Fédération Européenne des Activités de la Dépollution et de l'Environnement
European Federation of Waste Management and Environmental Services
Europäische Föderation der Entsorgungswirtschaft

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FEAD feedback on the draft delegated act to implement the Basel Convention's changes

In the context of transposing changes in the Basel Convention into the Waste Shipment Regulation, FEAD strongly believes that the following points should be taken into account. In particular:

- **it is crucial to ensure an intra-EU waste shipment regime that does not make it more difficult to ship plastic waste to destinations where waste will be properly treated.** This is key to the smooth functioning of EU recycling and recovery markets. Constraining the free movement of mixed plastic wastes within these areas could jeopardize important progress made in the effective treatment of unproblematic plastics.

- According to the draft Delegated Act (par.5), "there is no requirement for the EU to implement into EU law the changes to the annexes of the Convention related to non-hazardous plastic waste (new entries B 3011 and Y 48), related to non-hazardous waste". FEAD supports this approach foreseeing no changes to the current EU shipment regime for recycling or recovery purposes.

- Concerning the proposed integration within EU law of the new waste entry A 3210 (AC 300) related to hazardous waste, FEAD expresses concerns on the alternatives under consideration.

- First, there is a need to make sure A 3210 is the correct entry (since the latter is applicable only to extra-EU shipments), while according to the OECD compromise, entry AC 300 should be proposed for intra-EU shipments. Nevertheless, the two entries have the same wording.

    - A new waste entry A 3210 (or AC 300) would, theoretically, give a maximum environment security against possible intra-EU exports of "contaminated waste", whatever the contaminants and the thresholds. But it would also result in a maximum legal uncertainty resulting from the new definition of "plastic waste, including mixtures of such waste, containing or contaminated with Annex I constituents". This is because most Members States do not have clear rules nor thresholds for accepted levels of contaminants, and if they have some, the thresholds vary from one country to another. In the absence of legal certainty on how to interpret the word "contaminated", waste management operators will face delays, legal risks, case laws, administrative issues and costs in intra-EU plastic waste shipments. That would be at risks of preventing many non-hazardous waste recycling or recovery facilities to operate installations for which investments have been locked in order to treat imported waste flows – that may be blocked due to legal uncertainty of shipments. **There is an absolute and urgent need for thresholds to be set up at national or, even better, at EU level, in order to implement the new A 3210/ AC 300 waste entry**. FEAD regrets such priority has not entailed appropriated regulatory action in the EU.

    - The alternative option would be to consider non-hazardous plastic waste under the regime of Y 48 entry (namely EU 48 for intra-EU waste shipments). This would, contrary to the previous solution, allow non-hazardous waste facilities operating under permits and complying with all legal requirements to operate recycling or recovery activities on imported waste flows. To ensure a high level of environmental security, "environmentally sound treatment" could be introduced as a criterion for MS to accept shipments. But such criterion remains under MS discretion, as mentioned in ECJ judgment C- 654/18 of 28 May 2020.

FEAD AISBL – Rue Philippe Le Bon, 15 – B-1000 Brussels, Tel : +32 2 732 32 13, Email : info@fead.be, Website : www.fead.be
You can find us on Twitter: @FEADInfo & LinkedIn: https://www.linkedin.com/company/fead-waste

- As an interim solution, FEAD suggests that waste operators would be bound by contractual criteria, related to waste impurities or contaminants, allowing waste to comply with permitting requirements/emissions and techniques for recycling/recovery. These criteria should result from a contract between the organiser of a waste shipment and the treatment facility. The contract should result from the commitment of both parties, complying with EU or national quality and environmental requirements.
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