex III to WSR. The arguments for deciding this issue are given in the answer above. The position is that the terms 'legal shipment' and 'illegal shipment' in the WSR are to be understood purely in terms of its scope and, as shown, radioactivity of waste is not covered by the Hazardous Waste Directive 91/689/EEC, whereas radioactive waste in the meaning of Directive 2006/117/Euratom is outside the scope of the WSR. If one interprets the wording '*prevents the recovery of the wastes in an environmentally sound manner*' of the introductory paragraph of Annex III to WSR as if it included any level of radioactivity of waste, whether or not it exceeds the thresholds provided by radiation protection legislation, this would introduce a system outside the Hazardous Waste Directive and radiation protection legislation, which is not intended by European legislation.

Overall conclusion: Metal scrap with radioactive contamination is not to be considered as 'unlisted waste' on the grounds that environmentally sound recovery may be impaired, and shipments should therefore be subject to prior written notification and consent. This is irrespective of whether the thresholds laid down in radiation protection legislation are exceeded or not.

2.7. What is the meaning of 'type of waste' in Article 4(6) of the WSR? (Does it refer to waste which can be classified under the same EWC or to a single material which can be assigned different EWC, such as aluminium waste from packaging, or from demolition?)

Keywords: General classification issues; definition of 'type of waste' in WSR; one/several EWC codes

The WSR requires the notification and movement documents to give information on the identity of the waste. Article 4(6) of the WSR states that only one waste identification code should be covered in each notification, except for waste not classified under one single entry in Annexes III, IIIB, IV or IVA and mixtures of waste not listed in these Annexes under a single entry, unless listed in Annex IIIA.

This means the following three situations are possible:

- The waste *is* classified under a single entry in Annex III, IIIB, IV or IVA of the WSR − This single code should be used to identify the waste.
- The waste *is not* classified under a single entry in Annex III, IIIB, IV or IVA of the WSR — Only *one type of waste* should be specified.
- The mixture of waste *is not* classified under a single entry in Annex III, IIIB, IV or IVA unless listed in Annex IIIA. — The *code for each fraction* of the waste should be specified in order of importance.

Article 4(6) of the WSR does not include an explanation of the term 'type of waste'.

The term 'type of waste' is also used in Article 4(6) and in six different provisions of the WSR (Recital 20, Article 1 part 1, Article 2(a) point 15, Article 11 (1)(g), Annex IC part IV point 25, Annex V part 2). The provisions do not include any further explanation of the term.

It is also not defined in the Basel Convention or the OECD Decision.

Looking at the various sources where the term 'type of waste' is used, in general the term describes a grouping of wastes with similar physical, chemical or biological properties or waste generated by similar processes.

There is a clearer definition of 'type of waste' in the new WFD (Recital 14) together with Commission Decision 2000/532/EC.

Point 3 of the Introduction to the Annex of Decision 2000/532/EC then clarifies:

> 'The different types of wastes in the list are fully defined by the six-digit code for the waste and the respective two-digit and four-digit chapter headings. This implies that the following steps should be taken to identify a waste in the list.'

Consequently, in the meaning of Commission Decision 2000/532/EC ***one type of waste*** is related to ***one entry in the list*** and is fully defined by the six digit code (also referred as EWC or EWL code).

The WSR requests that besides the Basel or OECD codes, other accepted classification systems should be used to identify the waste in the notification document.

The EWC is described as one such classification system in subheading (iii) of Annex IC part IV point 25 of the WSR.

Consequently, the EWC should be used in cases where the waste cannot be classified with Basel or OECD codes.

Consequently, in cases where wastes are not classified under one single entry in either Annex III, IIIB, IV or IVA, the type of waste could be classified by using the corresponding EWC.

Article 4 (6) of the WSR requests, that 'only one type of waste shall be specified'. This provision can be fulfilled by using one EWC for specifying one type of waste.

In consequence, one EWC should be used to describe one type of waste.

If waste cannot be specified using the system of the six-digit EWC but belongs to different EWC headings, such as aluminium waste from packaging and aluminium waste from demolition, this would be regarded as a mixture of waste following Article 2 point 3 of the WSR. For mixtures of waste, Article 4(6) (b) of the WSR would apply.

Consequently, if the waste is a mixture and the mixture is not classified under one single entry in Annex III, IIIB, IV or IVA unless listed in Annex IIIA, each fraction of the waste should be specified in order of importance.

2.8. Under the WFD, what kinds of wastes can be considered as the same type of wastes, taking account of the requirements of Decision 2000/532/EC?

Keywords: General classification issues; definition 'type of waste' in WSR; one/several EWC codes

A clearer definition of the term 'type of waste' is given in the new WFD (Recital 14) together with Commission Decision 2000/532/EC.

Point 3 of the Introduction to the Annex of Decision 2000/532/EC specifies:

> 'The different types of wastes in the list are fully defined by the six-digit code for the waste and the respective two-digit and four-digit chapter headings. This implies that the following steps should be taken to identify a waste in the list.'

This means that one entry in the European Waste List using the six-digit code will fully define one type of waste.

Consequently, Decision 2000/532/EC defines the term 'type of waste' as a function of the six-digit waste code (EWC). The meaning of the term 'type of waste' in Directive 2008/98/EC refers to waste which can be classified under the same EWC.

2.9. Should waste be classified in accordance with WSR Annexes III, IIIA, IV and IVA if the transboundary shipment is taking place for the purpose of disposal, or is the use of these annexes only relevant when shipments are destined for recovery?

Keywords: General classification issues; procedural requirements; Use of Annexes III, IIIA, IV and IVA in shipments for recovery purposes

Article 3 of the WSR introduces two different procedures for the supervision and control of waste shipments:

- the **notification procedure** (WSR Article 4-17), for shipments of waste as defined in WSR Article 3(1) a and b;
- the **Article 18 procedure** for shipments of waste referred to in Article 3(2) and (4), i.e. waste requiring the procedure described in WSR Article 18.

Waste for disposal is subject to the notification procedure irrespective of its composition and properties, whereas waste for recovery must be identified in order to decide whether the notification procedure or the Article 18 procedure applies.

It is unclear whether waste shipments for disposal need to be classified according to the Annexes of the WSR (namely Annex III, IIIA, IV and IVA) in the notification and movement document, in other words, whether the list is 'appropriate' in the meaning of Annex II, Part 1 and whether the code is 'relevant' in the meaning of Block 14 of the notification form and movement document.

There is no indication in the WSR whether or not it is mandatory to classify wastes which are being shipped for disposal.

One could argue that classification is unnecessary on the grounds that that the entire system of classification outlined in the Annexes is only in place because of the differentiated system introduced for waste shipments for recovery. The titles of Annexes III and IIIA refer to 'List of wastes subject to the general information requirements laid down in Article 18' and 'Mixtures of two or more wastes listed in Annex III and not classified under one single entry as referred to in Article 3(2)' respectively, and thus cannot apply to wastes for disposal.

On the other hand, the relevant provisions of the WSR mention the 'appropriate list', which could be request to classify shipments according to Annexes III to IVA. Moreover the information in the notification document is used as a basis for decisions by the authorities concerned. Article 11(1) of the WSR lists the possible grounds for objection by all competent authorities to shipments of waste for disposal, some of which are clearly related (or may be related) to the properties of the waste. Correct identification of the waste is necessary for a proper decision by the authorities on prior written notification and also to justify the possible grounds for objection under Article 11 WSR.

Finally, Annex IC gives instructions for completing the notification and movement documents drawn up by the Commission, which were incorporated into the WSR by Commission Regulation (EC) No 669/2008 of 15 July 2008[13].

Point 25 of Annex IC relates to filling in Block 14, and says:

> 'State the code that identifies the waste according to Annexes III, IIIA, IIIB, IV or IVA of this Regulation.'

Here no distinction is made between wastes for recovery and wastes for disposal.

However, this section also mentions that waste should be identified *as appropriate* — e.g. explicitly referring to Annexes III and IIIA which relate to wastes in the meaning of Article 3(2) and (4) of the WSR — so the situation is unclear.

Conclusion: Although there are strong arguments to suggest that wastes for disposal should also be classified according to Annexes III, IIIA, IVA and IV, the WSR does not provide a definite answer to this question.

3. TAKE-BACK PROCEDURE

3.1. Who is responsible in cases of damage during transport and associated changes in the composition of waste? Who should bear the costs for transport and alternative treatment: the original dispatcher (notifier) or the carrier who has generated the (new) waste?

Keywords: Take-back procedure; costs; damage to waste during transport

The WSR does not contain provisions on responsibility in cases of damage. Such provisions may be laid down in national legislation. Claims under civil law (e.g. notifier's claims on the carrier on the basis of their contractual relationship) are not affected by the Regulation.

Accidents during transport causing damage to the waste must be covered by the transport company's insurance.

The WSR does contain provisions on:

- Intended shipments of an identified load of waste to be submitted to the notification procedure or the Article 18 procedure;
- Take-back obligations including transport of the waste if a shipment which is subject to the notification procedure cannot be completed as intended — see Article 22 of the WSR and related provisions on cost-bearing in Article 23;

[13] 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 (Text with EEA relevance) (*OJ L 188, 16.7.2008, p. 7).*

- Take-back obligations including transport of the waste in cases of illegal shipments — see Article 24 of the Regulation and related provisions on cost-bearing in Article 25;
- Whether the rules for the notification procedure or the rules for take-back obligations (and correlated cost-bearing provisions) apply depends on the interpretation of Article 22 and 24: if the words 'the waste in question' are taken to refer exclusively to the waste which was originally exported (i.e. waste of the same quality), then waste which has changed its nature or composition (e.g., as in this case, due to an accident) would not be covered by Article 22 or 24.

However, this paragraph could also be understood to refer to 'the load of waste for which the notification was issued' (or the Annex VII form was completed). It could be argued that the procedures of Articles 22 or 24 do provide instruments to bring incomplete/illegal shipments under control. For example, if a shipment cannot be completed as intended, take-back may not be necessary if the competent authorities of dispatch, transit and destination can agree on an alternative treatment in the country of dispatch or elsewhere (see Article 22(3)). Consequently in this case, the costs for take-back would be imposed as laid down in Article 23 and 25, respectively.

On the other hand, it would also be justifiable to highlight the responsibility (including financial) of the waste producer as emphasised in Recital 18 of the WSR.

There is no case law of the European Court of Justice on this matter, nor has the European Commission issued guidance on it. From the documents issued during adoption of the WSR, it is not evident that the legislator had an opinion on this question.

Developments will depend on case-by-case decisions and rulings by Member States' courts of law and the European Court of Justice.

3.2. Who should be the notifier, if waste which has changed composition has to be returned to the state of dispatch?

Keywords: Take-back procedure; costs; damage to waste during transport

Provisions on notification in various cases of take-back are given in Article 22(4) and 24(2).

Regarding the duty to notify, Article 24(2) points out that

> '(…) the new notification shall be submitted by the person or authority listed in (a), (b), or (c) and in accordance with that order (…). In the case of alternative arrangements as referred to in (d) and (e) by the competent authority of dispatch, a new notification shall be submitted by the initial competent authority of dispatch or by a natural or legal person on its behalf unless the competent authorities concerned agree that a duly reasoned request by that authority is sufficient.'

There is no case law of the European Court of Justice on this matter nor has the European Commission issued guidance on it. From the documents issued during adoption of the WSR, it is not evident that the legislator had an opinion on this question.

Developments will very probably depend on case-by-case decisions and rulings by Member States' courts of law and the European Court of Justice.

3.3. Is a duly reasoned request by the state where the accident happened (e.g. also a transit state) sufficient for a take-back procedure?

Keywords: Take-back procedure; costs; damage to waste during transport

Take-back obligations and 'duly reasoned requests' instead of notification are mentioned in four situations in Article 22(4) and (6) and in Article 24 of the WSR.

In all of these cases, the only authority which is entitled to issue a duly reasoned request is the 'initial authority of dispatch' (not the authority of transit; not the authority to which the notification is issued in the course of the take-back obligation).

Further, all of these cases require an 'agreement' between the competent authorities concerned.

The provisions on take-back suggest that a duly reasoned request for a transfrontier shipment of waste can only be issued by the initial authority of dispatch (or the initial notifier) and can only take place if there is agreement between the competent authorities concerned. Agreement must by definition be unanimous.

Consequently, a duly reasoned request by an authority is only sufficient if issued by the initial authority of dispatch and, in cases of transfrontier shipments, only in agreement with other competent authorities.

3.4. If the original dispatcher, who might simultaneously be the carrier, goes bankrupt or goes into liquidation after receiving the transport insurance payment, is there any liability of the state where the waste was generated (e.g. a transit state when the accident happens on its territory)?

Keywords: Take-back procedure; costs; damage to waste during transport

Articles 23 and 25 of the WSR have some provisions on cost distribution. Article 23 refers to costs for take-back if a shipment cannot be completed as intended.

The WSR contains no provisions on transit countries being allocated costs simply because they have jurisdiction over the area, as in the case of an accident during transport.

Some provisions of the WSR might suggest otherwise. Article 22(9) and Article 24(7) mention the 'responsibility' of a country due to the fact that it has jurisdiction over an area in the context of take-back obligations and related costs. Both provisions introduce an 'interim'

responsibility related to the place of discovery of a waste. But this particular instance does not create a general principle for imposing responsibility and allocating related costs to a country of transit.

Consequently, the WSR does not provide a direct basis for allocating costs to a transit country on whose territory there is an accident leading to incomplete or illegal shipments.

3.5. A consignee in Member State B also acts as a carrier and picks up hazardous wastes at a collector's site in the state of dispatch A. The consignee in Member State B is an authorised collector and processor of the wastes in question, shows the appropriate license for collection of hazardous wastes and pretends to have all necessary permits for the transfrontier shipment of these wastes, although this is not the case in reality. In this case is the consignee in Member State B the main person responsible for the illegal shipment or is it the waste collector in Member State A?

Keywords: Take-back procedure; costs; shared responsibility

The WSR defines the terms consignee and notifier in Article 2.

Article 5 (1) of the WSR states that all shipments of waste for which notification is required are subject to the requirement of the conclusion of a contract between the notifier and the consignee for the recovery or disposal of the notified waste.

Under these provisions the consignee and the notifier cannot be one and the same person.

I. The system of responsibility and cost charging according to the WSR

The rules on cost allocation for take-back of waste in cases of illegal shipments are laid down in Title II, Chapter 4 of the WSR. Article 24 of the WSR distinguishes three situations of responsibility and imposes different consequences for each; the corresponding cost regulation is indicated in Article 25 of the WSR:

Article 24(2) WSR contains rules for take-back if an illegal shipment is the responsibility of the notifier, Article 24(3) WSR contains rules for take-back if an illegal shipment is the responsibility of the consignee and Article 24(5) of the WSR contains rules for take-back in cases where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee. The corresponding cost-related rules are laid down in Articles 25(1), (2) and (3) of the WSR.

The situation where both the notifier and the consignee are responsible for the illegal shipment is not allowed for by the system as introduced by Article 24. Two interpretations are possible:

- Article 24(5) of the WSR applies only to exceptional cases; basically, the responsibility and the related costs are decided by charging the costs entirely to either the notifier or the consignee pursuant to Article 24(2) and 24(3); or

- Article 24(5) of the WSR is meant to regulate all cases that do not fit perfectly in Article 24(2) or 24(3).

Both interpretations seem to be in line with the wording of Article 24(5) of the WSR ('in particular'). Article 25(3) of the WSR, which allows the competent authorities to charge the costs to the notifier and/or the consignee, might favour the second position: If Article 24(5) of the WSR applied only to cases where neither the notifier nor the consignee were responsible, this flexibility would be rather surprising. However, the European Court of Justice has not yet provided a binding interpretation on this matter, nor is guidance available from the European Commission.

II. Applying this scheme to the present case

To apply this scheme when a competent authority feels that both the notifier and the consignee are morally responsible, the following has to be considered:

II.1. If no notification has been submitted

For a shipment of waste requiring a prior written notification, the notifier has to submit the notification documents to the authority of country of dispatch, and the notifier has to be defined in terms of the ranking in Article 2(15) (a) of the WSR.

A shipment of notifiable waste without notification of all competent authorities is defined as illegal (Article 2 point 35 (a) of the WSR).

Responsibility in terms of the take-back system of the WSR will depend on the interpretation of the Regulation as outlined above (see I.).

- Under the first interpretation of Article 24(5) WSR, it could be argued that the behaviour of the collecting company in the country of dispatch makes it mainly responsible for the illegal shipment by not submitting the notification to the competent authority. Then, regardless of any moral co-responsibility of the consignee, Article 24(2) would apply with the corresponding cost regulation of Article 25(1) WSR;
- Under the second interpretation, and if responsibility is considered to be shared by notifier and consignee, the competent authorities would have to decide jointly on the costs pursuant to Article 25(3) WSR.

II.2. If the notification procedure has been carried out

If the notification procedure has been carried out by the collecting company of the country of dispatch, the shipment is still regarded as illegal under Article 2(35) (c) of the WSR because consent was obtained from the competent authorities through falsification, misrepresentation or fraud.

In the case described, the waste collector in the country of destination (consignee) pretends to have all necessary permits and licenses, although this is not the case in reality. The moral responsibility seems to be on the side of the consignee.

As regards the responsibility in terms of the take-back system outlined above (see I.), the result depends on the interpretation of the Regulation.

- Under the first interpretation, it would be necessary to further investigate the exact responsibilities of both the notifier and the consignee; if the notifier has acted entirely in good faith, it does not seem appropriate to give him the responsibility. Nevertheless, the determination of respective responsibilities depends on national or Union law on liability ;
- Under the second interpretation, and if responsibility is considered to be shared, the competent authorities will have to decide jointly on the costs pursuant to Article 25(3) WSR.

3.6. When green listed waste is shipped with notification to EU Member States with a transitional period, would it be legally correct to assume that there would only be a moral obligation for the dispatcher or state of dispatch to take back illegal shipments of falsely declared green listed waste?

Keywords: Take-back procedure; transitional periods for new Member States

Transitional periods for certain Member States and conditions for application are laid down in Article 63 of the WSR. Article 63(1) to (5) deals with specific transitional rules for each of the Member States in question (Latvia, Poland, Slovakia, Bulgaria, and Romania). The character of the transitional rules is diverse. However, one common provision is that waste destined for recovery listed in Annex III is subject to prior written notification and consent as laid down in Title II of the WSR.

Take-back obligations must be included in the contract

- between the notifier and the consignee when the notification procedure applies, according to Article 5(3) of the WSR
- between the person arranging the shipment and the consignee when the shipped waste is subject to the Article 3(2) procedure, according to Article 18(2) of the WSR

Articles 24 and 25 of the WSR deal with take-back obligation and cost of take-back in the event of illegal shipments. The WSR does not contain further rules on take-back obligations for cases of illegal shipments and related costs outside of these provisions.

The definition of illegal shipment is in Article 2(35) of the WSR. The definition covers both wastes for which notification is necessary (see Article 2(35) 1 to f) and wastes for which the Article 18 procedure applies (see Article 2(35) g (i) to (iii)). The case in question (falsely declared green listed waste) would certainly fulfil the definition of an illegal shipment.

Against this background, Article 63(6) states:

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

The wording of Article 63(6) makes it clear that the provision relates only to waste listed in Annex III. Falsely declared green listed waste — as in the example — does not fulfil this definition. Therefore, Article 63(6) does not apply to this situation. Since the exemption clause of Article 63(6) does not apply, Articles 24 and 25 are not excluded from application, and the regular rules of take-back procedure apply.

3.7. Is the take-back obligation also applicable in cases of bankruptcy of the consignee?

Keywords: Take-back procedure; bankruptcy of consignee; destination of waste unclear

Background: Contaminated soil waste was shipped from country A to country B in two different instances; one using a notification under the old Regulation 259/93/EEC and the other using a notification under the WSR. The consignee in country B went bankrupt after the waste had been accepted. The competent authorities of dispatch received a confirmation of receipt from the consignee for these shipments but no certificate for the treatment.

The provisions of the WSR on take-back obligations are laid down in Title I, Chapter 4: ‘Take-back obligations’, in Articles 22 and 24. Article 22 covers the situation where a shipment cannot be completed as intended, and Article 24 introduces take-back obligations in cases of illegal shipments (as defined in Article 2 (35) (g) of the WSR).

If the consignee goes bankrupt and the authority in the country of dispatch is not aware whether the non-interim treatment of the waste has been completed as intended in the notification document or not, the authority is required to collect evidence on the completion. According to Article 16(e) of the WSR, the non-interim treatment facility has to submit signed copies of the movement document containing the certificate to the competent authorities concerned; Member State authorities have to verify that this obligation is fulfilled. Accordingly Member State authorities must investigate whether there is evidence that

- the shipment has not been completed as intended;
- the shipment is deemed to be illegal (as defined in Article 2(35) (d) or (e)).

In either case, a take-back procedure applies. Article 22 does not only relate to non-completion of the shipment, but explicitly includes non-completion of transport and recovery.

Regulation (EEC) 259/93

The relevant provisions of Article 25 of Regulation (EEC) 259/93 are to be found in Article 25, 8(6) and 26. In Article 26, it is stipulated that

> '(1) any shipment of waste effected: (…)
>
> (d) which is not specified in a material way in the consignment note; or
>
> (e) which results in disposal or recovery in contravention of Community or international rules (…)
>
> shall be deemed to be illegal traffic.
>
> (2) If such illegal traffic is the responsibility of the notifier of the waste, the competent authority of dispatch shall ensure that the waste in question is:
>
> (a) taken back by the notifier or, if necessary, by the competent authority itself, into the State of dispatch, or if impracticable;
>
> (b) otherwise disposed of or recovered in an environmentally sound manner, within 30 days from the time when the competent authority was informed of the illegal traffic or within such other period of time as may be agreed by the competent authorities concerned.'

If the consignee goes bankrupt and the authority in the country of dispatch is not aware that the non-interim treatment has been completed as intended in the notification document, the authority is required to collect evidence on completion. According to Article 8(6) of Regulation (EEC) 259/93, the non-interim treatment facility has to submit a certificate of recovery of the waste to the notifier and the other competent authorities concerned as a part of or attached to the consignment note which accompanies the shipment. Accordingly Member States authorities must check whether there is evidence that

- the shipment has not been completed as intended;
- the shipment is deemed to be illegal.

In either case, a take-back procedure applies.

It could be argued that (contrary to the provisions of the WSR) the take-back obligation on non-completion of the shipment, as defined in Article 25 of Regulation 259/93, does not include the non-interim treatment. One could argue that the take-back obligation of the notifier (and the state of dispatch) ends when the waste arrives at the non-interim facility. However, this position seems untenable, since Article 25(3) explicitly states that the obligation of the notifier and the subsidiary obligation of the state of dispatch to take the waste back ends only after the issuing of the certificate referred to in Article 8(6). As this certificate may only be issued after the processing of the waste, it can be concluded that the take-back obligation applies up to that stage.

3.8. Is the take-back obligation still applicable after the 180-day period (Article 8(6) of the old Regulation 259/93/EEC) and after the one-year period (Article 16(e) of the WSR?

Keywords: Take-back procedure; costs; damage to waste during transport

Background: Contaminated soil waste was shipped from country A to country B in two different instances; one using a notification under the old Regulation 259/93/EEC and another using a notification under the WSR. The consignee in country B went bankrupt after the waste had been accepted. The competent authorities of dispatch received a confirmation of receipt from the consignee for these shipments but no certificate for the treatment.

The relevant articles of the WSR (Article 16(e)) and Regulation (EEC) 259/93 (Article 8(6)) stipulate no deadlines for further investigation or action by authorities except in the cases specified. Where there are deadlines (such as the 90-day period in Article 25(1) of Regulation (EEC) 259/93), their purpose is to speed up administrative procedures, not to suggest that responsibility would expire after this date.

Where authorities conclude that take-back obligations exist, the necessary procedures must be arranged.

3.9. Given that the consignee in country B went bankrupt after the 180-day period had expired (under the old Regulation 259/93/EEC), is the notifier still obliged to take back the waste?

Keywords: Take-back procedure; costs; damage to waste during transport

Background: Contaminated soil waste was shipped from country A to country B in two different instances; one using a notification under the old Regulation 259/93/EEC and another using a notification under the WSR. The consignee in country B went bankrupt after the waste had been accepted. The competent authorities of dispatch received a confirmation of receipt from the consignee for these shipments but no certificate for the treatment.

Article 8(6) of Regulation (EEC) 259/93 lays down that

> 'As soon as possible and not later than 180 days following receipt of the waste the consignee, under his responsibility, shall send a certificate of recovery of the waste to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.'

It has to be investigated whether a take-back procedure is justified or not. Articles 25 and 26 of Regulation (EEC) 259/93 do not specify any deadlines after which take-back obligations expire. Where there are deadlines (such as the 90-day period in Article 25(1) of Regulation

(EEC) 259/93), their purpose is to speed up administrative procedures, not to suggest that responsibility would expire after this date.

Further, Article 25(3) states that

> 'The obligation of the notifier and the subsidiary obligation of the State of dispatch to take the waste back shall end when the consignee has issued the certificate referred to in Articles 5 and 8.'

Regarding the end of the obligation, Article 25(3) of Regulation (EEC) 259/93 does not contain any alternative to the requirement that the certificate according to Article 8(6) has to be issued.

3.10. If waste gets irreversibly mixed with other waste, the second paragraph of Article 22(3) of the WSR states that the take-back obligations do not apply. How does this relate to Article 23 on the costs for take-back? Who bears the costs for treatment — the notifier or, if impracticable, the competent authority of dispatch?

Keywords: Take-back procedure; costs; damage to waste during transport

Background: Contaminated soil waste was shipped from country A to country B in two different instances; one using a notification under the old Regulation 259/93/EEC and the other using a notification under the WSR. The consignee in country B went bankrupt after the waste had been accepted. The competent authorities of dispatch received a confirmation of receipt from the consignee for these shipments but no certificate for the treatment.

Provisions on take-back costs in cases covered by Article 22(3) of the WSR are laid down in Article 23:

> '(1) Costs arising from the return of waste from a shipment that cannot be completed, including costs of its transport, recovery or disposal pursuant to Article 22(2) or (3) and, from the date on which the competent authority of dispatch becomes aware that a shipment of waste or its recovery or disposal cannot be completed, storage costs pursuant to Article 22(9) shall be charged:
>
> (a) to the notifier as identified in accordance with the ranking established in point 15 of Article 2; or, if impracticable;
>
> (b) to other natural or legal persons as appropriate; or, if impracticable;
>
> (c) to the competent authority of dispatch; or, if impracticable;
>
> (d) as otherwise agreed between the competent authorities concerned.
>
> (2) This Article shall be without prejudice to Community and national provisions concerning liability.'

Although Article 23 is entitled 'Costs for take-back when a shipment cannot be completed', there is no possible doubt that its provisions also apply to cases covered by Article 22(3). This is clear from the unambiguous wording ('including costs of its transport, recovery or disposal pursuant to Article 22(2) or (3)').

The term 'impracticable' in Article 23(1) (c) of the WSR is open to interpretation. As it is used in relation to an authority (of dispatch), 'impracticable' cannot just refer to bankruptcy or technical malfunction. So cost sharing as mentioned in Article 23(1) (d) — agreement between the authorities concerned — seems also to apply when it is not appropriate to charge the competent authority of dispatch with the entire costs.

In any case paragraph 2 stipulates that Union and national legislation concerning liability is still applicable.

4. GENERAL PROCEDURAL ISSUES — TREATMENT OPERATIONS

4.1. If a waste shipment is intended for interim recovery operations R12-R13, does the WSR require information to be provided about the final recovery operation, i.e. can the competent authority of dispatch demand that the final recovery operation is mentioned on the notification form (written notification and consent procedure) or on the Annex VII document (Article 18 procedure)? Or is it permissible to provide this information at a later stage? Is it permissible under the WSR to arrange a shipment for storage even if the final recovery is still unclear?

Keywords: Procedure; Treatment operations; Article 18 procedure; Interim recovery

The questions raise two problems which have to be distinguished:

- The first problem relates to shipments of waste in the meaning of Article 3(1) (a) and (b) of the WSR, i.e. requiring the notification procedure in Article 4-17 (see below);
- the second problem concerns shipments of waste referred to in Article 3(2) and (4), i.e. requiring the procedure in Article 18 of the WSR (see below)

For shipments of waste

- where notification procedure has to take place
- intended for recovery operations R12 and R13 in the meaning of WFD 2006/12/EC (defined by Article 2 No 7 of the WSR as 'interim recovery operations'),

the procedures are laid down in Articles 4 and 15 of the WSR.

Article 4 (6) of the WSR states that:

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

Article 15 of the WSR contains further specific provisions for the shipment of waste destined for interim recovery. Article 15(a) and (b) clearly point out that

> 'Where a shipment of waste is destined for an interim recovery (…) all the facilities where subsequent interim as well as non-interim recovery and disposal operations are envisaged shall also be indicated in the notification document in addition to the initial interim recovery or disposal operation.
>
> The competent authorities of dispatch and destination may give their consent to a shipment of waste destined for an interim recovery or disposal operation only if there are no grounds for objection, in accordance with Articles 11 or 12, to the shipment(s) of waste to the facilities performing any subsequent interim or non-interim recovery or disposal operations.'

Consequently, in cases of waste shipments requiring the notification procedure, the competent authority of the country of dispatch may demand that the final recovery operation is mentioned on the notification form and does not have to accept that such information is provided at a later stage.

Article 4 (2) states, that information as required by Annex II Part 1 must be supplied on or annexed to the notification at the time of submission. Annex II, Part 1, point 5 says that this information includes:

> 'Recovery or disposal facility's name, address, telephone number, fax number, e-mail address, registration number, contact person, technologies employed and possible status as pre-consented in accordance with Article 14. If the waste is destined for an interim recovery or disposal operation, similar information regarding all facilities where subsequent interim and non-interim recovery or disposal operations are envisaged shall be indicated.'

When a planned shipment is subject to the procedure of prior written notification and consent, it may take place only after the notification and movement documents have been completed pursuant to the Regulation and it must not be started until the complete notification form has been submitted to the competent authority and a prior written consent has been transmitted to the notifier.

Consequently, in cases of waste shipments requiring the notification procedure, it is not permissible under the WSR to arrange a shipment destined for storage if the final recovery is still unclear.

For shipment of waste of the kinds referred to in Articles 3(2) and (4), see Article 18 for the main procedural rules. Annex VII contains a form for these kinds of shipments. These provisions do not include any specific provisions on interim recovery operations.

In the judgment of 25 June 1998 (Beside, Case C-192/96) the European Court of Justice had to decide on the question

> ‘What is the minimum evidence that the competent authority must normally require, in the absence of notification, in order to establish that the ‘green waste’ is intended for recovery’.

The Court stated that

> ‘given that the storage of a batch of ‘green waste‘ is not regarded as a recovery operation unless it takes place pending such an operation, such evidence must relate to the final recovery operation, even if it is to take place outside the Community.’

In other words, the Court stated that the storage of waste may only be regarded as a recovery operation if it is evident that the intended final treatment of the waste is a recovery operation complying with legal requirements.

This Court ruling related to former Regulation (EEC) 259/93, which has since been repealed. However, it should be borne in mind that the procedure of Article 11 of Regulation (EEC) 259/93 applied to ‘waste for recovery listed in Annex II’ (‘Green list of wastes’) and thus covers the same situations as Article 18 of the WSR. The objective of environmental protection is the same in the WSR as in Regulation (EEC) 259/93. The Court’s arguments therefore have an identical impact for shipments to which the Article 18 procedure applies.

Consequently, following the arguments of the Court, the competent authority of the country of dispatch may demand that the final recovery operation is mentioned on the Annex VII form and does not have to accept that such information is provided at a later stage. If this information is not yet available, i.e. if the final recovery is still unclear, it is not permissible under the WSR to arrange a shipment destined for storage.

4.2. Is a shipment destined for 'R12' and 'R13' always destined for interim recovery or can it also be recovery?

Keywords: Procedure; Treatment operations; Article 18 procedure; Interim recovery

Background: Article 2(7) of the WSR defines, 'interim recovery' as 'R12' and 'R13' recovery operations. 'R12' and 'R13' are not limited to interim recovery, but can also be regarded as recovery (Article 2(6) of the WSR). Therefore a shipment destined for 'R12' or 'R13' is probably not always interim recovery.

Annex II B to the WFD introduces the recovery operations R 12 (Exchange of wastes for submission to any of the operations numbered R 1 to R 11) and R 13 (Storage of wastes pending any of the operations numbered R 1 to R 12 excluding temporary storage, pending collection, on the site where it is produced). The wording of Article 2 of the WSR allows three different interpretations.

Article 2(7) of the WSR says:

> 'interim recovery' means recovery operations R 12 and R 13 as defined in Annex II B to the WFD'.

According to Article 2(6) of the WSR,

> 'recovery' is as defined in Article 1(1) (f) of Directive 2006/12/EC'.

Whereas according to Article 1(1) (f) of the WFD,

> 'recovery' shall mean any of the operations provided for in Annex II B',

in this interpretation, *all* categories of recovery treatment operations of the WFD including R 12 and R 13 can be regarded as recovery operations.

Three possible interpretations are possible for the application of the WSR:

1. R 12 / R 13 operations are always 'recovery';
2. R 12 / R 13 operations are sometimes 'recovery' and sometimes 'interim recovery';
3. R 12 / R 13 operations are always 'interim recovery', which is a specific case of recovery for which the general rules for recovery only apply if no specific rules are laid down in the WSR.

Both the first and the second interpretations of Article 2 create severe problems of consistency of legislation and conflicts with the overall protective aim of the WSR (if the first interpretation were appropriate, Article 2(7) of the WSR would be redundant; the second interpretation is problematic because the WSR does not help to distinguish which types of R12/R13 wastes are for 'interim recovery' and which for 'recovery'). However the third interpretation is clearly in line with the general aims of Waste Shipment legislation.

- The rules on interim recovery were included in the WSR to ensure that the specific dangers arising from exchange and storage of waste are dealt with.

- This is also in line with the specific rules for exchange and accumulation of wastes destined for recovery operations as provided in Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations. Recital 5 of the WSR indicates that one aim of revising the WSR was to incorporate OECD Decision C(2001)107/Final.

Thus, R 12 / R 13 operations are always regarded as 'interim recovery operations' in the sense that they are a specific case for which the general recovery rules only apply if no specific rules are laid down in the WSR.

Consequently, shipments for 'R12' and 'R13' are always destined for interim recovery in the sense that they are a specific case for which the general recovery rules only apply if no specific rules are laid down in the WSR.

4.3. For interim recovery, is only the notification procedure applicable?

Keywords: Procedure; Treatment operations; Article 18 procedure; Interim recovery

As pointed out in the answer to Question 4.2, the WSR introduces this approach for shipments of waste for interim recovery: the specific rules as laid down in the WSR apply; if there are no specific rules, the general rules apply. For the question whether the notification procedure applies to wastes destined for recovery operations R 12 / R 13, this means that:

1. for wastes requiring the notification procedure in Articles 4 to 17 (i.e. wastes referred to in Article 3(1) (b) of the WSR), the notification procedure also applies to wastes destined for interim recovery, with the additional requirements of Article 15. This Article 15 states in (a) and (b) that the competent authorities of the countries of dispatch and destination must consider the conditions of both interim and final recovery;
2. for wastes requiring the Article 18 procedure (i.e. wastes referred to in Article 3(2) and (4) of the WSR), no specific rules are laid down for wastes destined for interim recovery. In the absence of specific WSR rules for interim recovery operations, the general rules apply suggesting that wastes of this kind can be shipped using the Article 18 procedure.

However, the judgement of the European Court of Justice of 25 June 1998 (Beside, Case C-192/96) is relevant here. The Court had to decide on the question:

> 'What is the minimum evidence that the competent authority must normally require, in the absence of notification, in order to establish that the 'green waste' is intended for recovery'.

The Court stated that

> ‘given that the storage of a batch of ‘green waste‘ is not regarded as a recovery operation unless it takes place pending such an operation, such evidence must relate to the final recovery operation, even if it is to take place outside the Community.
>
> (…) In order to take account of the objective of environmental protection underlying the Regulation, the competent authorities must, as a general rule and as a minimum, be able to require, in relation to ‘green waste‘ intended for recovery and not subject to notification, the information mentioned in Article 11 of the Regulation.’

In other words, the Court stated that the storage of waste may only be regarded as a recovery operation if it is evident that the intended final treatment of the waste is a recovery operation complying with legal requirements.[14]

This is in line with the idea behind Article 15 (a) and (b) of the WSR that not only the interim recovery operation but also the subsequent recovery treatment operations have to be subjected to checks and authorisation.

4.4. Is R 12 / R 13 interim recovery (Article 2 (7)) always associated with the notification procedure? Is R 12 / R 13 recovery (Article 2 (6)) always associated with the information procedure under Article 18 of the WSR?

Keywords: Procedure; Treatment operations; basic definitions; Article 18 procedure; Interim recovery; term ‘recovery’ in Waste Framework Directive

As shown in the answer to Question 4.3, there is no distinction between R 12 / R 13 under Article 2(7) and R 12 / R 13 under Article 2(6). The WSR treats shipments of waste for interim recovery as a specific case of recovery to which the general rules only apply if there are no specific rules in the WSR.

14 This Court ruling related to former Regulation (EEC) 259/93 which has since been repealed. However, it should be borne in mind that the procedure of Article 11 of Regulation (EEC) 259/93 applied to ‘waste for recovery listed in Annex II’ (‘Green list of wastes’) and thus covers the same situations as Article 18 of the WSR. The objective of environmental protection is the same in the WSR as in Regulation (EEC) 259/93. The Court's arguments therefore have an identical impact for shipments to which the Article 18 procedure applies.

4.5. How should proof be provided to the relevant authorities that a contract has been concluded between the notifier and consignee on notification? How should proof be provided to the relevant authorities that a contract has been concluded between (a) the producer, new producer or collector and (b) the broker or dealer, where the broker or dealer is acting as notifier?
Keywords: Procedure, Proof of contracts

Article 4(2), 4(3) and Article 4(4) of the WSR specify the information to be provided by the notifier to the competent authority.

As regards the proof of a contract between the notifier and consignee 'evidence of a contract (or a declaration certifying its existence)' must be supplied (Annex II, part 1, 22.).

As regards the proof of a contract between (a) the producer, new producer or collector and (b) the broker or dealer, where the broker or dealer is acting as notifier 'a copy of the contract or evidence of the contract (or a declaration certifying its existence)' must be supplied (Annex II, part 1, 23.)

If requested by any of the competent authorities concerned, the notifier must supply a copy of the contracts referred to in Part 1, points 22 and 23. (Annex II, part 3, 12.).

The Waste Shipment Regulation makes it legitimate for competent authorities to choose the option they prefer.

As a practical solution an internet-based platform showing the information required by competent authorities would be very helpful. A tool already provided by the OECD is the 'Database on Transboundary Movement of Wastes destined for Recovery Operations' (see http://www2.oecd.org/waste/index.asp)

This interactive database aims to facilitate the paperwork of all parties involved in transboundary movements of wastes by providing the necessary information to complete the forms. The database includes practical information and specific requirements and provisions for each country. So far, however, the information it contains is limited.

4.6. Annex II, Part 1, point 14 of the WSR indicates the possibility of providing information on possible alternative routings. Are there any restrictions on describing more than one transport route in a notification dossier, as long as the starting point and the final destination stay the same?
Keywords: Procedural requirements; notification procedure; request for one route and no alternative

The WSR requires in the notification documents information on the routing of an intended waste shipment. According to Annex II, Part 1, point 14, information has to be included on the 'intended routing (point of exit from and entry into each country including customs offices of entry into and/or exit from and/or export from the Union) and intended route (route

between points of exit and entry), including possible alternatives, also in case of unforeseen circumstances'.

The information has to be included in block 15 of the notification document (shown in Annex IA). Annex IC, paragraph26 of the WSR includes specific instructions for completing block 15 of the notification document.

The WSR also allows notifiers to submit a general notification to cover several shipments, as long as the conditions given in Article 13 (1) are fulfilled.

In the case of unforeseen circumstances Article 13 (2) lays down the specifications for alternative routing.

The wording of Annex II, Part I, point 14 of the WSR allows three different interpretations:

1. The words 'including possible alternatives' relate exclusively to the intended route *between* points of exit and entry.
2. The words 'including possible alternatives' relate to the whole point, also allowing alternatives for the routing and for the points of exit and entry.
3. Several notification documents can be prepared (with alternatives in routing and routes) for a single intended shipment.

Option 1: Description of alternatives for route only

Annex II, part 1, point 14 specifies that, beside the information on exact points of exit and entries (routing), information on the '*intended route (route between points of exit and entry)*' should be *'supplied on, or annexed to, the notification document.'*

The same is stated in the specific instructions for completing the notification and movement document given in Annex IC, paragraph26.

In conclusion, the WSR not only allows but even requires alternatives for the routing within a country (between a point of entry and exit).

Consequently, it would not be in line with the WSR to describe only one possible transport route within a country (to the point of exit of the country of dispatch, between the points of entry and exit for transit countries and from the point of entry of the country of destination to the final destination).

Option 2: Description of alternatives for route and routing

It is uncertain that the term 'including possible alternatives' is only connected to the second part of the sentence; perhaps it is meant to include alternatives to the routing as well. Arguments against such a reading are given at two points in the WSR:

4. The notification document for transboundary movements/shipments of waste (Annex IA of the WSR) only provides space in block 15 (c) to enter *one* point of exit for the country of dispatch, *one* point of entry and *one* point of exit for transit countries and one point of entry for the country of destination.

In addition the requested information does not have to be provided *on* the notification document but also can be *annexed to it*; the template for the notification document gives an indication of the initial intention of the law, only leaving space for one possibility.

5. The instructions for completing the notification document (IC, point 26) require information to be annexed about the intended route between points of exit and entry, including possible alternatives, also in case of unforeseen circumstances.

This phrase is clearly separated (in a separate sentence) from the first part of point 26 specifying the information on points of exit and entry. This suggests that the 'alternatives' refer only to the route between points of exit and entry.

Also for general notifications covering several shipments, it is stated very clearly in Article 13 (1) (c) of the WSR that the route of the shipment as indicated in the notification document must be the same.

Furthermore, including alternatives for the entire transport routing could have far-reaching consequences. An alternative routing including changes in points of exit and entry could lead to a change of competent authorities involved. Also the question would arise how to restrict the number of alternatives indicated, e.g. would it be possible to include the whole list of a country's border-crossings and customs offices, with an entire list of names and codes annexed to the notification dossiers?

However the most obvious argument for restricting alternatives is the main objective of the WSR as indicated in Recital 1 and Article 1. Control of waste shipments would be unfeasible or at least more difficult if alternatives were possible for the entire transport between starting point and final destination.

Member States' authorities have stated that this interpretation of the WSR would lead to an unnecessary administrative burden, particularly in Member States where there is only one competent authority and where much transport is via seaports, with the companies involved being forced to take a flexible approach on transport routes. So far there is no binding interpretation in place on this issue.

However, in line with the arguments above, the WSR permits restrictions on describing more than one transport route where only the starting point and the final destination stay the same.

Option 3: Preparation of several notification dossiers

The final possible interpretation is that more than one notification dossier can be submitted, showing the alternative routing in additional notification(s).

The WSR does not address the possibility of preparing several notification dossiers for one waste shipment.

However, the main objective is stated in Recital 7 of the WSR as the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health.

For this reason notification dossiers have to be prepared for waste shipments with the intention of providing the competent authorities with the information they need to assess the acceptability of the proposed waste shipments (Annex IC, point 6). It also provides a means for them to acknowledge receipt of the notification and, where required, to consent in writing to a proposed shipment.

Preparing several notification dossiers for one shipment would hamper this intention.

Consequently, preparing more than one notification dossier for one shipment of waste is not in line with the WSR.

4.7. According to Annex II, Part 3, No 2 of the WSR, competent authorities can request a copy of the permit issued in accordance with the IPPC Directive. What does this mean in practice, given that operation facilities' permits can be very complex and are issued in the language of the country of destination? What does this mean for plants with permits issued under a different legislation (e.g. outside the EU)?

Keywords: Procedure, Permits of treatment facilities

According to Annex II, Part 3, No 2 of Regulation (EC) No 1013/2006 competent authorities can request, as additional information and documentation, a copy of the permit issued in accordance with Articles 4 and 5 of Directive 96/61/EC. The IPPC Directive 2008/1/EC (ex-Directive 96/61/EC) stipulates in Article 4 that Member States must take the necessary measures to ensure that no new installation is operated without a permit issued in accordance with this Directive. Article 5 defines requirements for the granting of permits for existing installations. Consequently for both new and existing IPPC installations within the EU, a permit must be granted before operating, in accordance with the national implementation of the Directive.

Of course, the permits may vary in terms of the overall page number, times of amendment, languages and basic legislation, depending on the installation type and the country where the installation is operating. Within the EU they may not vary in terms of the general requirements defined in Directive 2008/1/EC.

For exports from the European Union it should be ensured that the waste is managed in an environmentally sound manner throughout the period of shipment and including recovery or disposal in the country of destination. The facility which receives the waste should be operated in accordance with human health and environmental protection standards that are broadly equivalent to those established in Community legislation. Related non-binding guidelines on environmentally sound management can be found in Annex VIII of Regulation (EC) No 1013/2006 (Guidelines adopted under the Basel Convention, Guidelines adopted by the OECD, Guidelines adopted by the International Maritime Organisation, Guidelines adopted by the International Labour Organisation). Competent authorities can request the permit of an installation inside or outside the EU specifically in order to ensure that the waste

is managed and handled in an environmentally sound manner (especially throughout the recovery/disposal process in the receiving installation).

Annex II, Part 3, No 2 of the WSR should be seen as a practical means to clarify specific questions concerning the notification process. E.g. if there is a lack of clarity concerning the capacity of an installation, the request should be focused on that (part of the) permit or accompanying amendment to the permitted capacity of the installation.

Concerning different languages, Article 27 of the WSR stipulates that the notifier must provide the competent authorities concerned with authorised translation(s) into a language which is acceptable to them, should they so request.

4.8. What kind of proof can a competent authority require before releasing the financial guarantee associated with the prior written notification and consent procedure?

Keywords: Procedural requirements; release of the financial guarantee

Background: Some stakeholders complain that there are regional authorities in Member States which ask for a full copy of the movement document including front and back pages and that both pages must be stamped and signed. Processing thousands of these forms in this way can be confusing and creates a heavy burden on companies. This is even worse when the requirements vary from state to state.

The financial guarantee or equivalent insurance should be released when the competent authority has received the certificate referred to in Article 16(e) (or Article 15(e) in the case of interim recovery or disposal) for the relevant waste. It is not clear whether block 19 of the movement document should be filled in and stamped and signed before or after copying the movement document.

Our view is that before releasing the financial guarantee the competent authorities can request:

- signed (but not stamped) copies of the movement document with block 19 completed;
- signed copies of certificates according to Article 15(e) as outlined in the Correspondents' guidelines No 3[15].

[15] CORRESPONDENTS' GUIDELINES No 3 Subject: Certificate for subsequent non-interim recovery or disposal according to Article 15(e) of Regulation (EC) No 1013/2006 on shipments of waste.

4.9. In the shipment of wastes requiring notification, how should the movement forms be handled in the case of split shipments, where more than one mode of transport (e.g. trucks, train, ships) is involved in a shipment?
Keywords: Procedure; notification procedure; movement documents; procedure in case of split shipments

Under Article 4(1) of the WSR, the notifier has to submit the notification document (see Annex IA) and the movement document (see Annex IB).

Some parts of the movement document have to be completed by the notifier at the time of notification, while others have to be filled in after the consents from the competent authorities have been received (Annex IC, point 32).

The question is: How should the movement forms be filled out and handled when several transport modes are involved and the load is split into several transports (e.g. from truck to ship to truck) referred to as 'split shipments'? Two options can be discussed.

(1) *Several movement documents* for the divided loads of one intended shipment will be filled in.

(2) O*ne movement document* for the spitted loads of one shipment of waste will be filled in and used on the transport as a copy?

Option 1: Filling in several movement documents for spitted loads of one waste shipment

Article 16 of the WSR lays down, that the movement document, or, in the case of a general notification, the movement documents shall be completed by the undertakings involved.

Furthermore Block 2 of the movement document (Annex IB of the WSR) requires the information on the serial/total number of shipments. The specific instructions for filling in the movement document (included into Annex IC paragraph34 of the WSR), says that, for a **general notification** for multiple shipments, the **serial number of the shipment and the total intended number of shipments** indicated in block 4 in the notification document (e.g. '4/11' for the fourth shipment out of eleven intended shipments) has to be entered. **In the case of a single notification '1/1**' has to be entered.'

This means that the possibility of filling in several movement documents is only given in the frame of a general notification laid down in Article 13 of the WSR.

Such general notification may be submitted by the notifier to cover several shipments, fulfilling the three conditions laid down in Article 13 (1) of the WSR. In the case that a load of shipment of waste is divided on several transports all three conditions are fulfilled. It is the same type of waste (a) shipped to the same consignee and facility (b) taking the same route (c).

Consequently, the filling in of several movement documents for split shipments is possible in the frame of a general notification procedure laid down in Article 13 of the WSR. The

possibility of filing in several movement documents for a single notification procedure is not given in the Waste Shipment Regulation.

Option 2: Applying one movement document for spitted loads of one waste shipment

The movement document is included in Article IB of the WSR. The specific instructions for completing the notification and movement document (Annex IC, paragraph6 of the WSR) lays down the purpose of the movement document as, the document which is intended to travel with a consignment of waste **at all times from the moment it leaves the waste producer to its arrival at a disposal or recovery facility** in another country.

In the case of the involvement of different carriers block 8 in the movement document (included into Annex IB of the WSR) leaves space for the information of three different carriers. When more than three carriers are involved, appropriate information on each carrier should be attached to the movement document and upon each successive transfer of the consignment, the new carrier or carrier's representative taking possession of the consignment will have to comply with the same request and also sign the document. A copy of the signed document is to be retained by the previous carrier.

The intention of the movement document is, to give all persons (authorities, facility of dispatch and facility of disposal or recovery and the carriers) the possibility to fill in the regarded information. For that purpose the movement document is handed over from one carrier to the next and each carrier has to include the related information, sign the document and send a copy back to the notifier.

Consequently, it has to be assured that the movement document accompanies the shipment at all time of the transport. Therefore the use of a single movement document for more than one transport mode (e.g. for several trucks) is not in line with the WSR.

However practical solutions are needed for the exceptional case that a notified load (e.g. ship container) will be divided into several smaller loads (e.g. off-loading to smaller trucks). In this case it could be practical to allow using a single movement document in copy. Still the original information has to be given at *all* single transports. According to the movement document in Annex IB, block 2 especially the weight of a single transport has to be inserted. Looking at the specific instructions for filling in the movement document (Annex IC paragraph36 of the WSR) specifies that the actual weight in tonnes of the waste and wherever possible, copies of weighbridge tickets have to be given.

When using copies of the movement documents to accompany an actual transport, the information of the actual weight of the single transport and the total weight of the whole transport is required. Also it should be indicated how many transports are involved (e.g. number 1 out of 3) and where the rest of the load is transported (e.g. number of plate of trucks transporting the rest of the load).

Consequently, when more than one mode of transport is involved in a shipment, the transports in general have to be addressed within separate notifications requiring one

movement document for each transport or within a general notification of Article 13 of the WSR.

The use of copied movement document at the location of off-loading from one to another transport mode should be possible ***only in exception***. Then it should be required that the document includes the information of actual and total load of the waste shipment and the remaining rest of the shipment by specific information.

4.10. What are the procedural requirements for importing wastes listed in Annex IIIB (including potential future entries) into the European Union from an OECD country?

Keywords: Procedural requirements for Annex IIIB wastes

Case A: *Import for recovery*

Article 44 states that Title II of the WSR, 'Shipment within the Community with or without transit through third countries', applies with the adaptations and additions listed in Article 44 (2) and (3). Article 44 refers to all wastes destined for recovery, including potential future waste entries listed in Annex IIIB.

If Article 44 (4) required prior written notification for all wastes destined for recovery, one would expect this significant discrepancy with the provisions of the WSR Title II to be mentioned explicitly (see Article 38(2) (b) for exports of wastes listed in Annex IIIB to OECD Decision countries).

Accordingly, Article 44 applies to imports subject to the notification procedure (wastes classified under one single entry in Annexes IV or IVA) and also to imports where Article 18 applies (wastes classified under one single entry in Annexes III, IIIA or IIIB). The adaptations and additions to Article 44 include specific single provisions relating to the notification procedure (e.g. those in Article 44 (4) (a)). These provisions apply only to those imports where the notification procedure has to be followed because of the requirements of Title II.

Potential future waste entries listed in Annex IIIB include 'additional green listed waste awaiting inclusion in the relevant Annexes to the Basel Convention or the OECD Decision as referred to in Article 58(1) (b)' and Article 44 deals with 'waste destined for recovery', so these imports are presumably subject to the requirements of Article 18 according to Article 3(2) (a).

Case B: *Import for disposal*

Except in the cases defined in Article 41, it is prohibited to import waste for disposal from an OECD Decision country, not party to the Basel Convention, into the EU.

Where not prohibited, Article 3 (1) (a) stipulates that the notification procedure has to be followed for all wastes for disposal.

Consequently, for potential future waste categories in WSR Annex IIIB, which are imported into the European Union from an OECD country and are destined for recovery, the procedural requirements are given in Article 44 of the WSR. It is prohibited to import waste for disposal from an OECD Decision country, not party to the Basel Convention, into the EU, except in the cases defined in Article 41. In cases where imports for disposal are not prohibited, the notification procedure has to be followed, as stipulated in Article 3 (1) (a).

4.11. What are the procedural requirements for importing wastes listed in Annex IIIB (including potential future entries) into the European Union from a non-OECD country that is party to the Basel Convention?
Keywords: Procedural requirements for Annex IIIB wastes

Case A: *Import for recovery*

Article 45 of the WSR sets out the *'Procedural requirements for imports from a non-OECD Decision country Party to the Basel Convention or from other areas during situations of crisis or war'*. For imports of recovery waste into the EU from countries to which the OECD Decision does not apply and which are also Party to the Basel Convention, the same procedure must be followed as in Article 42 on for waste destined for disposal.

Article 42 of the WSR sets out the *'Procedural requirements for imports from a country party to the Basel Convention or from other areas during situations of crisis or war'*. According to paragraph 1 of Article 42 *'Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3'*.

Argumentation line A:

> Title V, Chapter 1, Article 42 refers to all wastes destined for disposal. Thus, Title II of the WSR 'shipment within the Community with transit through third countries' should apply with the adaptations and additions listed in paragraphs 2 and 3 of Article 42.
>
> Accordingly, the procedure requirements of Article 42 on waste shipments destined for disposal should apply *mutatis mutandis* for waste shipments covered by Article 45 and destined for recovery.
>
> According to Title II, Article 3(1) (a) the notification procedure and the provisions of Article 4 have to be followed for all wastes destined for disposal.
>
> Notification could be expected to be required because of the reference in Article 45 to Article 42 and the heading of Title V, Chapter 1 'Imports of waste for disposal'.

Argumentation line B:

> On the other hand it could be assumed that, when Article 45 cites Article 42, it refers only to equal time frames (in case of notification) for both recovery and disposal for imports from a non-OECD country party to the Basel Convention (see Article 42(2) (a)). Article 42 refers to Title II of the WSR 'shipment within the Community with

transit through third countries' and Title II deals with both wastes destined for recovery and waste destined for disposal.

The adaptations and additions to Article 42 include specific single provisions relating to the notification procedure (e.g. defined in Article 42 (4) (a)). These specific provisions apply only for those imports where the notification procedure has to be followed because of the requirements of Title II.

According to Title II, Article 3(2) (a), the Article 18 procedure applies for wastes listed in Annex III ('green listed').

Notification is unlikely to be required for all wastes in view of the reference to Title II of the WSR.

This argumentation would be in line with the Basel Convention where wastes of Annex IX, List B are outside the scope of the Basel Convention. Wastes in WSR Annex IIIB are not listed in the Basel Convention, whereas those in WSR Annex III Part I are.

There are no rules of the type stipulated for exports of green listed wastes destined for recovery (see Article 36 to 38).

Case B: *Import for disposal*

Except in the cases defined in Article 41, it is prohibited to import waste for disposal from a non-OECD Decision country, party to the Basel Convention, into the EU.

Where not prohibited, Article 3 (1) (a) stipulates that the notification procedure has to be followed for all wastes for disposal.

It is not clear from the WSR whether the reference to Article 42 in Article 45 means that the notification procedure is necessary for imports of green listed wastes destined for recovery into the EU from a non-OECD country party to the Basel Convention. There are two possible answers, as set out in the two argumentations given.

In cases where imports for disposal are

not prohibited, the notification procedure has to be followed, as stipulated in Article 3 (1) (a).

4.12. If a notifier makes several notifications per year, can they provide one single annual financial guarantee for all the relevant shipments concerned?

Keywords: Procedure, Financial guarantee for several shipments

The WSR does not explicitly include nor exclude the possibility of providing one single annual financial guarantee for several shipments per year (except in the case of a general notification (Article 13 (1) WSR) which is not referred to in this question).

The wording of several Articles (e.g. Art. 6(5)) indicates that for each notified shipment a financial guarantee or equivalent insurance is required.

The practical handling of a single annual financial guarantee for several different notified shipments could be difficult or impossible for the competent authorities, as the competent authority of dispatch has to approve the financial guarantee or equivalent insurance, including the form, wording and amount of the cover (Article 6 (4)). This is an important risk for competent authorities who must answer in cases of illegal or unfinished transfers.

- Where several notifications are carried out within a year but not notified simultaneously, and are covered by one financial guarantee or equivalent insurance, the costs for transport, recovery, disposal or storage for 90 days will probably not be known at the date of the first notification. Further these calculations depend on the type of waste, the type of treatment, packaging, etc. which make a calculation even more complex. For each new notification the competent authority would have to check if this shipment is still covered by the single financial guarantee or equivalent insurance.
- Where several notifications are carried out within a year and are notified simultaneously, and are covered by one financial guarantee or equivalent insurance, the approval of the costs might be possible.

In order to guarantee that all shipments are covered by the financial guarantee or equivalent insurance, care must be taken that the amount of the cover does not change within the year.

In both cases the single financial guarantee or equivalent insurance must be released when the competent authority concerned has received the last certificate referred to in Article 16(e) for the notified shipments covered (or Article 15(e) for interim recovery or disposal operations).

4.13. What procedure is necessary for the shipment of 'green listed' waste for recovery from a non-EU country to another non-EU country transiting through the EU?

Keywords: Procedural requirements for Annex III wastes

Title VI of the WSR regulates the *'Transit through the Community from and to third countries'*. Article 47 deals with *'Transit through the Community of waste destined for disposal'* and Article 48 deals with *'Transit through the Community of waste destined for recovery'*.

If the transiting waste is destined for recovery and Article 48 applies, there is a differentiation between OECD and non-OECD countries.

a. Article 48 (1) stipulates: *'Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision does not apply, Article 47 shall apply mutatis mutandis.'*

   Article 47 stipulates: *'Where waste destined for disposal is shipped through Member States from and to third countries, Article 42 shall apply mutatis mutandis, with the adaptations and additions listed below:…'*.

Article 42 of the WSR stipulates *'Procedural requirements for imports from a country Party to the Basel Convention or from other areas during situations of crisis or war'*. According to paragraph 1 of Article 42 *'Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3'*.

Accordingly, Title II of the WSR *'Shipment within the Community with transit through third countries'* with the adaptations and additions listed in Article 42 (2) and (3) also applies for transit through the EU of waste destined for disposal.

Article 42 refers to all wastes destined for disposal.

According to Article 3(1) (a) the notification procedure has to be followed for all wastes destined for disposal and *mutatis mutandis* for all recovery wastes shipped through Member States from and to a country to which the OECD Decision does not apply.

b. Article 48 (2) stipulates: *'Where waste destined for recovery is shipped through Member States from and to a country to which the OECD Decision applies, Article 44 shall apply mutatis mutandis, with the adaptations and additions listed below:...'*.

According to paragraph 1 of Article 44 '*Where waste destined for recovery is imported into the Community from countries and through countries to which the OECD Decision applies, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3'*.

Therefore Title II of the WSR *'Shipment within the Community with transit through third countries'* with the adaptations and additions listed in Article 44 (2) and (3) also applies for transit of waste destined for recovery.

If Article 48 or Article 44 required the prior written notification for all wastes destined for recovery, one would expect this significant discrepancy with the provisions of WSR Title II to be mentioned explicitly (see Article 38(2) (b) for exports of wastes listed in Annex IIIB to OECD Decision countries).

Accordingly, Article 44 applies to imports (transits) subject to the notification procedure (wastes classified under one single entry in Annex IV and IVA, wastes not classified under one single entry in either Annex III, mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA, IIIB, IV or IVA) and also to imports (transits) where Article 18 applies (wastes classified under one single entry listed in Annex III, IIIA and IIIB). The adaptations and additions of Article 44 include specific provisions related to the notification procedure (e.g. those in Article 44 (4) (a)). These provisions apply only for those imports (transits) where the notification procedure has to be followed because of the requirements of Title II.

c. Article 48 (3) stipulates: *'Where waste destined for recovery is shipped through Member States from a country to which the OECD Decision does not apply to a*

*country to which the OECD Decision applies or **vice versa**, paragraph 1 shall apply as regards the country to which the OECD Decision does not apply and paragraph 2 shall apply as regards the country to which the OECD Decision applies.'*

See arguments in (a) and (b).

Consequently, Article 18 applies for 'green listed' waste shipped through Member States from and to a country to which the OECD Decision applies. The notification procedure has to be followed for 'green listed' waste shipped through Member States from and to a country to which the OECD Decision does not apply.

4.14. If shipments of hazardous waste transit through the EU destined for a country to which the OECD Decision does not apply, are they considered illegal?

Keywords: Procedural requirements for Annex III wastes

According to the 'Basel Convention Ban Amendment' the Parties agreed at the Second Meeting of the Conference of the Parties (COP–2) in March 1994 to an immediate ban on the export of hazardous wastes from OECD to non-OECD countries. At COP-3 in 1995 it was proposed that the Ban be formally incorporated in the Basel Convention as an amendment (Decision III/1).

The Amendment to the Basel Convention (Decision III/1), adopted at the Third Meeting of the Conference of the Parties at Geneva on 22 September 1995, stipulates:

Article 4 A:

1. *Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.*
2. *Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1 (i) (a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention.*

According to recitals 3 and 4 of the WSR, the EU has been party to the Basel Convention since 1994 and the amendment to the Basel Convention, as laid down in Decision III/1 of the Conference of the Parties, was approved on the behalf of the EU by Council Decision 97/640/EC. Recital (4) stipulates: *'Regulation (EEC) No 259/93 was amended accordingly by Council Regulation (EC) No 120/97'*.

Bearing in mind that the 'Basel Convention Ban Amendment' has not entered into force at the international level, there are still OECD countries which can legally export hazardous waste to countries to which the OECD Decision does not apply. Title VI of the WSR regarding the transit of waste from and to third countries does not make any direct or indirect reference to

the part of the regulation pertaining to the export prohibition. Therefore, shipments of hazardous waste transiting through the EU and destined for a country to which the OECD Decision does not apply may not automatically be considered illegal.

4.15. Is the import of green or hazardous waste from Kosovo to Germany for the purpose of laboratory analysis possible under the WSR? If yes what shipment procedure should apply?

Keywords: Procedural requirements; Wastes destined for laboratory analysis; areas during situations of crisis; Kosovo

Title V of the WSR regulates imports of waste into the EU from third countries.

According Chapters 1 and 2 imports of wastes from third countries for disposal as well as for recovery are prohibited even if the waste is explicitly destined for laboratory analysis.

However several exemptions are stipulated in Articles 41 (1) and 43 (1), allowing the following conclusions:

- There is no exemption from the prohibition to import waste in Article 41(1) (a), (b), (c) and Article 43(1) (a), (b), (c), (d). It is unsure that Kosovo is an area where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, it is impossible to conclude bilateral agreements or arrangements pursuant to points (b) or (c) (of Article 41 WSR) or where a competent authority in the country of dispatch has either not been designated or is unable to act.
- The export of wastes generated by the Kosovo Troops (KFOR) of the North Atlantic Treaty Organisation (NATO) in Kosovo (Serbia and Montenegro) during the deployment of KFOR/NATO troops to Germany for environmentally sound management is possible based on the agreement between Germany and the KFOR/NATO concluded in 2000. However these exports are excluded from the provisions of the WSR.

Kosovo is a territory

(a) with which some EU Member Statescan decide to conclude bilateral or multilateral agreements or arrangements compatible with Union legislation and in accordance with Article 11 of the Basel Convention;

(b) or with which Germany (an individual Member State) can conclude bilateral agreements or arrangements in accordance with paragraph 2 (of Article 41 WSR);

To enable imports from third countries — not members of the EU and OECD and not party to the Basel Convention — into the EU, an agreement can be concluded in line with Article 41 (1) (b) or (c) or Article 43 (1) (c) or (d). It is obvious and obligatory that such an agreement must be concluded before the import takes place for the recovery or disposal of waste within the EU — including imports for the purpose of laboratory analysis.

Bilateral or multilateral agreements or arrangements entered into in accordance with Articles 41 (1)(b) and (c) or 43(1)(c) and (d) must be based on the procedural requirements of Article 42.

The procedural requirements defined in Article 42 for imports of waste into the EU refer to Title II of the WSR, where Article 3 (4) stipulates:

'*Shipments of waste explicitly destined for laboratory analysis to assess either its physical or chemical characteristics or to determine its suitability for recovery or disposal operations shall not be subject to the procedure of prior written notification and consent as described in paragraph 1. Instead, the procedural requirements of Article 18 shall apply. The amount of such waste exempted when explicitly destined for laboratory analysis shall be determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and shall not exceed 25 kg*.'

Consequently, the import of green or hazardous waste from Kosovo to Germany for the purpose of laboratory analysis under the provisions of the WSR is possible if an agreement has been/is concluded in line with Article 41(1)(b) or (c) or with Article 43(1)(c) or (d). These shipments are subject to the procedural requirements of Article 18. The national legislation of the non-EU countries through which the waste is shipped before being imported into the EU, has to be observed.

While there may be some scepticism as to whether Kosovo may still be regarded as an area where, on exceptional grounds during situations of crisis, peacemaking, peacekeeping or war, no bilateral agreements or arrangements pursuant to points (b) or (c) (of Article 41 WSR) can be concluded, a competent authority in Kosovo has been designated and is able to act.

4.16. What is the correct procedure for importing green listed waste destined for recovery into the EU from a non-OECD country party to the Basel Convention?

Keywords: Procedural requirements for Annex III wastes

As referred to in Article 45 of the WSR, Article 42 defining the procedure for waste destined for disposal applies *mutatis mutandis* to imports of wastes destined for recovery listed in Annex III ('green listed') into the EU from countries to which the OECD Decision does not apply and which are also party to the Basel Convention.

According to paragraph 1 of Article 42 *'Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3*'.

Argumentation A:

> Title V, Chapter 1, Article 42 refers to all wastes destined for disposal. Title II of the WSR 'Shipment within the Community with transit through third countries' therefore applies with the adaptations and additions listed in paragraphs 2 and 3 of Article 42.

Consequently, the procedural requirements of Article 42 for waste shipments destined for disposal apply *mutatis mutandis* to waste shipments covered by Article 45 and destined for recovery.

According to Title II, Article 3(1)(a), the notification procedure and the provisions of Article 4 must be followed for all wastes destined for disposal.

Notification requirement could be expected because of the reference in Article 45 to Article 42 and the heading of Title V, Chapter 1 'imports of waste for disposal'.

Argumentation B:

On the other hand one could argue that the reference to Article 42 in Article 45 only means that there are the same notification time frames for both recovery and disposal in the case of imports from a non-OECD country party to the Basel Convention (see Article 42(2)(a)).

This would mean that Title V, Chapter 1, Article 42 refers to Title II 'Shipment within the Community with transit through third countries' and Title II deals with both wastes for recovery and those for disposal.

According to Title II, Article 3(2) (a), the Article 18 procedure applies for wastes listed in Annex III ('green listed').

Notification could not be required for all wastes because of the reference to Title II of the WSR.

This argumentation would be in line with the Basel Convention, where wastes coming under Annex IX, List B of the Basel Convention or Annex III, Part I of the WSR are outside the scope of the Basel Convention or subject to the procedure requirements of Article 18 of the WSR.

The WSR does not indicate whether the reference to Article 42 in Article 45 means that the notification procedure is required when green listed wastes destined for recovery are imported into the EU from a non-OECD country party to the Basel Convention. There are two possible answers corresponding to the two argumentations above.

There are no rules of the type stipulated for exports of green listed wastes destined for recovery (see Article 36 to 38). If the competent authorities of dispatch and destination disagree on classification issues, Article 28 applies.

4.17. Should the 'date of transmission of the acknowledgement' as referred to in Article 9 of the WSR be understood as the date when the acknowledgement is received by the competent authority of transit?

Keywords: Time frame for taking a decision by the competent authorities concerned, transmission of the acknowledgement

It might happen that the acknowledgement is not delivered to the competent authority of transit so that the written decision cannot be taken and delivered within the 30-day time frame by the competent authority of transit.

According to Article 8(2) of the WSR, not sending an acknowledgement to the competent authorities concerned (including the competent authority of transit) would be against the provisions of the WSR.

In some Member States, e.g. Germany, it seems to be possible to deliver a written decision before the acknowledgement from the competent authority of destination has been received.

According to Article 9(1), the competent authorities concerned should have 30 days to take a decision following the date of transmission of the acknowledgement by the competent authority of destination. The question asked is whether it is the date of dispatch or the date of delivery that is the starting date for the 30-day time frame.

There are different wordings used in the WSR regarding the defined time periods. Compared to Article 7(4) and Article 8(3) where the wording indicates the beginning of the time period (…within 30 days of receipt of the notification…) there is no indication given in Article 9(1), Article 10(1), Article 11(1) or Article 12(1) (…within 30 days following the date of transmission of the acknowledgement of the competent authority of destination…).

There are some arguments for taking the date of dispatch (when the acknowledgement left the competent authority of destination) as the starting point for the 30-day period:

- Otherwise there could be different deadlines for the 30-day period depending on the authorities concerned.
- Clarification in Case C-215/04 (Party Pedersen) by the ECJ to provisions defined in Article 7(2) of Regulation (EEC) No 259/93: *The period in Article 7(2) of Regulation No 259/93 begins to run when the competent authorities of the State of destination have sent the acknowledgement of receipt of the notification, irrespective of the fact that the competent authorities of the State of dispatch do not consider that they have received all of the information set out in Article 6(5) of that regulation. The effect of the expiry of that time-limit is that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier.*
- For the competent authority of destination the act of transmission is finished on the date of dispatch.

On the other hand one could argue that the term 'transmission' includes the overall process beginning with dispatch and ending with receiving the acknowledgement.

Even it is not clearly indicated by the wording of the WSR, there are good arguments that the 30-day period starts when the competent authority of destination has sent the acknowledgement.

4.18. Regarding the duration of a contract, does it explicitly mean that the period of validity of the contract must be at least one year following the date of the last shipment indicated in block 6 of the Notification document and two years when one interim and one subsequent non-interim operation are notified?
Keywords: Procedural requirements; duration of contract

According to Article 5 of the WSR, all shipments of waste for which notification is required are subject to the requirement of a contract between the notifier and the consignee for the recovery or disposal of the notified waste. Article 5(2) says that

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

According to Article 15 and 16 of the WSR, the respective certificates have to be submitted at certain deadlines:

- In case of non-interim treatment, ***no later than one calendar year*** following ***receipt*** of the waste (Article 16(e))
- In cases where a recovery or disposal facility carrying out an interim recovery or disposal operation delivers the waste for any subsequent interim or non-interim recovery or disposal operation to a facility located in the country of destination, ***no later than one calendar year*** following ***delivery*** of the waste, (Article 15(e))
- In case of other interim treatment than mentioned in Article 15(e) no ***later than one calendar year*** following ***receipt*** of the waste (Article 15(d))

Following these provisions, there is no general deadline of two years in cases of interim treatment.

Note that: In all cases, Article 9(7) allows the Competent Authorities to specify a shorter period.

Article 5(2) of the WSR sets out requirements for the validity of the contract. It specifies that the entire operation of notification, shipment and recovery/disposal of wastes subject to notification must be covered by an effective contract until its termination, i.e. until the completion of the last step — the issue of a certificate in accordance with the provisions of Article 15(e), Article 16(e) or, where appropriate, Article 15(d).

4.19. If during transmission of the notification the competent authority of dispatch informs other competent authorities concerned that it considers the notification not properly completed (but properly carried out), is the competent authority of destination bound by that information and obliged to wait and not send the acknowledgement according to Art. 8(2) of the WSR until the competent authority of dispatch confirms, as in the last sentence of Art. 8(1), that the requested information and documentation have been received and that the notification is considered properly completed?
Keywords: Procedural requirements; notification procedure; bindingness of opinion of one CA

The background to this question is that when the competent authority of dispatch decides whether a notification has been properly carried out in the sense of Article 4(2), second point, it does not consider information in Annex II, part 3 at all. As a result, the competent authority of dispatch might consider that further information or documentation are necessary after transmitting the notification to the competent authority of destination. The proper way of communicating this consideration is a request for further information or documentation as laid down in Article 8(1).

The competent authority of dispatch might make such a request after transmitting the notification to the competent authority of destination because it considers

- the notification has been properly carried out in the sense of Article 4(2), second point, but
- it has not been properly completed in the sense of Article 4(2), third point, e.g. because further information or documentation are needed as mentioned in Annex II, part 3,

In such cases it is arguable whether the competent authority of destination might, nevertheless, consider the notification properly completed and subsequently send an acknowledgement in the meaning of Article 8(2) to the notifier and copies to the other competent authorities concerned.

With regard to this question, two interpretations of Article 8(2) are possible:

- The competent authority of destination decides alone whether the notification has been properly completed; in taking this decision it may or may not consider a request in the meaning of Article 8(1) by the competent authority of dispatch;
- A request in the meaning of Article 8(1) always binds the competent authority of destination in such a way that the authority may not issue an acknowledgement as mentioned in Article 8(2).

Article 8(2) is directly related to Article 4(2), third point, which defines what the competent authority of destination has to examine. Following this Article, the Authority has to confirm that ‘any additional information and documentation requested in accordance with this paragraph and as listed in Annex II, Part 3’ have been supplied by the notifier. ‘In accordance with this paragraph’ is to be understood as a reference to the first sentence of 4(2), third point,

('If requested by any of the competent authorities concerned, the notifier shall supply additional information and documentation.')

The competent authority of destination must therefore examine in relation to Article 8(2) whether any requested additional information and documentation has been submitted by the notifier. It has no mandate to examine whether the request for additional information was reasonable from its point of view or not.

For the submission of the requested information, the WSR specifies that it must be sent to the competent authority which requested the information and that it is subsequently sent to the competent authority of destination. If, as described in the question, the competent authority of dispatch has not informed the other competent authorities in the meaning of Article 8(1) that the requested information has been submitted, it can be inferred that the information has not yet been submitted. Consequently, the question 'Has the requested additional information and documentation been submitted by the notifier?' does not have to be answered by the competent authority of destination.

Bearing this in mind, the second of the above two interpretations of Article 8(2) should be followed and, ***consequently***, if during transmission of the notification the competent authority of dispatch informs other competent authorities concerned that it considers the notification not properly completed (but properly carried out), the competent authority of destination is bound by that information and is obliged to wait and not to send the acknowledgement according to Art. 8(2) until the competent authority of dispatch confirms according to last sentence of Art. 8(1) that the requested information and documentation have been received and that the notification is considered properly completed.

4.20. Is it admissible for national legislation to lay down more detailed provisions for notification (abiding by the provisions stipulated in Regulation 1013/2006), even if the main rules are already stipulated in the directly applicable Regulation?

Keywords: Basic questions; procedural requirements; Detailed provisions in national legislation additional to WSR requirements

Administrative provisions not addressed in WSR

The WSR does provide a number of administrative procedural rules for shipments of waste involving authorities from different countries (e.g. Title II, chapter 5). However, the system is not exclusive. For administrative procedural questions which are not addressed in the WSR, EU Member States have to apply their national procedural regulation in order to comply with Article 4(3) of the Treaty on the European Union[16] (a similar provision was laid down in Ex-Article 10 of the Treaty establishing the European Community ('TEC')):

[16] This draft reply follows the wording and the structure of the Treaties regarding the European Union as amended by the Treaty of Lisbon which entered into force on 1 December 2009 (see Consolidated Versions Of The Treaty On European

'The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.'

Additional protective measures in the meaning of Article 193 of Treaty on the Functioning of the European Union

Articles 191 to 193 of Treaty on the Functioning of the European Union ('TFEU') (Ex-Article 174 to 176 TEC) read

'Article 191 (ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,

- protecting human health,

- prudent and rational utilisation of natural resources,

- promoting measures at international level to deal with regional, or worldwide environmental problems, and in particular combating climate change.

(…)'

Article 192 (ex Article 175 TEC)

(1) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

(…)

(4) Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy. (…)

Article 193 (ex Article 176 TEC)

The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.'

The legal basis of the WSR is Article 192 TFEU (ex Article 175 TEC).[17]

Union and The Treaty On The Functioning Of The European Union (OJ 2008/C 115/01)). Note that for clarity reasons, provisions in the version valid until December 2009 are also indicated in parentheses and the prefix 'Ex- …'.

[17] Please note that the claim of European Commission that the European Court of Justice should annul the regulation due to an alleged infringement of the EC Treaty resulting from the choice by the Parliament and the Council to base the regulation solely on Article 192 TFEU (Ex-Article 175 TEC) and not jointly on Articles 207 TFEU (Ex-Article 133 TEC) and Article 192 has recently been dismissed by the Court (Judgment of the Court of 8 September 2009, C-411/06).

In line with this, additional procedural requirements set by Member States are basically and generally admissible if they in fact aim to protect the environment and if they do not exceed the requirements as set out by Article 193 TFEU (ex Article 176 TEC), the 'compatibility with the Treaties' being understood particularly as prohibiting quantitative restrictions on imports and exports as laid down in Articles 34 and 35 (ex-Articles 28 and 29 TEC). National legislation laying down procedures for waste shipment has to comply with this requirement.

A non-binding provision requiring the notifier to submit a set of copies (e.g. stating that 'The necessary set of copies should preferably be submitted together with the notification') is certainly in line with European law.

Where the additional requirement imposed by a Member State is a **more stringent protective measure**, it must be **compatible with the Treaty** on the Functioning of the European Union and fulfil the conditions of Article 193. Where the requirement is not a more stringent measure but a measure executing the obligations laid down in the WSR, it must be compatible with and proportionate to the objectives of the Regulation.

4.21. Does the term 'any natural or legal person under the jurisdiction of that Member State…' in the definition of the 'notifier' under Article 2(15) of the WSR, presuppose that the notifier has to have a business address in the Member State from which the shipment is dispatched?

Keywords: Definition of notifier, Need of business address/seat, Free movement of services

No indication is given in the WSR if the notifier has to have a business address in the Member State from which the shipment is dispatched.

Before we can address the question asked, the following terms have to be clarified:

- The term *'business address'* as mentioned in the question is understood as registered business address, for example a branch office.
- According to the 'territorial principle' the term *'natural or legal person under the jurisdiction of that Member State'* gives legal authority for a state to exercise jurisdiction in a case depending on the location of the crime. This does not require the offender to have a business address in the state concerned.

Moreover, there needs to be examined whether there might be any conflict with other EU Regulations, if the notifier were required to have a business address in the Member State from which the shipment is dispatched.

Setting up an additional branch office would create additional expenses for a notifier not based in the Member State where a shipment originates. This supports the argument that there should be no need for a business address, given the free movement of services. Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) also support this argument.

On the other hand it could be argued that a business address assists the enforcement of the WSR, e.g. in case of illegal shipments. Article 17(1)(e) of Directive 2006/123/EC and Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) support this second argument.

In general these provisions might be justified on environmental grounds, pending a position on the compatibility with the Treaty on the Functioning of the European Union.

The above question was discussed at meetings of the waste shipment correspondents on 18 and 19 September 2008 and 16 January 2009 in Brussels; the conclusions were:

There is no indication in the WSR that the notifier has to have a business address in the Member State from which the shipment originates. While recognising that national requirements applied to persons intending to ship waste to another Member State pose a restriction on the free movement of services under Article 56 of the Treaty on the Functioning of the European Union (TFEU) which might be justified on environmental grounds, a case-by-case assessment would be required before a position can be taken on the compatibility with the TFEU. So far in its case law the Court of Justice has interpreted restrictively the possibility of justifying such restrictions to the free movement of services; it was noted that derogations must be in conformity with the principles of necessity and proportionality. It is for the national authorities to demonstrate that these conditions are fulfilled in each specific case.

4.22. With reference to the new waste framework directive 2008/98/EC, which recovery operation(s) describe the newly introduced operation 'preparing for re-use'?

Keywords: Definition for R/D Codes; new WFD

Article 3 (13) and (16) of the new WFD indicate that 'preparing for re-use' is a waste recovery operation whereby the waste may cease to be waste, and 're-use' is an operation whereby the products or components derived from waste are used again for the same purpose for which they were designed.

The new WFD clearly distinguishes between 'preparing for re-use' and 'recycling'. Consequently the recovery operations R3, R4 and R5 (Recycling/reclamation…) would not correctly describe the recovery operation 'preparing for re-use'. For the 'preparation for re-use' of technical appliances such as used electronic equipment, operation R4 should not be used, even where the main component by weight is metal for several waste streams, as R4 is restricted to 'metal and metal compounds' only.

According to Article 6 of the new WFD certain specified waste shall cease to be waste within the meaning of Article 3(1) when it has undergone a recovery operation, including recycling, and complies with specific criteria to be developed in accordance with several defined situations. There is no indication in the WFD that preliminary operations (mentioned in R12, including pre-processing such as dismantling, sorting, crushing, compacting, pelletising,

drying, shredding, conditioning, repackaging, separating, blending or mixing) prior to final recovery are excluded from operations which allow waste to cease to be waste.

There is no indication in the WFD of the stage at which end-of-waste criteria have to be fulfilled, except after any recovery operation.

A recovery operation may be as simple as the checking of waste to verify that it fulfils the end-of-waste criteria (new WFD Recital 22, second indent).

The recovery operation R12 'Exchange of waste for submission to any of the operations numbered R1 to R11' can include preliminary operations prior to recovery, including pre-processing such as dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to any of the operations numbered R1 to R11.

The list of pre-processing operations is not exhaustive. The operations 'checking', 'cleaning' or 'repairing' could be included in the list. However, repairing usually includes dismantling and sorting (of appliances which are not worth repairing), which are already mentioned in the list.

Consequently, the newly introduced operation 'preparing for re-use' can correspond to the recovery operation(s) R12. There is no indication in the WFD of the stage at which end-of-waste criteria have to be fulfilled, so that waste prepared for re-use can cease to be waste after R12.

4.23. Should the shipment of waste destined for backfilling be regarded as shipment for recovery? / What is the appropriate operation to correctly describe backfilling operations?

Keywords: Treatment operations; Backfilling as disposal or recovery

Article 2 of the WSR defines the terms 'disposal' and 'recovery' with a reference to Article 1(1) of WFD and, by this, to Annex II of WFD.

'Backfilling' is not included in any of the lists in the annexes of WFD. As a starting point, it seems possible to classify 'backfilling' as an operation D1, D3 or D12 as well as an operation R5 and R10.

Indeed, the new WFD uses the term 'backfilling' in the definition of 'Recycling' in Article 3(17) and, of particularly interest for this question, in connection with the targets laid down in Article 11(2):

> '(...) Member States shall take the necessary measures designed to achieve the following targets: (…)
>
> (b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally

> occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight. (…)'

From the wording of Article 11, it could be deduced that in the new WFD, 'backfilling' is not to be regarded as 'recycling' but may be regarded as a type of 'material recovery' which would suggest seeing the operation R5 as the appropriate operation to describe backfilling. Currently, efforts are being made at EU level to further define the term 'backfilling'; however, this definition would be a non-binding interpretation of the Directive. However — and bearing in mind that according to Article 40 of the new WFD, Member States do not have to comply with it until 12 December 2010 — it is still unclear exactly which operation is meant by the term 'backfilling' in the new WFD and which requirements have to be met to define an operation as 'backfilling' in this sense.

In this context, the judgment of 27 February 2002 (ASA, Case C-6/00) of the European Court of Justice[18] has to be considered. The Court had *inter alia* to decide on the questions 'whether the deposit of waste in a disused mine necessarily constitutes a disposal operation within the meaning of D 12 of Annex II A to the *[sc. Waste Framework]* Directive or whether such deposits must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery within the meaning of the Directive and, in that case, what criteria should be used to make the assessment.'

The Court concluded that: 'The deposit must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery operation within the meaning of that Directive. Such a deposit constitutes a recovery if its principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose.'

These considerations may be applied to the question here. It should be noted that the Court ruling is reflected in the definition of 'recovery' as introduced by Article 3 of Directive 2008/98/EC:

> '(15) 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations.'

Bearing this in mind, the answer to this question is: whether 'backfilling' is to be classified as a disposal operation (the most obvious possibilities would be operations D1, D3 and D12) or as a recovery operation (the most obvious possibilities would be operations R5 and R10), and whether a shipment of waste destined for backfilling is a shipment for recovery or for disposal, **depends on the specific circumstances of the operation planned and is to be assessed on a case-by-case basis** in the light of

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[18] See OJ C 109, 4.5.2002, p. 5. The Court ruling in full text is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000J0006:EN:HTML.

(i) the objectives of the Directive and

(ii) ECJ case law establishing that the essential characteristic of a waste recovery operation is that the principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources.

4.24. Do the Mining Waste Directive's provisions on placing waste other than extractive waste used for filling in excavation voids mandatorily mean that a backfilling operation fulfilling these criteria always has to be considered as a disposal operation in the meaning of the WSR and WFD, or is it possible that a backfilling operation with waste other than extractive waste in an excavation void can be regarded as a recovery operation?
Keywords: Treatment operations; Backfilling as disposal or recovery; consistency with Mining Waste Directive

Article 10(2) of Mining Waste Directive 2006/21/EC reads '(Landfill) Directive 1999/31/EC shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.'

What was intended in Article 10(2) is not that placing of waste other than extractive waste into excavation voids would always have to be considered as a D1 operation. What was intended was that there are no *specific* measures introduced by the Mining Waste Directive for this situation whereas, if the other conditions are fulfilled, the Landfill Directive 1999/31/EC applies. Consequently, the question whether filling waste in an excavation void is to be classified as a D1 operation or not, does not exclusively depend on Article 10(2) of Mining Waste Directive.

Consequently, the Mining Waste Directive's provisions on using waste other than extractive waste to fill excavation voids do not mandatorily mean that a backfilling operation fulfilling these criteria must always be considered a disposal operation under the WSR and WFD. It is possible that a backfilling operation with waste other than extractive waste in an excavation void can be regarded as a recovery operation.

5. BASIC DEFINITIONS, MISCELLANEOUS

5.1. What do the definitions of 'producer' (Article 2(9)) and 'notifier' (Article 2(15) (a) (ii)) mean for waste streams which arrive at a waste treatment plant after collection and which are subsequently shipped for export untreated because they are already in the shape required by the receiving plant — Does such a plant become the new waste producer for the following process if a transboundary shipment to a further waste treatment takes place? How do the WSR definitions apply in the case of a transboundary shipment of waste streams from one waste treatment facility to another?

Keywords: Basic definitions; Definitions of waste 'producer' and 'notifier'; waste streams from one waste treatment facility to another

To fulfil the definition of a notifier in Article 2(15) (a) (ii) of the WSR, the operator of an interim treatment facility

- must carry out pre-processing, mixing or other operations resulting in a change in the nature or composition of a waste;
- must be licensed for this type of operation;
- must carry out this operation prior to shipment.

It is arguable whether

(1) an interim treatment facility only fulfils this definition if the shipped waste is actually treated in the facility or

(2) it is sufficient for the waste to enter and leave a facility without treatment, although interim treatments are regularly performed in the facility.

No definitive answer to this question is provided in the Waste Shipment Regulation or the Waste Framework Directive.

The wording of Article 2(9), however, refers to '*this*' waste and not to waste generally, which favours the first interpretation: If it were sufficient that waste is regularly treated in the facility in question and if it did not matter whether the waste for shipment is actually treated or not, one would expect a different wording.

Further, the categories of 'licensed collector', 'registered dealer' and 'registered broker' are introduced in Article 2(15) of the Waste Shipment Regulation. Waste collectors, brokers and dealers are waste shipment operators who regularly organise the transfer of waste without treating the waste themselves. For these operators, specific conditions and consequences are included in the Waste Shipment Regulation. It would be logical to apply these rules for an operator who ships waste across borders without having treated it himself.

Consequently, it is assumed that only an interim treatment facility which changes the nature or composition of the waste, by carrying out pre-processing, mixing or other operations, can fulfil the definition of a notifier under Article 2(15) (a) (ii).

5.2. Is it acceptable and compliant with WSR for a company acting as a broker or a dealer, but not taking any physical control of waste, to be considered a consignee of waste according to the definition in Article 2(14)?

Keywords: Basic definitions; term 'consignee' in WSR

The starting point is the definition of 'consignee' under Article 2 of the WSR which reads: '(...)

> 14. 'consignee' means the person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal (…)'

The wording of Article 2(14) ('to whom or to which the waste is shipped for recovery or disposal') suggests that there has to be a physical control by the consignee over the waste. This understanding of the wording of Article 2(14) is for example shared by the Internal Guidance Document of the German Working Group of Federation and Federal States.[19]

Further, the WSR stipulates that brokers or dealers may act as notifiers but only in the circumstances described in WSR Article 2(15), provided that further requirements have been fulfilled, such as a written authorisation by the original producer, new producer or licensed collector. The WSR does not indicate that that the same scheme applies to the consignee, nor is 'broker' or 'dealer' included in the definition of a 'consignee'.

On the other hand, point 15 of Annex IC to the WSR — which was introduced into WSR by Commission Regulation (EC) No 669/2008 of 15 July 2008 and which aims to provide the necessary explanations for completing the notification and movement documents under the Basel Convention, the OECD Decision C(2001)107/FINA and the WSR — states that

> 'Normally, the consignee would be the disposal or recovery facility given in block 10. In some cases, however, the consignee may be another person, for example a dealer, a broker, or a corporate body, such as the headquarters or mailing address of the receiving disposal or recovery facility in block 10. In order to act as a consignee, a dealer, broker or corporate body must be under the jurisdiction of the country of destination and possess or have some other form of legal control over the waste at the moment the shipment arrives in the country of destination.'

[19] Bund-/Länderarbeitsgemeinschaft Abfall (LAGA), Vollzugshilfe zur Verordnung (EG) Nr. 1013/2006 des Europäischen Parlaments und des Rates vom 14. Juni 2006 über die Verbringung von Abfällen (VVA) und zum Abfallverbringungsgesetz vom 19. Juli 2007 (AbfVerbrG)), Issue 2 February 2008, p. 11.

This paragraph explicitly states that a dealer or a broker may act as a consignee and even specifies the conditions under which this is deemed appropriate. Further, one could argue that several provisions of the WSR already make a distinction between 'consignee' and 'facility' (e.g. Article 13(1), Article 50(3)).

Finally, it should be borne in mind that the paragraph of Annex IC in question is identical to the 'Revised notification and movement documents for the control of transboundary movement of hazardous wastes and instructions for completing these documents' as adopted by the Eighth Conference of the Parties to the Basel Convention in 2008[20] and to the corresponding document at OECD level (see e.g. 'Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes' (2009), p. 74[21]).

One could claim that this proves that the Commission has acted entirely within the powers granted by Article 58 to take account of changes agreed under the Basel Convention and the OECD Decision and that, following the general legislative rule '*lex posterior derogat legi priori'*, paragraph 15 of Annex IC, being the younger provision, is preferable to the understanding of Article 2(14) outlined above.

On the other hand, it could equally be pointed out that one purpose of Annex IC is synchronisation with the Basel Convention and OECD Decision, and that its wording is rather broad (as pointed out in the introductory part of Annex IC) in order to cover a number of national waste management schemes. Accordingly the document is not necessarily compatible with every detail of EC waste legislation and should have no impact on every detail of understanding.

It can be concluded that there are good arguments in favour of both

- the position that a company acting as a broker or a dealer but not taking any physical control of waste can be considered a consignee of a waste under the WSR and
- the opposite position that a such a company must not be considered a consignee of a waste.

A definitive, unambiguous answer is not provided by the WSR.

5.3. Regarding WSR Annex IC, which situations are referred to by the following clause in paragraph 15 of Annex I to Commission Regulation (EC) No 669/2008 of 15 July 2008: 'or have some other form of legal control over the waste'?

Keywords: Basic definitions; term 'consignee' in WSR

To understand paragraph 15 of the WSR Annex IC, please see the answer to Question 5.2 above, particularly the fact that one purpose of Annex IC is synchronisation with the Basel Convention and OECD Decision, and that its wording is rather broad (as pointed out in its

[20] Document available at http://www.basel.int/meetings/sbc/workdoc/techdocs.html.
[21] Document available at http://www.oecd.org/dataoecd/57/1/42262259.pdf.

introduction) in order to cover a number of national waste management schemes and different understandings of the term 'possession of waste'.

The clause 'or have some other form of legal control over the waste' did in fact appear in the chapter 'Instructions for completing the notification and movement documents' in an OECD Council Decision as early as February 2002[22], i.e. even before the WSR entered into force.

5.4. How should a company handling the transport, reloading and storage for the same waste be regarded: as a transporter, a collector, or an interim recovery facility?

Keywords: Definition of transport, collection and storage; Storage within the transport vs. treatment; R/D Codes

Background: 'Green' listed waste is transported from Member State A to a non-OECD country using a port of another Member State (Member State B). The waste is first shipped by truck to an inland location in Member State B and then reloaded into ship containers which are then transported by road to the port and are then loaded onto a ship. A part of this waste has to be stored for a couple of days within this shipment at the reloading point in Member State B because not enough ship containers are available.

A shipment of waste is a transport of waste and starts after the collection of the waste.

At the beginning of the shipment no temporary storage — no interim recovery — of the waste was intended. A part of the waste in question is stored due to an interruption of the transport for a couple of days until containers become available and not stored in order to gather, sort and/or mix the waste for the purpose of transport.

Companies that only handle the transport, including reloading and storage of the same waste for the purpose of the transport, are regarded as '**carriers**'.

No information is given in the WSR how long a waste can be stored at a reloading point within the shipment. According to Article 15 of the WSR an interim recovery has to be completed at latest one year after receipt of the waste.

If the storage of the waste at the reloading point as described in the background information is intended as an interim recovery R13 at the beginning of the shipment, then the shipment ends at that point and a new shipment must be arranged from Member State B to the non-OECD country. In this case the facility carrying out the interim recovery would be regarded as an interim recovery facility.

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[22] Addendum 1 to Decision C(2001)107 Concerning the Revision of Decision C(92)39/Final on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, p. 10, see http://www.oecd.org/dataoecd/29/45/2089503.pdf.

5.5. What if, in the case above, the waste which is finally loaded into containers does not all originate from the same source (e.g. trucks from different producers/starting points bring the waste into Member State B) — How should a company handling the transport, reloading and storage in this case be regarded: as a transporter, a collector, or an interim recovery facility?

Keywords: Definition of transport, collection and storage; Storage during transport vs. treatment; R/D Codes

The 'shipment' of the green listed waste to a non-OECD country via Member State B started in Member State A. The storage in Member State B takes place during the shipment due to an inadequate capacity of ship containers at the place of reloading. The mixing of wastes originating from different sources in Member State B must be in line with the WSR.

In the case in question, the waste is not stored in order to gather, sort and/or mix the waste for the purpose of transport. It is just stored due to restricted transport capacity. During the time of storage, the mixing of similar wastes is possible if the information provided in the Annex VII documents (or in the notification and movement documents) clearly specifies the shipment.

Consequently, companies handling the transport, reloading and storage of the waste, including mixing with similar wastes under these conditions, cannot be regarded as 'collectors'.

The mixing of similar waste (in line with the WSR) within a shipment can be regarded as an assembly for transport. Consequently, companies loading similar waste into a container from different sources during a transport interruption of a couple of days are regarded as 'carriers'.

No temporary storage — no interim recovery — of the waste was intended at the beginning of the shipment. An interruption of a transport and the storage of waste for a couple of days and a mixing of the waste stored with similar wastes (mixing in line with the WSR) until containers become available cannot be regarded as 'interim recovery'.

According to Article 15 of the WSR an interim recovery has to be completed at latest one year after receipt of the waste. However no information is given as to how long waste can be stored at a reloading point during the shipment.