



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

**Brussels, 15 May 2014
(OR. en)**

**2013/0239 (COD)
LEX 1523**

**PE-CONS 69/2/14
REV 2**

**ENV 263
MI 263
RELEX 221
CODEC 757**

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1013/2006 ON SHIPMENTS OF WASTE

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

amending Regulation (EC) No 1013/2006 on shipments of waste

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

³ Position of the European Parliament of 17 April 2014 (not yet published in the Official Journal) and decision of the Council of 6 May 2014.

Whereas:

- (1) In order to protect the environment, Regulation (EC) No 1013/2006 of the European Parliament and of the Council¹ lays down requirements for shipments of waste both within the Union and between the Member States and third countries. However, divergences and gaps have been identified in the enforcement and inspections carried out by the authorities involved in inspections in Member States.
- (2) Adequate planning of inspections of shipments of waste is necessary to establish the capacity needed for inspections and to effectively prevent illegal shipments. The provisions relating to enforcement and inspections laid down in Article 50 of Regulation (EC) No 1013/2006 should therefore be strengthened with a view to ensuring regular and consistent planning of such inspections. Inspection plans should be established for inspections carried out in accordance with those provisions. Inspection plans should be based on a risk assessment and should include a number of key elements, namely objectives, priorities, the geographical area covered, information on planned inspections, the tasks assigned to authorities involved in inspections, arrangements for cooperation between those authorities involved in inspections in a Member State, in different Member States, as well as, where appropriate, between those authorities in Member States and in third countries, and information on the training of inspectors as well as on the human, financial and other resources for the implementation of the inspection plan concerned.
- (3) Inspection plans may either be drawn up separately or as a clearly defined part of other plans.

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, 12.7.2006, p. 1).

- (4) As inspection plans are covered by Directive 2003/4/EC of the European Parliament and of the Council¹, the provisions of that Directive, including, where applicable, the exceptions in Article 4 thereof, apply to such plans.
- (5) The outcome of inspections and the measures taken, including any penalties imposed, should be made available to the public, including electronically via the internet.
- (6) Diverging rules exist throughout the Union as regards the power of, and possibility for, authorities involved in inspections in Member States to require evidence to ascertain the legality of shipments. Such evidence could concern, inter alia, whether the substance or object is waste within the meaning of Regulation (EC) No 1013/2006, whether the waste has been correctly classified, and whether the waste will be shipped to environmentally sound facilities in accordance with Article 49 of that Regulation. Article 50 of Regulation (EC) No 1013/2006 should therefore provide the possibility for authorities involved in inspections in Member States to require such evidence. Such evidence may be requested on the basis of general provisions or on a case-by-case basis. Where such evidence is not made available or is considered to be insufficient, the carriage of the substance or object concerned, or the shipment of waste concerned should be considered as an illegal shipment and should be dealt with in accordance with the relevant provisions of Regulation (EC) No 1013/2006.
- (7) Illegal shipments of waste frequently stem from uncontrolled collection, sorting and storage. Carrying out inspections of shipments of waste in a systematic manner should therefore contribute to identifying and addressing those uncontrolled activities, thereby promoting the implementation of Regulation (EC) No 1013/2006.

¹ 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 (OJ L 41, 14.2.2003, p. 26).

- (8) In order to allow sufficient time for Member States to prepare for the application of the measures required under Article 50 of Regulation (EC) No 1013/2006, as amended by this Regulation, it is appropriate that the first inspection plans be adopted by 1 January 2017.
- (9) As a consequence of the entry into force of the Lisbon Treaty, the power conferred on the Commission under Regulation (EC) No 1013/2006 should be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).
- (10) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of certain non-essential elements of Regulation (EC) No 1013/2006. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (11) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1013/2006, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (12) Regulation (EC) No 1013/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing power (OJ L 55, 28.2.2011, p. 13).

Article 1

Regulation (EC) No 1013/2006 is amended as follows:

(1) in Article 2, the following points are added:

'7a. 're-use' is as defined in Article 3(13) of Directive 2008/98/EC of the European Parliament and of the Council^{*}.

35a. 'inspection' means actions undertaken by the authorities involved to ascertain whether an establishment, an undertaking, a broker, a dealer, a shipment of waste or the related recovery or disposal complies with the relevant requirements set out in this Regulation.

^{*} 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).';

(2) in Article 26, paragraph 4 is replaced by the following:

'4. Subject to the agreement of the competent authorities concerned and of the notifier, the information and documents listed in paragraph 1 may be submitted and exchanged by means of electronic data interchange with electronic signature or electronic authentication in accordance with Directive 1999/93/EC of the European Parliament and of the Council^{*}, or a comparable electronic authentication system which provides the same level of security.

With a view to facilitating the implementation of the first subparagraph, the Commission shall, where feasible, adopt implementing acts establishing the technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information. The Commission shall take into consideration any relevant international standards, and shall ensure that those requirements are in conformity with Directive 1999/93/EC or provide at least the same level of security as provided for under that Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59a(2).

* Directive 1999/93 of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).';

(3) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments, undertakings, brokers and dealers in accordance with Article 34 of Directive 2008/98/EC, and for inspections of shipments of waste and of the related recovery or disposal.';

(b) the following paragraph is inserted:

'2a. By 1 January 2017, Member States shall ensure that, in respect of their entire geographical territory, one or more plans are established, either separately or as a clearly defined part of other plans, for inspections carried out pursuant to paragraph 2 ("inspection plan"). Inspection plans shall be based on a risk assessment covering specific waste streams and sources of illegal shipments and considering, if available and where appropriate, intelligence-based data such as data on investigations by police and customs authorities and analyses of criminal activities. That risk assessment shall aim, inter alia, to identify the minimum number of inspections required, including physical checks on establishments, undertakings, brokers, dealers and shipments of waste or on the related recovery or disposal. An inspection plan shall include the following elements:

- (a) the objectives and priorities of the inspections, including a description of how those priorities have been identified;
- (b) the geographical area covered by that inspection plan;
- (c) information on planned inspections, including on physical checks;
- (d) the tasks assigned to each authority involved in inspections;
- (e) arrangements for cooperation between authorities involved in inspections;

- (f) information on the training of inspectors on matters relating to inspections; and
- (g) information on the human, financial and other resources for the implementation of that inspection plan.

An inspection plan shall be reviewed at least every three years and, where appropriate, updated. That review shall evaluate to which extent the objectives and other elements of that inspection plan have been implemented.';

- (c) paragraph 3 is replaced by the following:

'3. Inspections of shipments may take place in particular:

- (a) at the point of origin, carried out with the producer, holder or notifier;
- (b) at the point of destination, including interim and non-interim recovery or disposal, carried out with the consignee or the facility;
- (c) at the frontiers of the Union; and/or
- (d) during the shipment within the Union.';

- (d) paragraph 4 is replaced by the following:

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

(e) the following paragraphs are inserted:

'4a. In order to ascertain that a substance or object being carried by road, rail, air, sea or inland waterway is not waste, the authorities involved in inspections may, without prejudice to Directive 2012/19/EU of the European Parliament and of the Council^{*}, require the natural or legal person who is in possession of the substance or object concerned, or who arranges the carriage thereof, to submit documentary evidence:

- (a) as to the origin and destination of the substance or object concerned; and
- (b) that it is not waste, including, where appropriate, evidence of functionality.

For the purpose of the first subparagraph, the protection of the substance or object concerned against damage during transportation, loading and unloading, such as adequate packaging and appropriate stacking, shall also be ascertained.

4b. The authorities involved in inspections may conclude that the substance or object concerned is waste where:

- the evidence referred to in paragraph 4a or required under other Union legislation to ascertain that a substance or object is not waste, has not been submitted within the period specified by them, or

- they consider the evidence and information available to them to be insufficient to reach a conclusion, or they consider the protection provided against damage referred to in the second subparagraph of paragraph 4a to be insufficient.

In such circumstances, the carriage of the substance or object concerned or the shipment of waste concerned shall be considered as an illegal shipment.

Consequently, it shall be dealt with in accordance with Articles 24 and 25 and the authorities involved in inspections shall, without delay, inform the competent authority of the country where the inspection concerned took place accordingly.

- 4c. In order to ascertain whether a shipment of waste complies with this Regulation, the authorities involved in inspections may require the notifier, the person who arranges the shipment, the holder, the carrier, the consignee and the facility that receives the waste to submit relevant documentary evidence to them within a period specified by them.

In order to ascertain whether a shipment of waste falling under the general information requirements of Article 18 is destined for recovery operations which are in accordance with Article 49, the authorities involved in inspections may require the person who arranges the shipment to submit relevant documentary evidence, provided by the interim and non-interim recovery facility and, if necessary, approved by the competent authority of destination.

- 4d. Where the evidence referred to in paragraph 4c has not been submitted to the authorities involved in inspections within the period specified by them, or they consider the evidence and information available to them to be insufficient to reach a conclusion, the shipment concerned shall be considered as an illegal shipment. Consequently, it shall be dealt with in accordance with Articles 24 and 25 and the authorities involved in inspections shall, without delay, inform the competent authority of the country where the inspection concerned took place accordingly.
- 4e. By ...⁺, the Commission shall adopt, by means of implementing acts, a preliminary correlation table between the codes of the combined nomenclature, provided for in Council Regulation (EEC) No 2658/87^{**} and the entries of waste listed in Annexes III, IIIA, IIIB, IV, IVA and V to this Regulation. The Commission shall maintain that correlation table up-to-date in order to reflect changes to that nomenclature and to the entries listed in those Annexes, as well as to include any new waste-related codes of the Harmonized System Nomenclature that the World Customs Organisation may adopt.

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

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

** Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).';

⁺ OJ: Please insert date: one year after the entry into force of this Regulation.

(f) paragraph 5 is replaced by the following:

'5. Member States shall cooperate, bilaterally and multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. They shall exchange relevant information on shipments of waste, flows of waste, operators and facilities and share experience and knowledge on enforcement measures, including the risk assessment carried out pursuant to paragraph 2a of this Article, within established structures, in particular, through the network of correspondents designated in accordance with Article 54.';

(4) in Article 51, paragraph 2 is replaced by the following:

'2. Before the end of each calendar year, Member States shall also draw up a report for the previous year, based on the additional reporting questionnaire in Annex IX, and shall send it to the Commission. Within a month of transmission of that report to the Commission, Member States shall also make the section of that report relating to Article 24 and Article 50(1), (2) and (2a), including Table 5 of Annex IX, publicly available, including electronically via the internet, together with any explanation that the Member States consider to be appropriate. The Commission shall compile a list of the Member States' hyperlinks referred to in the section relating to Article 50(2) and (2a) in Annex IX and make it publicly available on its website.';

(5) Article 58 is replaced by the following:

'Article 58

Amendment of the Annexes

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to amend the following:

- (a) Annexes IA, IB, IC, II, III, IIIA, IIIB, IV, V, VI and VII to take account of changes agreed under the Basel Convention and the OECD Decision;
- (b) Annex V to reflect agreed changes to the list of waste adopted in accordance with Article 7 of Directive 2008/98/EC;
- (c) Annex VIII to reflect decisions taken under relevant international conventions and agreements.';

(6) the following Article is inserted:

'Article 58a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 58 shall be conferred on the Commission for a period of five years from ... ⁺. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 58 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 58 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.';

⁺ OJ: Please insert date: the date of entry into force of this amending Regulation.

- (7) Article 59 is deleted;
- (8) Article 59a is replaced by the following:

'Article 59a

Committee procedure

1. The Commission shall be assisted by the committee established by Article 39 of Directive 2008/98/EC. That committee is a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.';

- (9) in Article 60, the following paragraph is added:

'2a. By 31 December 2020, the Commission shall, taking into account, inter alia, the reports drawn up in accordance with Article 51, carry out a review of this Regulation and submit a report on the results thereof to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal. In that review, the Commission shall consider, in particular, the effectiveness of Article 50(2a) in combating illegal shipments, taking into account environmental, social and economic aspects.';

(10) Annex IX is amended as follows:

(a) the section relating to Article 50(2) is replaced by the following:

'Summary information on the outcome of the inspections carried out pursuant to Article 50(2), including:

- number of inspections, including physical checks, of establishments, undertakings, brokers and dealers, related to shipments of waste:
- number of inspections of shipments of waste, including physical checks:
- number of supposed illegalities concerning establishments, undertakings, brokers and dealers, related to shipments of waste:
- number of supposed illegal shipments ascertained during the inspections:

Additional remarks:';

- (b) the following section relating to Article 50(2a) is inserted:

'Article 50(2a)

Information on the inspection plan(s)

Number of inspection plan(s) for the entire geographical territory:

The date of adoption of the inspection plan(s) and the period covered by them:

The latest review date of the inspection plan(s):

The authorities involved in inspections and the cooperation amongst those authorities:

Indicate the persons or bodies to which concerns or irregularities can be reported:';

- (c) the following section relating to Article 50(2) and (2a) is inserted:

'The link where the information made publicly available via the internet by

Member States in accordance with Article 51(2) can be accessed electronically:';

- (11) in Annex IX, Table 5, the heading of the last column is replaced by the following:

'Measures taken, including any penalties imposed'.

Article 2

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

It shall apply from 1 January 2016.

Notwithstanding the second paragraph, point (4) of Article 1 shall apply from 1 January 2018.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President