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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 19 November 2021, the Commission transmitted to the European Parliament and the Council the proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056.
2. The proposal is a recast of Regulation (EC) No 1013/2006 on shipments of waste and has the overall aim of increasing the level of protection of the environment and public health from the impacts of unsound transboundary shipments of waste. Moreover, it implements the Basel Convention and incorporates the OECD rules.

3. In the European Parliament, the file was referred to the Committee on the Environment, Public Health and Food Safety (ENVI), which appointed Pernille Weiss (EPP, Denmark) as rapporteur. The ENVI Committee adopted its report on 1 December 2022. The European Parliament adopted its position without further amendments on 16 January 2023.
4. The European Economic and Social Committee delivered its opinion on 23 February 2022. The Committee of the Regions decided not to deliver an opinion¹.
5. At working group level, the proposal was presented at the Environment Council on 20 December 2021 under the Slovenian Presidency. The examination of the proposal started under the French Presidency and continued under the Czech Presidency. Under the Swedish Presidency, another seven meetings of the Working Party on the Environment were dedicated to the examination of the entire proposal and of compromise suggestions.

II. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE TEXT

6. The Presidency compromise text amends the Commission's proposal on several aspects and builds on the compromise text on Titles I and II by the French Presidency² and the additional suggestions made on Title II and Annexes II and VII by the Czech Presidency³. The compromise in addendum 1 to this note aims at addressing the concerns of delegations expressed at the seven meetings at working party level during the Swedish Presidency, while maintaining the right balance between the necessary flexibilities and the need to preserve the objectives and integrity of the proposed Regulation. The main elements of the compromise are set out below.

¹ Letter from the Committee of the Regions on 25 March 2022.

² ST 10807/22

³ WK 17544 2022 INIT

a) Title I General Provisions (subject matter, scope, definitions)

Following the discussions in the Working Party, the Presidency had already agreed to address the following items:

- a new recital 11b which underlines the importance of strengthening the control of shipments of products and materials that are not waste but may have a negative impact on human health and the environment, in particular when exported to third countries;
- the objective to reach climate neutrality in Article 1 (subject matter) of the Regulation, in line with the Union climate goals;
- a clarification and elaboration of the relation of the proposal with Regulation (EU) No 1257/2013⁴ in Article 78 and recital 14 taking into account the importance of the shipping sector and the requirements for ship recycling in a number of Member States.

Following the delegations' request the Presidency proposes an addition in recital 31 concerning waste deriving from composite material and its related challenges to manage such waste in an environmentally sound manner.

Despite diverging views between delegations, but to be consistent with other parts of the Regulation, the Basel Convention and the OECD Decision, the Presidency proposes, as a compromise, to define "shipment" as "...the transport of waste destined for recovery or disposal **from the location from which the transport starts until the receipt of the waste by the facility that carries out the disposal or recovery operation....**". It should be noted, however, that the notification according to Article 5(8) should cover both the shipment and the treatment of the waste at its destination. Moreover, definitions on "route", "routing", "notifier" and "person who arranges a shipment" are aligned accordingly based on discussions at the Working Party.

⁴ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).

In relation to the definition of “illegal shipments”, the Presidency proposes to keep the exclusion of minor errors of a clerical nature and has further clarified this exclusion in a recital.

b) Title II Shipments within the Union; Prior Informed Consent (PIC) procedure

The large quantity of additional comments and redrafting suggestions received throughout the discussions for Title II had shown broad support for the outline and purpose of those provisions. The Presidency aimed at accommodating those redrafting suggestions, for which there has been clear support from a majority of Member States or where there has been a clear added value for clarification or for finetuning the procedure.

More specifically, a new recital has been included related to the provision in Article 4(4) concerning shipments of waste destined for laboratory analysis or experimental treatment trials, in order to justify the increased amounts of waste allowed in such shipments subject to general information requirements within the Union.

Following delegations’ request to ease the pressure on competent authorities and foster overall compliance with the regulation, the Presidency had suggested more realistic timelines in the procedure for prior written notification and consent (‘Prior Informed Consent, PIC’). Overall, the Presidency has aimed at rendering the PIC procedure more transparent and clearer as regards the distribution and share of responsibilities. The Presidency also intends to achieve harmonisation and legal certainty as well as a reduction of the administrative burden, building on experiences from the procedure as currently implemented in the Member States.

More specifically, as a compromise on one of the remaining items; the Presidency follows the delegations’ majority to clarify an issue as regards the provision on consents by the competent authorities and time periods for transport shipment, recovery or disposal which had been considered too vague in the current Regulation (Article 9(4): ” ... **waste shall have been received by the facility for recovery or disposal before the end of the period of validity of the tacit or written consent of all competent authorities concerned.**”)

On the provision regarding the shipments of waste for disposal (Article 11) the Presidency follows the delegations' call to include a provision that the Commission should adopt an implementing act clarifying the criteria which can be used to object to shipments of waste destined for disposal.

Furthermore, the Presidency proposes in recital 19 and in Article 12(1)(e) that a Member State to which mixed municipal waste is planned to be exported should have the possibility to object to the notification, and thereby to refuse to receive a shipment of mixed municipal waste, where it can be expected, based on evidence, that the waste will not be treated in accordance with environmentally sound management.

New amendments had been already proposed in Articles 17, to clarify that the listing of examples of what is considered as essential changes after consent is not exhaustive and to add as an example the prolongation of the shipment due to unforeseen circumstances occurring after the start of the shipment.

c) Title II; general information requirements; take back procedure, general administrative provisions

For Article 18, stricter obligations to improve the control concerning “green-listed waste” had been introduced, as well as a take-back procedure for these waste streams. More specifically, in Article 18(2), the Presidency proposes to require information on the R-code(s) and facility(ies) carrying out the operations directly following the initial interim operation and, where possible, also information on the subsequent facilities and operations.

On one of the remaining issues to be addressed, following the requests of several delegations, the Presidency proposes to delete Article 21 on Public access to information, since the Aarhus Convention referred to in recital 28, as well as the Directive 2003/4/EC⁵ apply in any case to Member States.

⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

In Articles 24 and 25 on the take back of waste in cases of illegal shipments, the Presidency had already proposed a new paragraph (2a) providing a possibility for the competent authorities concerned and, where relevant, the notifier, to agree on alternative arrangements for the recovery or disposal of the waste instead of applying the take-back obligations in paragraph (2). The Presidency also proposed clarifications on how the actors responsible for an illegal shipment should be identified, and on the release of financial guarantees. Regarding the addition of a timeline, as proposed by some delegations, it is the view of the Presidency that the provisions already state that take-back shall be done within 30 days.

In Article 26 on the electronic submission and exchange of information the Presidency has made several amendments to ensure clarity and consistency throughout the Regulation. In addition to the central system (EDI), the Presidency had proposed to clarify the language on other systems eligible for that exchange. At the request of some Member States, the Presidency proposes that the Regulation should recognize available systems or software used by competent authorities that allows for preparing and processing information and documents, through interoperability with the central system. Moreover, following the delegations' request, the Presidency proposes to empower the Commission to adopt delegated acts in order to supplement the list of information and documentation laid out in Article 26(1) that shall be submitted and exchanged via electronic means.

For Art 28 on disagreements on classification issues, the Presidency had already introduced in a previous version of the text conditions to use when assessing if an object is waste or used goods, and introduced the possibility for the Commission to adopt implementing acts in order to establish detailed criteria on the uniform application of these conditions. As regards other distinctions between waste and non-waste, the Presidency proposes to essentially maintain the original proposal by the Commission, referring to Directive 2008/98/EC. However, the Presidency proposes to add in Article 28(1a) that provisions in paragraph 1, as well as any national or Union conditions and decisions adopted according to Directive 2008/98/EC, shall be taken into account when deciding whether an object or substance is considered waste or non-waste while preserving that if two Member States cannot agree it shall be treated as waste.

Furthermore, for the new provision Article 30a concerning shipments between an outermost region and its Member State, the Presidency proposes seven working days for transit countries to react to a completed notification, as this time seems reasonable building on Member States suggestions and being coherent with other similar timelines in the Regulation.

d) Titles IV, V and VI; exports, imports and transit

The Presidency had also received many comments for Articles 34 to 55 in Titles IV, V and VI throughout the discussions at working party level. The Presidency took up redrafting suggestions for those provisions, related Annexes and recitals, where there has been general support from delegations and with the aim to provide clear added value and avoid adding further complexity to the text.

For exports, amendments had been introduced regarding which waste (especially unlisted waste) can be exported and how. Articles 36 and 37 of the Commission proposal have therefore been clarified to ensure coherence and a more complete coverage of waste types. As one of the few remaining items, more specifically in Article 37(2)(b) the Presidency wishes to clarify that if both countries and the related wastes are on the list specified in Article 38 it should be allowed for subsequent treatment in other third countries that are on that list. Regarding shipments of waste destined for experimental treatments outside the Union, it has been clarified that these shall be subject to the PIC procedure.

On Article 43 on audits the Presidency had also provided clarifications throughout the discussions at working party level. Based on the Commission's proposal that exporters should ensure that the facilities, which will manage the waste in the country of destination, should be subject to an audit by an independent and accredited third party with appropriate qualifications, the Presidency had already proposed that the audits could be commissioned by other actors than the notifier or the person who arranges the shipment. For further clarification, the Presidency proposes to include in recital 39 an explanation what is meant by "an independent third party with appropriate qualifications" and introduces an additional amendment to the corresponding Article 43(2).

e) Title VII; enforcement, penalties, enforcement cooperation, actions performed by the commission

Following requests for a consistent approach, in Article 60 on penalties the Presidency proposes a compromise text that is as close as possible to the agreed general approach on the Industrial Emissions Directive at the Environment Council on 16 March 2023, and takes also into account the provisions of the Environmental Crime Directive.

Following the extensive discussion at working party level on the provisions giving the Commission enforcement powers (Articles 64-68), the Presidency has made some changes to clarify the relation between the Commission's and the Member States actions, such as prosecutions or legal proceedings, and to more clearly specify the Commission's enforcement powers. It had earlier been agreed in the Working Party that the legal basis for the mandate of the European Anti-Fraud Office (OLAF) should be mentioned only in the Recitals as this is a matter of the Commission's internal delegation. However, during the meeting of the Working Party on 11 May, a proposal from the Commission to refer to Council Regulation 515/97 was discussed, and the Presidency has re-entered this text in Article 64(1).

f) Title VIII; transitional provisions

The length of the transitional period between the entry into force and application of the provisions of the new Regulation, as well as the repeal of the current Regulation, were discussed extensively at several occasions at working party level. The Presidency aims at providing enough time required for implementation of the Regulation but ensuring the application of the new provisions as soon as possible in a legally clear manner.

Some Member States had required that more time is needed for adopting national legislation. Many were also concerned that it would be difficult to achieve a good overview of which provisions will apply during the transitional period, which may lead to legal uncertainty. The Presidency proposes therefore an approach as follows.

While provisions related to the necessary work in the Commission with secondary legislation could apply immediately, the main application date of the new Regulation should be **two years** after its entry into force. A limited number of provisions relating to inter alia the new conditions for export of waste should apply after three years.

As the precise interaction of transitional timelines for each provision is complex, the negotiations with the European Parliament will also need to address the finetuning of these suggested timelines and transitional provisions.

III. CONCLUSION

7. The Permanent Representatives Committee is invited to examine the Presidency compromise text as set out in addendum 1 to this note with a view to agreeing on a mandate for negotiations with the European Parliament.
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