

# Public Consultation on the Revision of the Waste Shipment Regulation

## Submission from the Rethink Plastic alliance, supported by the Basel Action Network and GAIA

Plastic waste shipments represent the latest wave of unsustainable and unethical waste trafficking just as plastic has also become one of the most discussed items regarding the circular economy. Solving the plastic waste crisis, largely the result of overconsumption and design issues, cannot be solved by shipping plastic waste around the globe in search of countries willing to receive it despite the environmental and human cost. On the contrary, the plastic waste crisis can only be solved through a holistic strategy that places the emphasis on upstream solutions—preventing plastic production and consumption while collecting and treating that which is used—and not by looking for new global hiding places for it. A comprehensive package of measures on plastic and plastic waste, to be advanced within different legislative files, are key to fulfill the promise of the new Circular Economy Action Plan (CEAP) and European Green Deal (EGD). The revision of the Waste Shipment Regulation (WSR), formally known as Regulation (EC) No 1013/2006 on Shipments of Waste, is a vital part of that package.

The revision of the WSR comes at a moment of significant changes to the European Union (EU) and the international landscape related to plastic waste trade and the circular economy, mostly recently with the recent amendments to the Basel Convention. To capitalise on this unique moment in time, the Rethink Plastic alliance, supported by the Basel Action Network (BAN) and the Global Alliance for Incinerator Alternatives (GAIA), herein calls for the following revisions in the WSR. These revisions are primarily designed to address, in a more sustainable manner, plastic waste exports by Member States whether destined for non-EU countries or other Member States.

### I. Ban on Plastic Waste Exports to Non-EU Countries

The EU exports ever-increasing volumes of plastic waste to non-EU countries. This occurs despite these countries not possessing the means to properly recycle it, often due to it being shipped in a mixed and contaminated state that is difficult to recycle anywhere but particularly in countries lacking the resources to maintain highly complex recycling facilities. The result is often open burning, dumping and landfilling as well as port pile-ups as government seizures of illegal shipments increase.<sup>1</sup> The Commission has recognized this trend, acknowledging that, over the last 15 years, “the export of plastic waste has considerably increased, to a point where export outside the EU has become a common way to manage plastic waste generated in the EU.”<sup>2</sup>

Plastic waste, in particular, presents an important challenge in relation to exports under the WSR as it is currently a “green-listed waste” subject only to general information requirements.<sup>3</sup> Despite the strengthening of the WSR in 2014 to improve inspection and control of wastes subject to general information requirements, the Commission found that “[e]xperience shows however that export of ‘green-listed wastes’ is often not controlled by national authorities as closely as the export of ‘notified wastes,’” further finding that it “is thus not always clear whether (and how) operators and authorities ensure that exported waste is treated in an environmentally sound manner.”<sup>4</sup>

Recent developments underscore the need for more robust controls on plastic waste. In 2018, China implemented its National Sword policy banning imports of post-consumer plastic waste and, in 2019, this was followed by additional prohibitions including industrial plastic waste scrap.<sup>5</sup> The result of these escalating bans has been an indiscriminate re-direction of plastic waste to many other countries; Malaysia, Thailand, Vietnam and Indonesia quickly became the largest importers of plastic waste coming from the EU, many shipments likely illegal, while Hong Kong now serves as a major transshipment port.<sup>6</sup> Many recent reports and investigations have shed light on this phenomenon. For example, a recent review of trade patterns found that almost 7,000 metric tonnes of plastic waste were shipped from Italy to Malaysia during the first three trimesters of 2019—including containers, wrappings, industrial films and various plastic residues—and that half of that plastic waste shipped was destined for non-authorized plants.<sup>7</sup> In January 2020, the Malaysian government refused and returned 150 containers carrying 3,375 tonnes of illegal plastic waste to their countries of origin, among which were France, UK, Spain, Portugal and Lithuania.<sup>8</sup> A recent report by Greenpeace Malaysia illustrates the severe environmental harm from the toxic impact of imported plastic.<sup>9</sup> Other reports found similar patterns from other EU countries to other non-EU countries.<sup>10</sup> The Commission has noted that plastic waste exports to non-EU countries “can cause detrimental environmental impact on importing countries, further noting “that around 60% of all the plastics in global waters originates... in exactly a number of these Asian destination countries for plastic waste from the EU.”<sup>11</sup> In other words, EU plastic waste exports are more common to countries that already suffer from waste-management challenges. These problems are not unique to Southeast Asia, but also exist in OECD countries, such as Turkey.<sup>12</sup> Furthermore, IMPEL has recognized that Mexico and Chile are also at risk of being deluged with plastic waste.<sup>13</sup>

The recent amendments to the Basel Convention will partly address concerns about plastic waste exports to non-EU countries and the harm therefrom, in particular by introducing requirements of prior informed consent for certain exports of mixed, dirty and hard-to-recycle plastic wastes. However, these measures alone are insufficient, offering no protection against plastic wastes listed in Annex IX to the Basel Convention—including thermoset plastics—even when importing countries have no capacity to adequately manage such wastes. Nor do they offer protections from situations where importing countries consent to plastic waste imports under duress, yet incapable of managing them without harm to the environment or human health. Overall, the recent amendments to the Basel Convention, while a step in the right direction, fail to uphold the general requirement of national self-sufficiency in waste management – an obligation which the EU has sufficient domestic resources to enforce themselves.<sup>14</sup>

Against this background, the Commission has recently made several policy statements on the issue. In the EGD released in December 2019, the Commission states its “view that the EU should stop exporting its waste outside of the EU and will therefore revisit the rules on waste shipments

and illegal exports.”<sup>15</sup> A few months later, in the new CEAP, when discussing the WSR review, the Commission states it will “aim at restricting exports of waste that have harmful environmental and health impacts in third countries or can be treated domestically within the EU by focusing on countries of destination, problematic waste streams, types of waste operations that are source of concern, and enforcement to counteract illegal shipments.”<sup>16</sup> Plastic waste meets all the requirements for waste whose export to non-EU countries should be prohibited, and such a ban should headline a comprehensive package of policies to create a truly responsible circular economy with respect to plastics. It should be supported by and supportive of measures to reduce the overall rate of plastic production, consumption and waste generation, eliminate the production and use of low-quality, toxic and hard-to-recycle plastic, scale up toxic-free recycling (quality and quantity) and promote secondary markets for toxic-free recyclates by improving already existing technologies.

The Commission should therefore propose a ban on all plastic waste exports to non-EU countries.

## II. Prior Informed Consent for All Plastic Waste Trade within the EU

The European Union has directed significant efforts toward promoting a circular economy. The Commission acknowledges the WSR requires revision, stating that the WSR “was developed much earlier [than the Circular Economy Action Plan] and focused on the protection of the environment and human health; it was not specifically designed to promote the transition towards a circular economy.”<sup>17</sup> In addition to a ban on plastic waste exports to non-EU countries (discussed above), significant measures are required to clean up intra-EU trade of plastic waste to align it with the circular economy.

Although the recent amendments to the Basel Convention will bring some transparency and accountability to the plastic waste trade, as currently drafted, certain categories of plastic waste are not subject to prior informed consent for unclear reasons. This creates legal loopholes that illegal traders can be expected to exploit. There is a very high risk that treating some plastic waste as green-listed and other plastic waste as amber-listed within the EU will likewise exacerbate intra-EU illegal trade. This becomes evident by looking at the current issues with green-listed waste. For example, under the WSR, plastic waste is currently green listed, meaning it is only subject to general information requirements.<sup>18</sup> Member State competent authorities have reported “challenges related to the enforcement of the general information requirements throughout the EU,” and experience shows that “the export of ‘green listed waste’ is often not controlled by national authorities as closely as the export of ‘notified wastes.’”<sup>19</sup> Indeed, it is “not always clear whether (and how) operators and authorities ensure that exported waste is treated in an environmentally sound manner.”<sup>20</sup> And there remain serious concerns about these supposedly benign plastic wastes, namely: (i) in practice, many contain harmful additives in significant concentrations to be quite hazardous; and (ii) often times, the recycling or disposal of these “green wastes” create harmful emissions, including volatile organic compounds, products of incomplete destruction, such as dioxins, hazardous wash waters and fugitive emissions, as part of or because of the treatment process itself. There is little reason for there to be less scrutiny and accountability placed on these plastic wastes in terms of both ensuring ESM and respecting national rights to deny importation. And there is no justifiable basis for not subjecting intra-EU trade of all plastic waste to prior informed consent. For these reasons, not only must the EU full transpose the Basel

amendments between Member States, it should go one step further and review and require prior informed consent or all plastic waste.

However, to be clear, under no circumstances should the WSR be weaker than the Basel amendments. On this, the Commission must avoid creating a double standard whereby these necessary reforms that the EU fought hard to create are discarded internally. The problems that plague intra-EU trade of plastic waste are also well documented.<sup>21</sup> Some of the known routes for illicit plastic waste in the EU recently in the news include: Italy to Slovenia,<sup>22</sup> Italy to Croatia,<sup>23</sup> Italy to Bulgaria,<sup>24</sup> Sweden to Latvia,<sup>25</sup> Germany to Poland,<sup>26</sup> and Germany to Romania,<sup>27</sup> among many others. The EU fought hard for the adoption of the recent amendments to the Basel Convention to bring more transparency, accountability and assurances of ESM to the plastic waste trade. All of the EU and its Member States are Parties to the Basel Convention, which allows for no reservations or exceptions, meaning the EU is obligated to, at a minimum, transpose the recent amendments to ensure prior informed consent within the EU. To do otherwise is to create a reservation for itself, which the Basel Convention does not allow. In short, the EU cannot and should not use Article 11 of the Basel Convention to derogate from the Basel Convention, namely because Article 11 requires an equivalent level of control for any special arrangement or agreement, which is not the case here. Moreover, it is illogical to argue that not requiring prior informed consent is an equivalent level of control to requiring it and should therefore be flatly rejected.

In short, the EU should require prior informed consent for all plastic waste traded within the EU and, at a minimum, refrain from derogating from the new requirements in the recent amendments to the Basel Convention.

### **III. Certification Schemes for EU Plastic Waste Destinations**

In order to promote transparency and accountability, the Commission should introduce a certification-scheme framework into the WSR. Such a framework would serve multiple objectives, including to: (i) verify compliance with the WFD, including the waste hierarchy and new recycling target requirements where recent changes to the recycling calculation method now calculate the recycling rate based on the amount of plastic waste that enters the recycling process versus the amount exported for recycling; (ii) ensure that pre-consented facilities engage in environmentally sound recycling using the best available techniques and best environmental practices in order to minimize harm to the environment and human health, including wastewater treatment and treatment of recycling rejects; and (iii) ease the burden on competent authorities in terms of inspections and enforcement. Moreover, and importantly, it would allow materials recovery facilities (MRFs) and local governments to require certification before engaging plastic waste traders, thereby empowering those actors that often times have limited ability to secure meaningful assurances from waste brokers.

The certification-scheme framework should be premised on regular monitoring and reporting, assurances of environmentally sound management (ESM) and traceability from origin to destination through a chain-of-custody tracking system. Moreover, the Commission should set out the minimum requirements that must be met for certification, following the model set out in the Waste Electrical and Electronic Equipment (WEEE) Directive.<sup>28</sup>

## IV. Environmentally Sound Management of Plastic Waste in the EU

Waste shipment controls go hand in hand with assurances of (ESM). Currently, the WSR requires those involved in shipment or treatment of waste to “take the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during [recycling or other recovery] and disposal.”<sup>29</sup> The WSR defines ESM as “taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste,”<sup>30</sup> which is similar to how it is defined in the Basel Convention.<sup>31</sup> As a result of this vague definition, the ESM concept has no real meaning in practice. To address this, the Commission should develop and detail how ESM applies to plastic waste and its management, reviewing measures in the WSR and other EU legislation and setting out an integrated lifecycle approach, a guiding principle for ESM under the Basel Convention, seeking to minimize harm to human health and the environment at each stage. At present, none of the ESM guidelines developed under the Basel Convention or the OECD properly addresses the lifecycle of plastic in a satisfactory manner.<sup>32</sup> The EU can take a leadership role in addressing ESM, proposing more detailed criteria for plastic waste in the WSR—or a process for its adoption and regular update via implementing or delegated acts—in line with waste-hierarchy and circular-economy principles.

## V. Inspection, Enforcement and Deterrence

Cross-border trade in plastic waste is notoriously opaque, characterised by a lack of transparency, traceability, and accountability across the value chain. Many waste traders engage in unscrupulous practices, externalising costs and harm by taking advantage of the lack of inspection and enforcement resources. Examples include shipping unsorted or household waste as scrap plastic (misdeclaration), falsifying trade documents (fraud), using multimodal transportation, trans-shipment ports and multiple ports of entry to hide final destination and treatment (concealment), and use of other legal loopholes.<sup>33</sup> This problem is further compounded by the multiple interpretations and clashes with other legislation and the WSR.<sup>34</sup> In addition, pre-consented facilities are not tied to specific procedures and nor do common or consistent criteria exist for plastic waste management, creating trust issues between Member States and acting as a burden for transparency and traceability.<sup>35</sup> In other words, the problems that plague intra-EU trade of plastic waste remain unsolved.<sup>36</sup> The Commission confirms this, finding that “[m]ost illegal shipments appear to be intra-EU movements,”<sup>37</sup> which is major reason that “the need to address illegal waste trade exports has also been recognised as a priority as part of the EU policy cycle against organised crime 2018-2021.”<sup>38</sup> This is significant reason why prior informed consent should be required for all plastic waste traded within the EU, and at a minimum why the recent amendments to the Basel Convention must be transposed. Moreover, the costs of illegal trade are significant, representing a burden on Member States. Competent authorities cite “managing illegal waste shipments” as a main cost of the WSR.<sup>39</sup> In addition to enforcement costs to prevent illegal trade, these costs include “operations to clean-up illegally shipped and dumped waste” and “the repatriation of intercepted illegal waste shipments back to the country of origin.”<sup>40</sup> The Commission has found that “disparate systems of inspections/controls and lack of standardised inspection criteria, more specifically, on the frequency and quality of inspections undermines uniform enforcement of the WSR,”<sup>41</sup> identifying “[o]ne of the underlying reasons for the persisting occurrence of illegal shipments is the lack of uniform enforcement through the EU.”<sup>42</sup>

Although the other measures proposed herein will assist with combatting illegal trade, improving inspections and enforcement is essential. Similar to other EU waste legislation, Member States should be required to carry out regular inspections on a certain percentage of plastic waste traders and installations annually, based on an EU risk-based targeting mechanism, while EU-wide market surveillance should be improved.<sup>43</sup> The use of GPS tracking should also be explored. In addition, penalties should be high enough to serve as a serious deterrent; at the moment, penalties are low with substantial fines and jail time for violators almost non-existent.<sup>44</sup>

## VI. National Plastic Waste Trade Reduction and Recycling Plans

To promote the principles of proximity and self-sufficiency, the WFD requires Member States to:

“[T]ake appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.”<sup>45</sup>

The WFD allows Member States to limit incoming shipments of waste destined to incinerators that are classified as recovery “where it has been established that such shipments would result in national waste having to be disposed of [landfilled] or waste having to be treated in a way that is not consistent with their waste management plans.”<sup>46</sup> Member States may also “limit outgoing shipments of waste on environmental grounds as set out in [the WSR].”<sup>47</sup> To attain a circular economy for toxic-free plastics, more stringent limitations should be proposed and Member States required to produce national plastic waste trade reduction and recycling plans designed to ensure the most proximate circular treatment (recycling or reuse) of domestically produced plastic waste.<sup>48</sup> This should also include additional measures on problematic single-use plastics, supportive measures to improve and scale-up a toxic-free recycling and the progressive phase-out of plastic waste destined for “other recovery” in other Member States.

## VII. Streamlining Paperwork and Procedures

Enforcement authorities and all stakeholders will benefit from improved standardisation of information and processes in the WSR. The burdens from excessive and redundant paperwork and lack of immediate access to data hurts business, governments and the public alike. It is vital therefore that work be undertaken to streamline all paperwork requirements of the WSR without reducing the rigor of the obligations behind them. This can be done by digitizing all data input and flow and making all such data subject to public scrutiny. To this end, the Commission should propose several measures to update the existing system, including: (i) establishing and maintaining a harmonised electronic system for plastic waste shipments; (ii) tracking plastic waste shipments in real-time via the electronic system, applicable to both waste subject to prior informed consent as well as waste subject to general information requirements; and (iii) making publicly accessible in the electronic system information on authorisations, notification and consent procedures, certification schemes and reported data, among other information.

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- <sup>29</sup> European Union. Regulation (EC) No 1013/2006 on Shipments of Waste (consolidated 2018 version), Article 49. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454069470717&uri=CELEX:02006R1013-20180101>.
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