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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

to a legislative proposal and additional non-legislative measures strengthening the inspections and enforcement of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

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1. PROBLEM DEFINITION

1.1. What is precisely the problem?

The problem which needs to be addressed is the high frequency of illegal waste shipments from the EU to certain destinations violating the EU waste shipment regulation¹, "WSR". Inspections at sea-ports, on roads and in companies have shown that around 25% of shipments containing waste in the EU do not comply with the WSR. Numerous reports of NGOs, media and studies published during 2007-2011 have shown that large amounts of waste originating in the EU are illegally exported to developing countries in Africa and Asia. The significantly lower costs for waste treatment and disposal in developing countries are an important economic driver for illegal waste shipments. These lower costs are mainly a result of less stringent environmental and health regulation than in the EU. Illegal traders thus seek to avoid the higher costs within the EU by shipping waste illegally to cheaper, poor quality facilities in developing countries.

The dumping or substandard treatment of waste following an illegal shipment usually has severe implications for the environment and health. Inadequately disposed or untreated waste may cause serious environmental and health problems for populations surrounding the disposal area. Leaks from the discarded waste also harm soils and water streams, and produce air pollution, through emissions of e.g. heavy metals and persistent organic pollutants. In addition to the long-term health risks for citizens and workers, this also contributes to global warming and ozone depletion. The extent of these impacts is closely linked with the usage of proper or improper waste treatment techniques. The already toxic nature of hazardous substances can often become an augmented risk due to a lack of personal protection equipment or pollution control measures used in waste treatment in the countries receiving illegal waste shipments.

Illegal waste shipments also entail significant costs for Member States and operators. These include costs for clean-up operations after waste has been illegally shipped and dumped, as well as costs for the repatriation of the waste to the country of origin. In addition, the current "leakage" of waste via illegal shipments to sub-standard treatment inside or outside the EU hinders the access to valuable raw materials. Higher quantities of waste routed through legal channels for recovery and treatment, would lead to optimised processes and better sorting techniques and consequently better quality of waste and, ultimately increased access to high quality raw materials. Further, the current lack of a level playing field due to wide disparities in enforcement practices put law-abiding businesses at an economic disadvantage. The high rates of illegal shipments thus undermine legitimate waste treatment and disposal industries.

1.2. Who is most affected?

Inspections and enforcement of the WSR mainly concern the following actors:

- Member States' authorities which undertake waste shipment inspections at national, regional or local level.
- Waste traders and shippers who comply with WSR requirements.
- Illegal waste traders and shippers who use the enforcement and inspection gaps in MS to circumvent the WSR at the expense of environmental and health issues.

¹ Regulation (EC) no 1013/2006 of the European Parliament and of the Council on shipments of waste, OJ L 190, 12.7.2006, p.1.

- Citizens suffering health effects from the dumping or mismanagement of waste.

1.3. Why is public intervention necessary?

Requirements for inspections and enforcement are formulated in the WSR in a general way (Article 50). The WSR does not contain any specific provisions on how inspections shall be carried out. As a result, there are large differences between Member States. Some have developed thorough, well-functioning inspection systems targeting either waste shipments in ports or at the sites of waste producers and collectors, while others have significant problems with enforcement and lack adequate structures and resources to control waste streams and carry out inspections.

This situation leads to 'port hopping', i.e. exporters of illegal waste choose to send their waste through Member States with the least controls. If enforcement in one Member State is stepped up, illegal exporters move their exports to another Member State. Effectively preventing illegal waste shipments can only be achieved if sufficient controls are carried out in all Member States.

2. ANALYSIS OF SUBSIDIARITY

2.1. Treaty base

The EU has the right to act based on Article 191 Treaty on the Functioning of the European Union (TFEU). Current EU legislation, including Article 50 of the WSR, contains certain provisions on enforcement aiming to ensure that effective inspection systems are put in place in Member States. However, enforcement of the WSR is patchy and significant levels of different types of illegal waste are continuing to be exported from the EU. A major problem seems to be that the WSR currently lacks specific criteria related to the planning of inspections, burden-of-proof, up-stream inspections and training.

2.2. The 'necessity test'

Waste shipments are by nature international and require the implementation and enforcement of regulations in the same way by all Member States to ensure a level playing field and limit unlawful shipments of waste which hamper EU and international trade and create a danger for human health and the environment. Therefore, EU action appears necessary.

Inspection requirements are not detailed in the current legislation (Article 50 of the WSR), leading to poor and uneven implementation and enforcement throughout the EU. The policy objectives of the WSR cannot therefore currently be achieved.

Member States have a strong interest in the effective enforcement of the WSR in other Member States. Indeed, waste shipped to third countries is often initially moved within the EU. Thus, poor enforcement in certain Member States leads to further work by inspection authorities in other Member States. Further, companies trying to avoid Member States where the WSR is well implemented may transport waste to Member States where the WSR is less implemented, reducing their chances of being caught. In order to address these problems, action at the EU level is essential, as the EU as a whole needs to reduce the impacts of its waste in third countries but its action is limited by the weakest link in the inspection chain. Therefore, harmonised inspection procedures appear necessary in the EU.

3. OBJECTIVES OF THE EU INITIATIVE

The main objectives of the implementation of the proposed legal requirements on inspections of waste shipments are to achieve the following goals.

General objective: The protection of the environment and health by reducing illegal waste shipments.

Specific objectives: Improving the implementation and enforcement of the EU waste shipment regulation, thus contributing to the fulfilment of the Commission's task in Article 17(1) of the EU Treaty; cutting costs in Member States, related e.g. to clean-up and repatriation of waste; increasing access to raw materials and contributing to resource efficiency; and ensuring a level playing field across the EU for those dealing with waste.

Operational objectives: Strengthen and improve the effectiveness of waste shipment inspections; and harmonise the criteria used in different Member States for inspections.

4. POLICY OPTIONS

The policy options analysed were subject to stakeholder consultation and were extensively commented on during this process. They range from possible amendments of EU legislation to non-legislative measures. They are not mutually exclusive and can be combined in order to strengthen enforcement of the WSR. Four main policy options have been identified and assessed with regard to their economic, social and environmental impacts:

Option 1 - No action at EU level

Option 2 - Specific requirements and criteria for waste shipment inspections introduced in EU legislation by amending Article 50 of the WSR to address the concrete enforcement gaps identified in the Impact Assessment: lack of inspection planning and risk assessments; insufficient provisions on the burden-of-proof; lack of up-stream inspections to detect illegal exports; and lack of training for inspectors.

Option 3 - Guidance for waste shipment inspections at EU level to address the four specific areas where a need for guidance was identified in the Impact Assessment: facilitation of control of shipments by customs authorities; ensuring ESM at treatment and recycling plants in third countries; promoting the traceability of waste by technical means; and co-operation, coordination and monitoring.

Option 4 – Combination of EU legislative requirements and guidance

5. ASSESSMENT OF IMPACTS

Option 1 - No action at EU level

The non-action option entails no changes and leaves Member States free to arrange for inspections of waste shipments in their own way in order to address the specific national situation. On the other hand, this option does not solve any of the problems outlined in the report. The lack of precise EU-wide rules regarding inspections gives way to different interpretations and to an uneven implementation among Member States. The current ineffectiveness and specific insufficiencies of waste shipment inspections in many Member States risk leading to increased rates of illegal waste shipments.

The current problems of severe, negative implications for the environment and human health, high costs for Member States (clean-up of illegally shipped waste) and industry (lack of a level playing field) would remain. Access to raw materials would not improve and the current inefficient use of resources would remain. This option also risks leading to relocation of jobs outside the EU.

Option 2 - Specific requirements and criteria for waste shipment inspections in EU legislation

Member States whose inspection systems for waste shipments are already effective will incur little costs. In fact, their costs would be lower if adequate inspections are conducted at source in other Member States since illegal waste shipments often originate in one Member States and are exported through another. This would release the pressure on the traditional points of exit of illegal waste shipments from the EU.

Member States lacking adequate inspection capacities and infrastructure would need to hire new inspectors and establish the necessary capacity to comply with new legal requirements. The impact assessment estimates the total yearly cost for increasing inspection capacities and infrastructure in the whole EU at €4,000,000. No costs would be passed on to legal businesses or consumers, but would be placed on the illegal exporters, in line with the polluter pays principle. There are no additional costs for economic operators, apart from the suspected illegal operators on which the burden of proof in specific cases would be reversed. The costs could be covered by potential revenues from fines or penalties imposed on the illegal operators, and could also be outweighed by the savings of avoided repatriation- and clean-up costs.

Option 3 - Guidance for waste shipment inspections at EU level

It is unlikely that guidance *alone* could contribute to improvements of waste shipment inspections in all Member States. An abundance of guidance on waste shipments and inspections already exists at EU level, but its non-binding nature represents a major challenge to achieve the objective of better enforcement of the WSR. If guidance is not followed by some Member States, “port hopping” continues.

Option 4 - Combination of EU legislative requirements and guidance

This option will have the same costs and benefits of options 2 and 3 together. This means that the additional costs, cost savings and economic benefits of binding legislation would be the same as in in option 2, with very small additional costs for guidance as in option 3. In view of the net costs and benefits of options 2 and 3, these options could be considered as mutually reinforcing.

6. COMPARISON OF OPTIONS

The first criterion is to identify whether the option solves the problems identified in the Impact Assessment. The second criterion is to assess the net costs, i.e. the estimated difference between economic costs and benefits. In applying these criteria, option 4 (combination of EU legislative requirements and guidance) would be the only option which solves all the problems identified in the Impact Assessment and has also the lowest net costs. This option has also the most positive economic, social and environmental impacts.

7. MONITORING AND EVALUATION

The effectiveness of the measures proposed to solve the problem of illegal waste shipments should be monitored and evaluated in the following way:

(1) Establishment of adequate infrastructures, capacities and enforcement systems. The proposed inspection planning would be considered successful in practice if it results in the establishment of adequate infrastructures and capacities, well-functioning enforcement systems and improved inspections for waste shipments in the Member States.

(2) Reduction of illegal waste shipments. The effectiveness of the proposed measures could be measured by statistics showing reduced rates of illegal waste shipments.

(3) Monitoring by the Commission. When monitoring the information submitted by Member States on the implementation of the WSR, the Commission could assess and evaluate the impacts of legislative measures on inspections and illegal shipments, and take this into account as appropriate when drawing up its tri-annual report on the implementation of the WSR.

(4) On-the-spot projects. A further measurement tool would be to evaluate the specific non-compliant cases detected by inspections in terms of cost savings made, i.e. avoidance of repatriation, clean up etc. as well as the environmental improvements on-the-spot, i.e. at destinations currently receiving illegal waste shipments. This could in practice be carried out through projects with developing countries.

(5) Estimates based on increased recycling rates. The rates of recycling of waste are being monitored within the EU as a result of EU and national legislation. Increases of the recycling rates could be used to indicate the success of the proposed requirements due to waste being recycled rather than illegal exported and dumped.