



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.01.1998

COM(97) 685 final

95/0029 (ACC)

Amended proposal for a

COUNCIL REGULATION (EC)

establishing common rules and procedures to apply to shipments
to certain non-OECD countries of certain types of waste

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

Background

1. Council Regulation (EEC) No 259/93 of 1 February 1993 sets out a system of supervision and control to apply to shipments of waste within, into and out of the EC. The Regulation took effect on 6 May 1994.
2. The Regulation implements into EC law two international legal instruments with which the Community has associated itself: the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal; and the OECD Council decision of 30 March 1992 concerning the control of transfrontier movements of wastes destined for recovery operations.
3. Regulation (EEC) No 259/93 makes a distinction between waste which is destined:
 - * for final "disposal" (e.g. landfill, incineration etc.) and
 - * for "recovery" (e.g. recycling, use as a means to generate energy etc.)
4. With regard to waste which is destined for recovery, the Regulation makes further distinction between:
 - * so-called "green" list waste, listed in Annex II to the Regulation;
 - * so-called "amber" list waste, listed in Annex III;
 - * so-called "red" list waste, listed in Annex IV; and
 - * "unlisted" waste, i.e. waste which has not (yet) been assigned to any list.
5. This communication concerns solely shipments of "green" list waste destined for recovery from the EC to third countries.
6. Shipments of "green" list waste for recovery are generally excluded from the scope of the Regulation. This exclusion is based on the OECD Council Decision referred to above. The OECD considers that such shipments should not normally present a risk to the environment if recovered properly in the country of destination.
7. However, the EC did not wish to impose this point of view on third countries. Therefore, Article 17 of the Regulation provides that the Commission communicate with all non-OECD countries notifying them of the "green" list and asking them whether they would accept shipments of such waste for recovery without recourse to

one of the control procedures set out in the Regulation, or that they indicate which of these control procedures they require or wish to be applied.

8. Where a country clearly indicates that it requires or wishes one of the control procedures which are provided for in the Regulation to apply to some or all types of "green" list waste, Article 17(3) provides that the Commission determines which control procedure should apply in consultation with the country in question and after having notified the Committee established by Article 18 of Council Directive (EEC) No 75/442. One such Decision was adopted by the Commission on 20 July 1994 (Commission Decision 94/575/EC, OJ No L 220, 25.8.94, p.15).

9. However, a number of countries have either not responded at all to the missives sent out by the Commission (including at least two reminder notes), or have indicated that they do not wish to receive some or all types of "green" list waste for recovery. This is not provided for in Article 17(1) first paragraph. In these cases, the second paragraph of Article 17(1) requires that "the Commission shall make appropriate proposals to the Council". These are contained in the attached proposal for a Council Regulation.

Content of the proposal

10. **Legal base.** The present proposal concerns solely trade with third countries- therefore Article 113 is the appropriate legal base.

11. **Countries which do not wish to receive shipments.** A number of countries have indicated they they do not wish to receive some or all types of "green" list waste. The Commission has decided after consultation with the European Parliament to respect the wishes of these countries and not to allow exports of "green" list waste for recovery.

12. **Countries which have not responded.** The general principle established in Regulation (EEC) No 259/93 with regard to exports of "green" list waste for recovery is that of normal commercial transactions unless the country of destination wishes or requires otherwise. It would therefore follow that countries which have not responded to the Commission's notes on the subject should continue to be treated in the light of this general principle, with the addition of a system of prior automatic export licensing which would allow the EC to monitor the level of such exports to these countries. Consequently, it is suggested that the so-called "red" list procedure will be applied to those countries which have not responded.

13. **ACP countries.** Shipments to ACP countries of those types of waste listed in Annexes I and II of the Basel Convention are prohibited under Article 39 of the Fourth ACP-EC Convention. A very limited number of materials included in the "green" list may be covered by this prohibition. The proposed draft Regulation excludes any such materials from the scope of the Regulation.

14. **Review.** The Commission proposes that the systems of control established by the proposed draft regulation be subject to a review, reflecting the dynamic nature of waste policy issues in general. A similar review is already provided for in Regulation

(EEC) No 259/93 with regard to exports of hazardous waste to non-Parties of the basel Convention. A review of the operation of the current proposal could be carried out in parallel.

15. **Simplified amendment procedure.** The proposal provides for a simplified amendment procedure which would allow the Commission to decide in consultation with the relevant Committee to change the control procedure applying to one or more of the countries covered by the scope of the proposal. This will cover cases where a response is received after the entry into force of the Council Regulation from a country which has not previously responded, or where a country which has indicated a particular position alters that position. It would also allow the EC-where this is deemed appropriate- to take account of other factors, such as a third country treating shipments from the EC in a less favourable manner than shipments from other destinations.

16. For these reasons, the Commission recommends that the Council adopts the proposed Regulation establishing common rules and procedures to apply to (a) those countries which do not wish to receive shipments of "green" list waste for recovery from the EC and (b) those countries which have not responded to the Commission's letters.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,¹

Whereas Article 1(3)(a) of Council regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community², as amended by Commission Decision 94/721/EC³, excludes from the scope of application of that Regulation shipments of waste destined for recovery only and listed in Annex II thereto, except as provided in, *inter alia*, Article 17(1), (2), and (3);

Whereas in accordance with Article 17(1) of Regulation (EEC) No 259/93 the Commission has notified to every country to which the OECD Council Decision of 30 March 1992 on the control of transfrontier movements of waste destined for recovery operations does not apply the list of waste set out in Annex II to regulation (EEC) No 259/93, and has requested confirmation that such waste is not subject to control in the country of destination or has asked that such countries indicate whether such waste should be subject to the control procedures which apply to waste listed in Annex III or IV to the Regulation, or to the procedure laid down in Article 15 thereof;

Whereas certain countries have indicated that such waste should be subject to one or other of those control procedures and the Commission on 20 July 1994, pursuant to the provisions of Article 17(3) of regulation (EEC) No 259/93, took Decision 94/575/EC⁴ to determine the appropriate control procedures;

Whereas the second subparagraph of Article 17(1) of regulation (EEC) No 259/93 provides that if such confirmation is not received, the Commission is to make appropriate proposals to the Council; whereas it is therefore necessary to establish, on a Community-wide basis, a system to regulate trade in such waste from the Community by establishing the appropriate common rules and procedures relating to exports thereof;

Whereas, in the case of countries which have replied that they do not wish to receive some or all types of waste listed in Annex II of regulation (EEC) No 259/93, their will

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² OJ No L 30, 6.2.1993, p.1.

³ OJ No L 288, 9.11.1994, p.36;

⁴ OJ No L 220, 25.8.1994, p.15

has to be respected and therefore these types of waste cannot be exported to those countries;

Whereas in the case of countries which have not replied, it is appropriate to adopt a framework in order to enable such countries to evaluate such shipments on a case-by-case basis and whereas it is difficult to imply that silence is equal to consent;

Whereas, in the the case of countries which have replied that they do not wish to receive some or all types of waste listed in Annex II or have not replied, the possibility exists that they will change their position, or will reply in the future, and a mechanism must, therefore, exist within a comitology procedure, to change this regulation;

Whereas Regulation (EC) 120/97⁵ prohibits the export of waste for recycling purposes which is considered hazardous and whereas certain categories of waste from Annex II of Regulation (EEC) 259/93 are to be considered hazardous and have to be excluded from the scope of the present Regulation.

Whereas the Commission will complete the Annex V of Regulation (EEC) 259/93 with waste categories considered hazardous by the Basel Convention and the Union's hazardous waste list⁶ and will adapt Regulation (EC) 120/97 accordingly.

Whereas with regard to shipments to ACP countries, Article 39 of the Fourth ACP-EC Convention prohibits exports of all waste listed in Annexes I and II of the Basel Convention;

whereas, furthermore, certain items of waste may be found in Annex II of Regulation (EEC) 259/93; whereas, in these circumstances and in order to respect the Community's international obligations, it must be clear that such items are excluded from the scope of the Regulation;

Whereas the arrangements covered by this Regulation should be subject to periodic review by the Commission;

HAS ADOPTED THIS REGULATION:

Article 1

The export of waste listed in Annex II to Regulation (EEC) 259/93 and mentioned in Annex A, to countries listed in Annex A shall be prohibited.

Article 2

The control procedure applicable to waste listed in Annex IV to Regulation (EEC) 259/93 shall apply to exports to the countries listed in Annex B with respect to waste destined for recovery only and listed in Annex II to Regulation (EEC) 259/93.

⁵ OJ No L 22, 24.1.1997, p.14

⁶ OJ No L 377, 31.12.1991, p.20

Article 3

Shipments to ACP countries are permitted only as so far as they are not prohibited by the Fourth ACP-EEC Convention.

Article 4

Upon request by the country of destination or where there is a change of circumstances, the control procedure applicable under this Regulation may be amended. The Commission may determine, after consultation with the country of destination, in accordance with the procedure laid down in Article 18 of Council Directive 75/442/EEC⁷, which of the procedures shall apply, that is normal commercial transactions with or without a system of prior automatic export licensing as provided for in Article 17(2) of Regulation (EEC) 259/93, or the procedure applicable to Annex III or IV of the same Regulation or the procedure laid down in Article 15 of Regulation (EEC) 259/93.

Article 5

The control procedures established by this Regulation shall be subject to periodic review by the Commission and for the first time no later than 31 December 1998, taking into account the experience gained. If the results of the review leads to the conclusion that this would be appropriate, the Commission may, without prejudice to the provisions of Article 4, make new proposals to the Council.

The Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, shall as soon as possible and at the latest before 1 January 1998, review and amend this Regulation, in order to bring it in line with Regulation 259/93 as modified by Regulation 120/97, and in particular with Annex V of the former Regulation.

Article 6

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

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

Done at Brussels,

For the Council
The President

⁷ OJ No L 194, 25.7.1975, p.39

ANNEX A

Countries and territories which have indicated to the Commission that they do not wish to receive shipments for recovery of certain types of waste listed in Annex II (the "green" list) to Council regulation (EEC) No 259/93. The categories of waste listed in Annex II which are covered are also given. Shipments to these countries and territories of these categories of wastes should be prohibited.

ANDORRA:	All types in Annex II
BAHAMAS:	All types in Annex II
BARBADOS:	All types in Annex II
BELIZE:	All types in Annex II
BENIN:	All types in Annex II
BHUTAN:	All types in Annex II
BOLIVIA:	All types in Annex II
BOTSWANA:	All types in Annex II
BURKINA FASO:	All types in Annex II
CAPE VERDE:	All types in Annex II
CHAD:	All types in Annex II
CHILE:	All types in Annex II
COLOMBIA:	

1. In section GA ("Metal and metal-alloy wastes in metallic, non-dispersible form")

a) the following waste and scrap of non-ferrous metals and their alloys:

GA 120	7404 00	Copper waste and scrap
GA 130	7503 00	Nickel waste and scrap
GA 140	7602 00	Aluminium waste and scrap
GA 150	7802 00	Lead waste and scrap
GA 160	7902 00	Zinc waste and scrap
GA 170	8002 00	Tin waste and scrap
GA 180 ex	8101 91	Tungsten waste and scrap
GA 190 ex	8102 91	Molybdenum waste and scrap

GA 200 ex	8103 10	Tantalum waste and scrap
GA 210 ex	8104 20	Magnesium waste and scrap
GA 220 ex	8105 10	Cobalt waste and scrap
GA 230 ex	8106 00	Bismuth waste and scrap
GA 240 ex	8107 10	Cadmium waste and scrap
GA 250 ex	8108 10	Titanium waste and scrap
GA 260 ex	8109 10	Zirconium waste and scrap
GA 270 ex	8110 00	Antimony waste and scrap
GA 280 ex	8111 00	Manganese waste and scrap
GA 290 ex	8112 11	Beryllium waste and scrap
GA 300 ex	8112 20	Chromium waste and scrap
GA 310 ex	8112 30	Germanium waste and scrap
GA 320 ex	8112 40	Vanadium waste and scrap
ex	8112 91	Wastes and scrap of:
GA 330		- Hafnium
GA 340		- Indium
GA 350		- Niobium
GA 360		- Rhenium
GA 370		- Gallium
GA 400 ex	2844 30	Selenium waste and scrap
GA 410 ex	2804 50	Tellurium waste and scrap
GA 420 ex	2805 30	Rare earths waste and scrap

2. In section GB ("Metal bearing wastes arising from melting, smelting and refining of metals"):

GB 040 ex	2620 90	Slags from precious metals and copper processing for further refining
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3. In section GC ("Other wastes containing metals"):

GC 070 ex	2619 00	Slags arising from the manufacture of iron and carbon steel (including low alloy steel) excluding those slags which have been specifically produced to meet both national and relevant international requirements and standards*
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*This entry covers the use of such slags as a source of titanium dioxide and vanadium

4. In section GD ("Waste from mining operations: these wastes to be in non-dispersible form"):

GD 040 ex	2529 30	Leucite, nepheline and nepheline syenite waste
GD 050 ex	2529 21	Fluospar waste
ex	2529 22	

5. In section GG ("Other wastes containing principally inorganic constituents, which may contain metals and organic materials"):

GG 030 ex	2621	Bottom ash and scag tap from coal fired power plants
GG 040 ex	2621	Coal fired power plants fly ash
GG 060 ex	2803	Spent activated carbon, resulting from the treatment of potable water and processes of the food industry and vitamin production
GG 080 ex	262100	Slag from copper production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications
GG 100		Limestone from the production of calcium cyanamide (having a pH less than 9)

6. in section GH ("Solid plastic wastes"):

GH 013 ex	3915 30	Waste, parings and scrap of plastics of polymers vinyl chloride
GH 015 ex	3915 90	Waste parings and scrap of plastics of resins or condensation products e.g. - urea formaldehyde resins - phenol formaldehyde resins - melamine formaldehyde resins - epoxy resins - alkyd resins - polyamides

7. In section GJ ("Textile wastes"):

GJ 050 ex	5302 90	Top and waste (including yarn waste and garnetted stock) of true hemp (<i>Cannabis sativa</i> L.)
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8. In section GK ("Rubber wastes"):

GK 020	4012 20	Used pneumatic tyres
GK 030 ex	4017 00	Waste and scrap of hard rubber (e.g. ebonite)

9. In section GO ("Other wastes containing principally organic constituents, which may contain metals and inorganic materials"):

GO 040		Waste photographic film base and waste photographic film not containing silver
GO 050		Single use cameras without batteries

COMOROS: All types in Annex II

COSTA RICA:	All types in Annex II
DOMINICA:	All types in Annex II
DJIBOUTI:	All types in Annex II
EGYPT:	All types in Annex II
FIJI:	All types in Annex II
GAMBIA:	All types in Annex II
GHANA:	All types in Annex II
GUYANA:	All types in Annex II
KIRIBATI:	All types in Annex II
KUWAIT:	All types in Annex II
LEBANON:	All types in Annex II
MALAWI:	All types in Annex II
MALDIVES:	All types in Annex II
MOLDOVA:	All types in Annex II
MONGOLIA:	All types in Annex II
MOZAMBIQUE:	All types in Annex II
MYANMAR:	All types in Annex II
NICARAGUA:	All types in Annex II
NIGER:	All types in Annex II
NIGERIA:	All types in Annex II
PAKISTAN:	

1. In section GK ("Rubber wastes"):

GK 020 . 401220 Used pneumatic tyres

2. In section GM ("Waste arising from agro-food industries"):

GM 070 ex 2307 Wine lees

3. In section GN ("Waste arising from tanning and fellmongery operations and leather use"):

GN 010 ex 0502 00 Waste of pigs', hogs' or boars' bristles and hair or of badger hair and other brush making hair

PAPUA NEW GUINEA: All types in Annex II

PERU: All types in Annex II

SAO TOME E PRICIPE:

All types in section GM ("Wastes arising from agro-food industries")

SAUDI ARABIA: All types in Annex II

SENEGAL: All types in Annex II

SEYCHELLES: All types in Annex II

ST. LUCIA: All types in Annex II

ST VINCENT AND THE GRENADINES: All types in Annex II

WESTERN SAMOA: All types in Annex II

TAIWAN:

In section GA ("Metal and metal-alloy wastes in metallic, non-dispersible form")

GA 090 720449 Other ferrous scrap and waste

TANZANIA: All types in Annex II

TUVALU: All types in Annex II

UGANDA: All types in Annex II

VANUATU: All types in Annex II

ANNEX B

Countries and territories which have not yet responded to the Commission's communications on shipments for recovery of certain types of waste listed in Annex II (the "green" list) to Council Regulation (EEC) No 259/93. Shipments to these countries and territories of these categories of waste should be carried out under the control procedure applying to waste listed in Annex IV (the "red" list) of Regulation (EEC) No 259/93.

AFGHANISTAN

ALGERIA

ANGOLA

ANTIGUA and BARBUDA

ARMENIA

AZERBAIJAN

BAHRAIN

BANGLADESH

BRUNEI

BURUNDI

CAMBODIA

CAMEROON

CENTRAL AFRICAN REPUBLIC

CONGO

CONGO, DEMOCRATIC REPUBLIC OF

COTE d'IVOIRE

DOMINICAN REPUBLIC

ECUADOR

EL SALVADOR

EQUATORIAL GUINEA

ERITREA

ETHIOPIA	1001
GABON	1002
GUATEMALA	1003
GUINEA	1004
GUINEA-BISSAU	1005
HAITI	1006
HONDURAS	1007
KENYA	1008
KYRGYSTAN	1009
LAOS	1010
LESOTHO	1011
MALI	1012
MAURITANIA	1013
MOROCCO	1014
NAMIBIA	1015
NEPAL	1016
OMAN	1017
PANAMA	1018
QATAR	1019
RWANDA	1020
ST.CHRISTOPHER & NEVIS	1021
SOLOMON ISLANDS	1022
SUDAN	1023
SWAZILAND	1024

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UZBEKISTAN

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ISSN 0254-1475

COM(97) 685 final

DOCUMENTS

EN

02 10 14

Catalogue number : CB-CO-97-706-EN-C

ISBN 92-78-29050-5

Office for Official Publications of the European Communities

L-2985 Luxembourg