

Draft CORRESPONDENTS' GUIDELINES No 11 (updated version of October 2012)

Subject: Shipments of waste pursuant to Article 18 of Regulation (EC) No 1013/2006 on shipments of waste

1. These Correspondents' guidelines represent the common understanding of all Member States on how Regulation (EC) No 1013/2006 on shipments of waste (Waste Shipment Regulation – WSR) should be interpreted. The guidelines were agreed by the correspondents [[at a meeting on [*insert date of meeting*] organised pursuant to Article 57 of WSR] or [through written procedure on [*insert date of agreement*]]. They are not legally binding. The binding interpretation of European Union law is an exclusive competence of the Court of Justice of the European Union (CJEU). The guidelines should be reviewed at the latest five years from the above date and, if necessary, revised.

1. Introduction

2. These Correspondents' guidelines provide information for:

- (a) Persons arranging shipments of waste that are subject to the general information requirements of Article 18 of the WSR;
- (b) Other parties related to the use of Annex VII to the WSR, such as waste producers, collectors, dealers, brokers, traders, waste carriers, importers, exporters, consignees, and
- (c) Authorities responsible for the enforcement of the WSR.

3. Article 18 of the WSR contains a number of detailed provisions and voluntary measures that can be taken in order to implement and effectively enforce the requirements related to the shipments of wastes not subject to the procedure of prior written notification and consent.

2. The application of Article 18 and the use of Annex VII

2.1. Instructions for completing the Annex VII document

4. It is unclear how to complete Annex VII on the basis of the specific instructions contained in Annex IC to the WSR alone (see Annex VII, footnote 1, 2nd sentence). As a common understanding of the Correspondents, it has been agreed that the instructions provided in Appendix 1 to these guidelines should be used for completing Annex VII. This appendix also provides guidance on matters such as the accepted language, the obligations of the various parties involved in the completion of Annex VII, the contractual obligations referred to in Annex VII, etc.

5. In order to reduce the risk of an incorrect completion of Annex VII, competent authorities should provide guidance or FAQ in the national language which could be available or actively communicated to all relevant economic sectors.

2.2 Person who arranges shipment pursuant to Article 18(1)(a)

6. The person who arranges the shipment of waste pursuant to Article 18(1)(a) can be any natural or legal person under the jurisdiction of the country of dispatch. This person should be physically identifiable and meet all the characteristics laid down in Article 18 of the WSR.

7. It is unclear from Article 18 which persons could act as persons who may arrange the shipment under Article 18. As a common understanding of the Correspondents, it has been agreed that

the person who arranges the shipment could include (i) the original producer, (ii) the licensed new producer who carries out operations prior to shipment, (iii) a licensed collector who assembled the shipment from various small quantities of the same type of waste, (iv) a 'dealer' acting in the role of principal to purchase and subsequently sell waste, (v) a 'broker' arranging the recovery of waste on behalf of others, (vi) the holder of the waste, or even (vii) a carrier, in cases a carrier initiates and controls a shipment (e.g. postal services, if acting as a collector who, from various small quantities of the same type of waste collected from a variety of sources, has assembled a consignment (>20 kg) destined for a transboundary shipment).

8. The person who arranges the shipment (natural, or legal person) may not differ from the person who has signed both the contract with the consignee for the recovery of the waste, and block 12 of Annex VII.

9. It is unclear from Article 18 how to interpret the applicability of "under the jurisdiction of the country of dispatch". As a common understanding of the Correspondents, it has been agreed that it is up to the national authorities of the country of dispatch to define the conditions upon which a person arranging a shipment of waste falls "under the jurisdiction of the country of dispatch". Once these conditions are fulfilled in the country of dispatch, all relevant parties concerned, including the competent and enforcement authorities of the countries of transit and destination are to accept that the person arranging a shipment of waste is under the jurisdiction of the country of dispatch. In case of doubt, enforcement authorities should attempt to confirm the jurisdiction with the competent authorities in the country of dispatch.

In case Member States have laid down respective provisions in their national legislation, or take measures in individual cases, these measures have to comply with the Treaties' provisions, including conformity with the principles of necessity and proportionality in the interpretation given in applicable rulings of the CJEU.

Examples of cases for which such conditions may be fulfilled could include the following¹:

- (a) if the country of dispatch and the country where the person who arranges the shipment has his seat have implemented the Council Framework decision 2005/224/JHA on application of the mutual recognition to financial penalties, or
- (b) if the country of dispatch can exercise its jurisdiction on a person/company that has either a valid registration, or a waste management permit in the country of dispatch, or
- (c) According to article 15 of the WFD the responsibility for carrying out a complete recovery or disposal operation lies with the original producer of the waste, so if the person who arranges the shipment has no seat in the country of dispatch authorities may demand an extra contract between the producer and the person who arranges the shipment to ensure that the waste will be taken back in case the shipment of waste or its recovery cannot be completed as intended or where it has been effected as an illegal shipment.

10. The person who arranges the shipment should sign block 12 before the shipment begins and at the latest when the transport leaves the facility in the country of dispatch. At the moment the transport leaves the facility, blocks 1 to 12 should be complete however block 5 should be signed by the first carrier only (see Appendix 1).

11. The person arranging the shipment has to ensure that the shipment is accompanied by the Annex VII document for the entire transport. In case of change of the means of transport or the transporter, the document² with the original signature of the person who arranged the shipment has to be handed over to the new transporter who should complete and sign the corresponding block.

¹ It is understood that there may be some Member States for which the only possible way to exercise their jurisdiction is to require a seat of establishment in their territory.

² In some Member States a copy is considered sufficient, even if this is not a certified copy.

National legislation may explicitly oblige every carrier to carry the Annex VII document, to sign and to hand it over to the next actor in the transport chain. When the country of dispatch requires information pursuant to Article 18(3) of the WSR, the person arranging the shipment should report to the competent authority of dispatch any changes in the shipment destination or the waste description.

12. In case of individual low weight waste transports involving private or public postal services (e.g. return of waste such as cartridges to the refilling/recycling stations), the person arranging the shipment should complete an Annex VII document as soon as a consolidation of an accumulated shipment exceeds 20kg.

13. Whenever possible, Member States should ensure that dealers or brokers arranging a shipment under Article 18 are registered in an EU Member State, as appropriate.

14. Member States may consider to engage dealers or brokers arranging a shipment under Article 18 to establish a contract with the waste generator that would include an obligation and a responsibility to take back the waste in case the treatment cannot be accomplished as foreseen.

2.3. Contractual obligations pursuant to Article 18 (2)

15. The contract should be readily available (e.g. via fax or email) on request to the competent authorities of dispatch and destination or any other control authority involved without delay. The information in the contract should be consistent and aligned with that provided in Annex VII. An easy matching of a contract with its corresponding Annex VII document can be made by including in the contract the information of blocks 1-11 of Annex VII.

16. The contract referred to in Article 18(2) should be available in the national languages of the economic partners³ involved or in English if this is considered to be an easier alternative.

2.4. Information pursuant to Article 18(3)

17. When Member States require copies of the documentation as compiled and referred to in Annex VII, it is recommended that this information be requested both prior to shipment as well as after the shipment, as appropriate⁴.

2.5. Illegal shipment of waste subject to Article 18 (Article 2(35))

18. It is unclear from Article 2(35)(g) how to interpret the text "not specified materially in the Annex VII document". As a common understanding of the Correspondents, it has been agreed that the text in Art. 2(35)(g) of the WSR: "not specified materially in the Annex VII document" is to be understood that essential information in the document is not consistent with the practical situation encountered. Penalties should always remain proportionate.

2.6. Quality of information – document validity

19. An Annex VII document is to be considered incomplete in case any information required during a control is missing. This means it should be considered incomplete if any of the blocks 1-12 is

³ original producer, licensed new producer, licensed collector, dealer, broker, holder, carrier and recovery facility

⁴ Before the shipment, blocks 1-11 should already be filled (block 5 to the extent possible), while after the shipment all remaining blocks should be completed and signed, as appropriate.

not completed as requested and block 12 is not signed when the transport leaves the facility in the country of dispatch.

20. Signatures in block 5 are only required for carriers involved in the transport chain up to the time of a control. Therefore, it is perceivable that during a control, some carrier signatures in block 5 may still be missing.

21. Electronic Annex VII documents signed with a digital signature should be accepted only if readily accessible and readable by control authorities.

22. In case of incomplete Annex VII documents, enforcement bodies should request the person arranging the shipment to provide the missing information promptly. In such a case the shipment may be seized until the missing information can be delivered and shown on the document. Administrative fines could be imposed for non-compliance with legal requirements.

23. From the environmental point of view, essential elements of Annex VII to check during a transport control include: (i) a verification of the waste description and identification, (ii) a verification of the transporter's identity, and (iii) a confirmation that the indicated origin, treatment method and recovery facility are both credible and easily verifiable.

24. In case of a check on the consignee and/or treatment facility, it is essential that the accompanying documentation (copy or original) bears original signatures (of consignee and treatment facility) certifying acceptance and treatment.

2.7. Case of split shipments

25. It is unclear from Article 18 whether the use of Annex VII to accompany the transport of waste applies to a single transport unit or to an entire shipment composed of split units. As a common understanding of the Correspondents, it has been agreed to use the original Annex VII form for one single transport unit. In case of split shipments involving varying size of transport units this would not be possible. In order to assure that one original Annex VII document accompanies every single transport unit multiple documents should be issued.

2.8. Case of container shipments

26. Transport by ship, may involve thousands of containers which are moved several times during shipment. In practice it is equally difficult to attach the Annex VII document outside the container or to place the document inside the (sealed) container. As it is important to demonstrate evidence that each container corresponds to one signed Annex VII document, it is recommended to either attach an electronic chip to the container containing the required information (if this is in accordance with surveillance rules in the countries concerned), or to fill-in the container number in the Annex VII document which would then be kept together with all other relevant shipping documents.

27. In case a clear matching of container and Annex VII document can be made⁵, hardcopies of the documentation pursuant to Article 18 may be stored and transported together with customs documents and other shipping papers. A copy of the Annex VII document should also be placed either inside the container door in a sealed plastic bag, or outside the container in a pocket such as that used by the shipping industry for specific instructions.

⁵ e.g. by means of attaching electronic chips to the container containing the required information

Appendix 1

Specific instructions for completing the Annex VII document

Purpose of the Annex VII document

The Annex VII document is intended to accompany a shipment of waste at all times from the moment it leaves the waste producer to its arrival at a recovery facility or laboratory in another country. Relevant parties involved in the shipment may need to sign the document either upon delivery or receipt of the waste concerned. Finally, the document is to be used by the relevant recovery facility or laboratory to certify that the waste has been received.

General requirements

Completion of Annex VII should be made either by typing or by using capital letters in permanent ink throughout.

Signatures should always be written in permanent ink and the name of the authorised representative should accompany the signature in capital letters.

A correction can be made in the event of a minor mistake. The correction should be marked and signed or stamped, and the date of the modification noted. For major changes or corrections, a new form should be completed.

The forms have also been designed to be easily completed electronically. In such cases, appropriate security measures should be taken against any misuse of the forms. Any changes made to a completed form with the approval of the competent authorities should be visible. When using electronic forms transmitted by e-mail, a digital signature is necessary.

Text information shown in Annex VII should be in a language acceptable to the competent authorities of all countries involved. In case of an export out of the EU, Annex VII should be completed in the language of the competent authorities of the country of dispatch and should be accompanied by an English version. In case of an import into the EU, Annex VII should be completed in English (see also block 9)

A six-digit format should be used to indicate the date. For example, 29 January 2006 should be shown as 29.01.06 (Day.Month.Year).

In case annexes providing additional information need to be attached to Annex VII, these should include clear references (e.g. enumerated references) pointing to the relevant parts of Annex VII as well as a citation of the block(s) to which they might relate.

Specific instructions for completing the Annex VII document

Before the shipment begins, the person who arranges the shipment is to complete blocks 1, 2 and 6–11.

Before the actual start of the shipment, the person arranging the shipment is to complete blocks 3-4, 12 and 5 (with exemption of the *means of transport*, the *date of transfer* and the *signature*). Additional information with reference to block 12 may be attached to Annex VII if relevant.

At the time of taking possession of the consignment, the carrier or its representative is to complete the remaining missing information from block 5 (i.e *means of transport*, *date of transfer* and *signature*

which appear in blocks 5(a) to 5(c)). If additional information needs to be provided (e.g. in case more than three carriers are involved) this should be attached to Annex VII providing a reference to block 5.

The consignee is to complete block 13 in the event that this is not the recovery facility or the laboratory. The consignee signing in block 13 takes charge of a shipment of waste after it arrives in the country of destination and holds additional information attached to Annex VII with reference to block 12.

If necessary, additional information (e.g. information on the port where a transfer to another transport mode occurs; the number of containers and their identification number; information on subsequent operations, incl. final recovery facility/laboratory in case of R12 or R13 operation, or additional proof or stamps indicating that the shipment has been consented by the competent authorities) can be either attached to Annex VII by the exporter, carriers and/or the consignee with reference to blocks 5, 12 or 13 as appropriate. Alternatively, additional information may be added at the top or bottom of the Annex VII document.

Block 1

Provide the name of the person who arranges the shipment.

The person who arranges the shipment may be the original producer, or the licensed new producer who carries out operations prior to shipment, or a licensed collector who, from various small quantities of the same type of waste collected from a variety of sources, has assembled the shipment which is to start from a specific location, or a registered dealer who has been authorised in writing by the original producer, a new producer or licensed collector to act on his/her behalf, a registered broker, or where all of the persons specified above are unknown, the holder.

In case the person who arranges the shipment is a legal person (a company), the name of the company should be filled-in under "Name" and information on a competent person, which can give additional information if needed should be added under "Contact person". The contact person should be responsible for the shipment including the cases when any incidents during shipment might occur. In case the person who arranges the shipment is a natural person, no contact person may need to be added.

The address should include the name of the country and telephone and fax numbers including the country code. The phone and fax numbers and the e-mail address should facilitate the contact of all relevant persons at any time regarding an incident during shipment.

Block 2

Normally, the consignee would be the recovery facility or laboratory given in block 7. In some cases, however, the consignee may be another person, for example a dealer, a broker, or a corporate body, such as the headquarters or a mailing address of the receiving recovery facility in block 7. In such cases, information relating to the dealer, broker or corporate body should be completed in block 2.

A dealer, a broker or a corporate body acting as a consignee must be under the jurisdiction of the country of destination. Member States wishing to introduce more stringent protective measures pursuant to Article 193 of the Treaty on the Functioning of the European Union (TFEU) may, for the cases when the consignee differs from the recovery facility, enable the competent authority of dispatch to request a contract with the recovery facility to ensure the recovery of the waste. These measures must be compatible with the Treaties and notified to the Commission.

Block 3

Give the actual weight in tonnes (1 tonne equals 1 megagram (Mg) or 1 000 kg of the waste. In some third countries, giving the volume in cubic metres (1 cubic metre equals 1 000 litres) or other metric units, such as kilograms or litres, may be acceptable.

When other metric units are used, the unit of measure may be indicated and the unit in the form may be crossed out.

Block 4

Enter the date when the shipment actually starts (see also instructions on block 6 of the notification document).

Block 5 (a-c)

Provide the name of the carriers. A carrier is the legal or natural person that is actually transporting the waste.

In case of trucks rented by the exporter or subcontracted, provide the name indicated on the trucks and the name of the exporter company and add that it is rented by the company or add the contracting company.

The address should be as complete as possible, including the name of the country, and telephone and fax numbers should include the country code.

When more than three carriers are involved, appropriate information on each carrier should be attached to the Annex VII document.

The means of transport, the date of transfer and a signature should be provided by the carrier or carrier's representative when taking possession of the consignment.

A copy of the signed Annex VII document should be retained by the person arranging the shipment.

Upon each successive transfer of the consignment, the new carrier or carrier's representative taking possession of the consignment should provide all necessary details in the respective part of block 5, including signature.

A copy of the signed document is to be retained by the previous carrier.

Block 6

Provide the required information of the "waste generator", including a registration number where applicable. If the waste generator is the same as the person who arranges the shipment, then write "Same as block 1". If the waste has been produced by more than one generator, write "See attached list" and append a list providing the requested information for each generator. Where the generator is unknown, give the name of the person in possession or control of such waste (holder). Also provide information on the process by which the waste was generated and the site of production. This block has to be filled before the shipment begins.

Block 7

Provide the required information (give destination of the shipment by ticking either recovery facility or laboratory, registration number only where applicable and actual site of the facility or laboratory if it is different from the address of the facility or laboratory). If the recovery facility or laboratory is also the consignee, state here "Same as block 2". If the recovery facility is listed in Annex I, Category 5 of Directive 2008/1/EC of 15 January 2008 on integrated pollution and prevention control, evidence (e.g. a declaration certifying its existence) of a valid permit issued in accordance with Articles 4 and 5 of that Directive must be provided in an annex in case a facility is located in the European Union.

Block 8

Indicate the type of recovery operation by using R-codes of Annexes II of Directive 2008/89/EC on waste (see also the list of abbreviations and codes in Appendix 2).

"Analysis" should be used for waste destined to laboratory analysis.

If the recovery operation is an R12 or R13 operation, provide the planned method of disposal for the non-recoverable fraction after recovery, the amount of recovered material in relation to non-recoverable waste, the estimated value of the recovered material and the cost of recovery and the cost of disposal of the non-recoverable fraction in an annex.

If the recovery operation is a R12 or R13 operation⁶, corresponding information on the subsequent operation(s) (R1-R11 or any R12/R13) should be provided in an annex. Also indicate the technology to be employed. For the case of a laboratory analysis, operation D13 may be indicated. The final recovery facility/laboratory should be indicated either in the Annex VII document or in an annex.

Block 9

Give the name or names by which the material is commonly known or the commercial name and the names of its major constituents (in terms of quantity). In the case of a mixture of wastes listed in Annex IIIA to the WSR, provide the same information for the different fractions. Fill in the information in different languages, as necessary (e.g. official language of country of dispatch and English).

Block 10

Fill in the code(s) that identifies the waste entry from Annexes III, IIIA or IIIB to the WSR in the subheadings as indicated below.

(a) *Subheading (i)*: The Basel Convention Annex IX codes which are listed in Annex III to the WSR should be provided (Basel Annex IX can be found in Annex V to the WSR, in the text of the Basel Convention as well as in the Instruction Manual available from the Secretariat of the Basel Convention).

(b) *Subheading (ii)*: OECD codes should be used for wastes listed in Part II of Annex III to the WSR, i.e. wastes that have no equivalent listing in the Annexes to the Basel Convention or that have a different level of control under the WSR from the one required by the Basel Convention.

(c) *Subheading (iii)*: For the case of mixtures of wastes, the relevant code(s) from a single entry of Annex IIIA to the WSR should be used. Multiples codes should be listed in sequence, as appropriate.

⁶ R12 Exchange of waste for submission to any of the operations numbered R1 to R11 (****), including pre-processing such as, inter alia, dismantling, sorting, crushing, compacting, pelletizing, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to further recovery.

R13 Storage of waste pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where the waste is produced)

Certain Basel entries such as B1100, B3010 and B3020 are restricted to particular waste streams only, as indicated in Annex IIIA.

(d) *Subheadings (iv)*: The BEU codes listed in Annex IIIB to the WSR should be used, if applicable. These codes may not be used in case of export of waste out of the EU.

(e) *Subheading (v)*: Exporters/importers from/to the EU Member States should use the codes included in the European list of waste (see Commission Decision 2000/532/EC as amended)⁷.

(f) *Subheadings (vi)*: Where applicable, national identification codes (other than the codes of the European list of waste) used in the country of dispatch and, if known, in the country of destination should be used.

Block 11

Provide the name of the countries of dispatch, transit and destination or the codes for each country by using the ISO standard 3166 abbreviations^{8 9} (3).

Block 12

At the time of shipment, the person who arranges the shipment should sign and date Annex VII. The Annex VII document should be signed by the person indicated in block 1. The signature should be completed by the stamp of the company, if the exporter in block 1 is a company. The person who signs in block 12 also signs the contract between the person who arranges the shipment and the consignee for the recovery of the waste.

In case of a disagreement pursuant to Article 28 (1), the contract between the person who arranges the shipment and the consignee should specify: that “the matter is considered to be non-waste in (country of dispatch/destination) pursuant to.. [*relevant national legal provision should be provided*]”.

Block 13

This block is to be completed by the consignee in case the consignee is neither the recovery facility nor the laboratory and in case the consignee becomes the holder of the waste after the shipment arrives in the country of destination.

Block 14

This block is to be completed and signed by the authorised representative of the recovery facility or the laboratory upon receipt of the waste consignment. Tick the box for either recovery facility or laboratory. With regard to the quantity received, please refer to the specific instructions for block 3.

If the shipment is rejected for any reason, the representative of the recovery facility or the laboratory should immediately contact the competent authority in the country of destination.

The original Annex VII document should be kept by the recovery facility or the laboratory for at least three years.

⁷ See http://europa.eu.int/eur-lex/en/consleg/main/2000/en_2000D0532_index.html

⁸ See http://www.iso.org/iso/home/standards/country_codes/iso-3166-1_decoding_table.htm

⁹ In the Basel Convention, the term ‘State’ is used instead of ‘country’. For shipments outside the European Union, the terms ‘export’ and ‘import’ may be used instead of ‘dispatch’ and ‘destination’.