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HWE's views on the Evaluation of the Waste Shipment Regulation

Shipments of waste represent important activities of our hazardous waste business. The notifications are a significant part of HWE's members day to day business. In 2017, our members completed around 1 000 notifications with an average duration of instruction going from 2 to 10 months, ⅔ were renewals and the rest new notifications. ⅔ concerned transboundary shipments within the EU and the remaining parts concerned imports from third countries. Our members therefore grant a great importance to the notification procedure to ensure the safe shipments of hazardous waste, traceability and adequate treatment at the final destination.

The WSR is, in our view, a very good tool to ensure these principles. In addition to our answer to the public consultation on the evaluation of the waste shipment regulation, we would like to highlight a few important topics to take into consideration in the assessment of the current Waste Shipment Regulation (WSR). We would advocate not giving in to the temptation of oversimplifying the current provisions that could be detrimental to the environment and health.

Nonetheless, the regulation could benefit from some homogenisation in the procedures as we have counted 24 different ones. Having an EU regulation that ensures harmonized provisions for all the operators within the Member States is a key principle to ensure a level playing field and contribute to the circular economy. The current Waste Shipment Regulation could also benefit from some clarifications and improvements aiming at accelerate the efficiency of notifications procedure with the ultimate objective to find the right balance between red tape and the rigor of the document that it is dear to us to preserve.

- **The distinction between the requirements needed for transfers of hazardous waste and those for transfers of non hazardous waste is essential and should remain to ensure appropriate treatment of waste**

The distinction between the requirements needed for transfers of hazardous and those for non hazardous waste is very important to keep in the regulation. The WSR considers three categories of streams (green listed waste, non hazardous waste which are not in the green list and hazardous waste) with appropriate procedure based on the destinations and the types of treatment. Non hazardous waste not listed in the green list are subject to the notification procedure to be shipped for recovery (both OECD and non OECD) and disposal operations (within the EU and EFTA), which is the same procedure as for hazardous waste. If the provisions were to be simplified for those non hazardous waste, it should remain as strict as it is currently for hazardous waste to ensure traceability and safe treatment.

- **Press for better efficiency of the procedure**

- *When does the notification end*: Should we consider that the notification ends at the departure of the last shipment or arrival at final destination? We need to clarify this point. It is much more convenient to consider that the last day of the notification corresponds to the date of departure of the last shipment. It is not only important because of the delay in the notification procedure but also because some travels are very long without any certainty of the date of arrival. There is no risk of non completed shipments as the financial guarantees end when the last shipment has been finally treated.

- *Tacit consent*: according to article 9, for shipments within the community, tacit consent by the competent authority of transit may be assumed if no objection is lodged within the said 30-day time limit. However regarding shipment with third countries the tacit consent is linked to information to other parties about a tacit or written consent. But in the absence of answer within the 60 days, it is difficult to assess if it is considered as tacit consent or if the competent authority still needs time to instruct the request. One consequence being to cause longer delays and long, costly and dangerous waste interim storage with environmental risks. It would be very beneficial that the WSR reproduces what has been done with the regulation 1418/2007 in order to know in advance the position of the respective third countries on this topic.

- *The pre-consent procedure*: its application is heterogeneous among the Member States. To introduce one single procedure for the validation of the pre-consent in the regulation (either in article 14 or in annex VI - Form for pre-consented facilities) would help to have harmonised criteria that could be used in a more systematic manner and contribute to make the notification faster.

- *The procedure for renewals should be accelerated*. Indeed, the procedure of notification demandes huge work that implies lot of time and money. It would help from an administrative point of view to limit the information needed for renewals only to potential changes (new permits, change in the quantities, changes of transporters, changes in the routes - main or alternatives, etc.). The launch of an electronic data system could help with this issue. This improvement would also considerably reduce the administrative burden of competent authorities involved

- *The topic of financial guarantee* could benefit from some adjustments. A simplification could be to introduce the possibility for single rolling yearly financial guarantee instead of one for each notifications. It would be based on the number of shipments/active volume. Having a bigger global amount instead of severals segmented amounts will not only facilitate the negotiations with the banks but also reduce red tape. The financial guarantees in favour of non EU exporting state are sometimes difficult to recover or cancel. The financial guarantee should automatically be released once the certificate delivered has been received by the competent authority, which is not the case today.

- *Authentication/translation of the document*: the procedure can suffer from demands of the competent authorities to provide extended certified or translated documents on non essential part of official documents that do not help to give consent.

- We would favor reviewing *the amount of 25kg* associated to shipments of waste explicitly destined for laboratory analysis. Indeed, sometimes we need to send bigger quantities, for instance in the case of pilot trials. The limit should be revised and accompanied by a specific procedure in order to be more adapted to situations of laboratory test or analysis.

- **Beyond the provisions of the WSR, we should fix the gaps and overlaps of EU waste legislations to reduce diverging interpretations and ensure harmonised implementation in the EU**

Shipments of waste can also be impacted by obstacles connected to the implementation of EU waste legislation or other related legislations. For instance, differences of interpretation between waste/non waste, hazardous/non hazardous waste and recovery/disposal have consequences on the efficient functioning of the shipments and application of the waste shipment regulation. Although article 28 on disagreement on classification issues considers managing the divergences by applying the stricter regulation, its point 4 opens the possibility to bring the issues to court. That means that any positions can be put into question, and as the level of interpretation of the different situations may be complex, this uncertainty can push Member States not to take position. For this reason, in order not to weaken the provisions of article 28, we would advocate to limit or better frame the possibility to bring any dispute to a court or a tribunal to situations where no specific national legislation exist.

- *Divergence of classification of the waste codes*: The differences of waste codes between the European and the Bale lists harm the consistency of application of the WSR. It would be very useful to have a correspondence table between the two lists.

- *Application of national end-of-waste criteria:* Divergent national applications of end of waste criteria are likely to distort competition and disturb the market.

- *Application of the grounds for reasoned objections to shipments of waste for recovery:* The objections to transfers are different depending on the status of the treatment. For disposal operations, a competent authority can object referring to proximity principle or self-sufficiency but these objections don't exist for recovery operations. We should fight the situation of sham recovery where the use of inappropriate R code favors imports or exports of waste. It leads to massive waste shipments to installations that are located farer and whose treatment may be lower in the waste hierarchy or even detrimental for the environment or human health.

- **The provisions of the WSR should protect health and the environment.**

A Member State should have the possibility to impose that the notifier must act in its legal jurisdiction. It is a very powerful mean for the Member States to get access to the financial guarantee of the notifyer.

We should also pay a particular attention to the existing infrastructure of a Member States regarding the treatment of hazardous waste. In the framework of the current assessment of the hazardous waste management situation in some EU Member States, we came to the conclusions that many Member States did not have adequate infrastructure to treat their own hazardous waste. Thus a country with insufficient capacity should give limited access to it to foreign waste.

Moreover in the context of the non toxic environment, we would also like to underline the absolute necessity that EU should avoid the export in third countries of waste contaminated with substances of concern, for instance POPs, especially as EU puts tight limits on those substances on imported goods.

- **Thus, all the points raised above should benefit from better controls and inspections and from the implementation of an electronic data system**

A better public access to notifications, as planned in article 21, is necessary, as there are some member States that give a very limited access to them. A revision of this article should introduce a real access to notifications and better information to the public.

Inspections should be guided by a chain-of-responsibility approach, and where an infraction is detected at any point in the chain, for example at the port or road controls, or at the last installation before shipment, inspectors shall follow the chain of responsibility and penalties shall be applied to those found to be in breach of the regulation.

The implementation of an electronic data interchange would be a great tool to ensure traceability and the sharing of information between authorities. Not only it would make the administrative process easier, but the environmental benefits of more control on waste shipments would also include less illegal shipments, and more environmentally sound treatment in Europe, including high quality recycling within the EU. Better waste shipment controls would also avoid major environmental accidents, especially in developing countries. It will therefore be necessary to make the appropriate change in the article 26 on the format of the communications.

From our assessment, merely targeted adaptations on the existing provisions would really improve the existing waste shipment regulation, that's the reason why we would favor a recast.