

Alert | Environmental



July 2020

EU Opens Consultation on Rules for Transboundary Plastic Waste Shipments

The European Commission has opened a consultation on the adoption of amendments (currently available in [draft form](#)) to the European Union’s [law on the transboundary shipment of waste](#). These amendments are intended to allow the EU to give effect to recent changes to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (the Convention) which significantly extend the Convention’s scope in relation to plastic waste.

The Convention, adopted in response to controversies following the discovery of exports of hazardous wastes to countries unable to appropriately handle and manage the receipt of such wastes, entered into force in 1992. Its overarching objective is the protection of human health and the environment against the adverse effects of hazardous wastes. The Convention applies to a wide range of wastes defined as “*hazardous wastes*” based on their origin, composition and/or characteristics. It now has 187 members, including the EU (but not the United States).

Plastic waste has emerged as a significant environmental issue in recent years, not only due to its growing accumulation in the environment generally but also due to companies in so-called developed countries shipping hard-to-recycle plastic wastes to less economically developed countries. This has led to the build-up of plastic waste with, for the moment, little prospect of being recycled or otherwise sustainably managed, in several countries including Indonesia, Thailand and Malaysia.

This issue was exacerbated when, in January 2018, China imposed a ban on the import of several kinds of waste, including plastics. The effect of the ban is more waste being shipped to other countries which lack the infrastructure to process and recycle it. These developments, amongst others, have led to the changes to the Convention.

The changes to the Convention were agreed by the Convention's governing body, the Conference of the Parties, in a May 2019 [decision](#) (the Decision). In broad terms, the changes provide for, via amendment to Annexes II and VIII of the Convention, the inclusion of most types of plastic waste in the Convention's 'prior informed consent' (PIC) mechanism. The only types of plastic waste excluded from the PIC mechanism are those which are destined for recycling, presumed not to be hazardous, and, due to their composition, easily recyclable. The specific types of plastic wastes which fall within each Annex are set out in the Decision.

The PIC mechanism, a fundamental element of the Convention's waste shipment regime, requires prior consent from national authorities in countries where relevant wastes are proposed to be shipped to destination countries. This facilitates the regulatory oversight of proposed imports of such waste and gives the authorities in destination countries the opportunity to scrutinise and, where they deem necessary, reject those imports of waste.

The EU's implementation of the Basel Convention, [Regulation \(EC\) No 1013/2006 on shipments of waste](#), includes a ban on the export of hazardous wastes to countries which are not members of the Organisation for Economic Cooperation and Development (the OECD, an international organisation representing a group of countries generally regarded as more economically developed) as well as a ban on the export of waste for disposal.

Exports of plastic waste from the EU to non-OECD countries (with the [list of OECD countries available on the OECD's website](#)), other than the plastic wastes listed in Annex IX of the Convention (i.e. those which are more easily capable of being recycled and subject to the so-called Green Control Procedure (subject to controls applied in commercial transactions)), will be prohibited.

The amendments to the Convention will take effect on 1 January 2021; the parties to the Convention are required to implement whichever measures may be necessary under their own legal frameworks to give effect to the amendments before that date.

Finally, as the EU has implemented the Basel Convention in the form of a regulation (a type of EU legal instrument which applies to all EU Member States without any national implementing legislation being required), the amendments to the relevant EU law will take effect automatically across the EU.

It is unclear if and how this amendment will take effect in the United Kingdom, as the Brexit transition period is until 31 December 2020, and negotiations as to the eventual terms (if any) governing the UK/EU relationship after that date are ongoing. The UK's legal right to request an extension to the transition period lapsed on 30 June 2020 without the UK making such a request. In any event, the UK is, independently of its current participation in the EU, a signatory to the Convention and will remain so following 31 December 2020.

The consultation opened on 24 June 2020 and will close at midnight (Brussels time) on 22 July 2020. [Click here to view further details, including information on how to submit feedback.](#)

Other recent developments

The Commission is also currently consulting more widely on the waste shipment regime. It is seeking to obtain, as part of its **Better Regulation agenda**, “*views from the public on the challenges related with the shipment of waste and more detailed information and opinions from national authorities, experts and private actors involved in the shipment and management of waste*”. [Click here to view the consultation](#), which will close at midnight (Brussels time) on 30 July 2020.

Also, on 29 June the Commission released updated guidance on the potential implications of the ending of the Brexit transition period on 31 December 2020 with respect to the shipment of waste between the UK and the EU. [Click here to view the Brexit Waste Shipments guidance](#), which replaces the 8 November 2019 guidance. For completeness, [click here to view the UK guidance on importing and exporting waste from 1 January 2021](#), last updated on 25 October 2019.

** This GT Alert is limited to non-U.S. matters and law.*

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