



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention at the 10th Conference of the Parties to the Basel Convention (COP 10) on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

EXPLANATORY MEMORANDUM

1. The EU is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done on 22 March 1989 (the "Basel Convention").
2. The Basel Convention establishes a control procedure for the export and import of hazardous wastes between Parties. The Convention entered into force in 1992 and now binds 175 Parties.
3. In 1995, the 3rd Conference of the Parties to the Basel Convention (COP3) adopted by Decision III/1 an amendment to the Convention prohibiting hazardous wastes exports for final disposal and recycling from what are known as Annex VII countries (Basel Convention Parties that are members of the EU, OECD, Liechtenstein) to non-Annex VII countries (all other Parties to the Convention) (the "Ban Amendment").
4. The EU accepted the Ban Amendment on 30 September 1997.
5. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ transposes the provisions of the Basel Convention and the Ban Amendment into EU law by establishing a system of supervision and control to apply to shipments of waste within, into and out of the EU and, in particular, prohibiting exports of hazardous waste from the EU to non-OECD countries.
6. The Ban Amendment has not yet entered into force. So far, 69 Parties to the Basel Convention have ratified the Ban Amendment. Parties have been unable to reach consensus on an agreed interpretation of paragraph 5 of Article 17 of the Basel Convention (Annex I to this Decision) which governs the number of ratifications required for the entry into force of amendments to the Convention. There have been persistent diverging views amongst Parties on how many Parties need to ratify the Ban Amendment before it can enter into force despite huge efforts since the 8th Conference of the Parties (COP8).
7. Given the length of time that has elapsed since the adoption of the Ban Amendment and in order to break the deadlock, the Indonesian President of the 9th Conference of the Parties (COP9) developed a statement "*on the possible way forward on the Ban Amendment*" that has been unanimously acknowledged by Parties through Decision IX/26.
8. By this statement, the President sought to launch a process which intends to reaffirm the objectives of the Ban Amendment and explore the means by which these objectives might be achieved. He called upon all Parties to create enabling conditions through, among other measures, country-led initiatives conducive to attainment of the objectives of the Ban Amendment. Such country-led initiatives would serve to contribute to gathering momentum to encourage ratification of the Amendment and to expedite its entry into force.
9. Responding to this invitation, Indonesia and Switzerland launched a country-led initiative with a view to developing recommendations for the 10th Conference of the Parties (COP10) for a way forward to protect vulnerable countries without adequate capacity to manage hazardous wastes in an environmentally sound manner from unwanted import of hazardous waste and to ensure that transboundary movement of hazardous wastes, especially to

¹ OJ L 190, 12.7.2006, p. 1.

developing countries, constitute an environmentally sound management of hazardous wastes as required by the Basel Convention.

10. The draft recommendations prepared by Indonesia and Switzerland propose to resolve, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention be interpreted so as to mean that the acceptance of three-fourths of the Parties at the time of the adoption of the amendment is required for the coming into force of such amendment, noting that such an interpretation of paragraph 5 of Article 17 does not compel any Party to ratify an amendment.

In view of the above, at COP10 the Union should support the adoption of the decision addressing the entry into force of the Ban Amendment with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention, as recommended by Indonesia and Switzerland.

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention at the 10th Conference of the Parties to the Basel Convention (COP 10) on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192 (1), in conjunction with Article 218 (9), thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) The EU is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the "Basel Convention") and to the amendment to the Convention prohibiting hazardous wastes exports for final disposal and recycling from a list of developed (mostly OECD) countries to developing countries (the "Ban Amendment");
- (2) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste³ transposes the provisions of the Basel Convention and the Ban Amendment into EU law;
- (3) The Ban Amendment has not yet entered into force since Parties have so far been unable to reach consensus on an agreed interpretation of paragraph 5 of Article 17 of the Basel Convention which governs the number of ratifications required for the entry into force of amendments to the Convention;
- (4) With a view to solving this issue, Indonesia and Switzerland have prepared recommendations for the 10th Conference of the Parties to the Basel convention (COP10); the recommendations propose to resolve, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention be interpreted so as to mean that the acceptance of three-fourths of the Parties at the time of the adoption of the amendment is required for the coming into force of such amendment, noting that such an interpretation of paragraph 5 of Article 17 does not compel any Party to ratify an amendment;

² OJ C [...], [...], p. [...].

³ OJ L 190, 12.7.2006, p. 1.

- (5) COP10 is called upon to adopt the decision addressing the entry into force of the Ban Amendment with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention. Such a decision will have legal effects;
- (6) In this regard, it is proposed that the recommendations prepared by Indonesia and Switzerland with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention should be supported;

HAS ADOPTED THIS DECISION:

Sole Article

At the 10th Conference of the Parties to the Basel Convention (COP10) on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Commission shall support, on behalf of the Union, the adoption of the decision addressing the entry into force of the Ban Amendment with regard to the interpretation of paragraph 5 of Article 17 of the Basel Convention, as recommended by Indonesia and Switzerland (Annex II to this Decision).

Done at Brussels,

*For the Council
The President*

Annex I

Paragraph 5 of Article 17 of the Basel Convention

"Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments."

"CLI/2010/3/1"**Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention****Proposal prepared by Indonesia and Switzerland****Introduction**

- (1) By its decision IX/26, the Conference of the Parties to the Basel Convention acknowledged the “President’s statement on the possible way forward on the Ban Amendment” set out in the annex thereto and invited Parties to take that proposed way forward into consideration wherever possible.
- (2) In his statement, the President sought to launch a process to reaffirm the Amendment’s objectives and to explore means by which they might be achieved. The President called upon all Parties to create enabling conditions, through, among other measures, country-led initiatives conducive to the attainment of those objectives.
- (3) Based on that statement, the Governments of Indonesia and Switzerland announced their readiness to organize a country-led initiative to discuss, in an informal and dynamic manner, views from various sides on a way forward to ensure that the transboundary movements of hazardous wastes, especially to developing countries and countries with economies in transition, constitute an environmentally sound management of hazardous wastes, as required by the Basel Convention.

The process

- (4) Three physical meetings, supported by the Basel Convention Secretariat and consultants, have taken place as part of the Indonesian-Swiss Country Led Initiative (the ‘CLI’). The first took place from 15 to 17 June 2009 in Bali, Indonesia, the second from 12 to 15 January 2010 in Wildhaus, Switzerland, and the third from 24 to 28 September 2010 in Hilterfingen, Switzerland. The outcome of the first two meetings was presented to the seventh session of OEWG on 10-14 May 2010 (UNEP/CHW/OEWG/7/7 and UNEP/CHW/OEWG/7/INF/8).
- (5) The documentation and outcomes of meetings under the CLI were circulated to Parties and other stakeholders by e-mail and through the Basel Convention website. All Parties and stakeholders were afforded the opportunity to comment on the issues to be discussed and a number of stakeholders that were not directly involved in the CLI provided valuable input to the process.
- (6) The first meeting considered the available statistics on the transboundary movements of waste and discussed the possible reasons why transboundary movement takes

place to countries where environmentally sound management cannot be assured. This led to the preparation of an analysis of these reasons.

- (7) The second meeting considered further this analysis of possible reasons for the transboundary movement of hazardous wastes where environmentally sound management could not be ensured, and also considered a paper on the impacts on human health and the environment of transboundary movements of hazardous wastes. In light of these discussions the meeting developed a list of possible elements for a way forward.
- (8) The third meeting focused on the preparation of concrete proposals for recommendations for consideration by the Conference of the Parties. A more detailed paper describing the background to these recommendations is set out in an explanatory note that is distributed together with the present document

General considerations

- (9) The entry into force of the Ban Amendment is a matter of political importance. Obstacles to its entry into force and ways of addressing those obstacles were considered and draft recommendations prepared for transmission to the Conference of the Parties... Parties are not obliged to ratify the Ban unless they become Parties after the Ban has entered into force.
- (10) Consideration of data on waste flows and on health effects indicated that movements between non-Annex VII countries continue to increase based on demand from both sides and illegal movements and management of hazardous waste arising within non-Annex VII countries are cause for concern. These would not be addressed by the Ban Amendment.
- (11) Therefore, a number of the recommendations arising from the CLI process deal with ways of addressing these issues and improving standards of waste management practices, enhancing efforts for combating illegal traffic, helping vulnerable countries to protect themselves against unwanted imports, and clarifying certain aspects of the implementation of the Basel Convention.

Proposed action

- (12) The Conference of the Parties may wish to adopt a decision along the following lines:

The Conference of the Parties

(1) **Addressing the entry into force of the Ban Amendment**

Recognising that there are vulnerable Parties who are unable to handle hazardous and other wastes in an environmentally sound manner, but who continue to receive such wastes, which results in serious harm and needs to be addressed as a matter of urgency;

Noting that the amendment to the Basel Convention adopted by decision III/1 of the Conference of the Parties is one way of meeting that challenge but that other ways exist to meet that challenge responsibly, especially through a stringent application of the prior informed consent procedure, strengthening environmentally sound management and national legislation;

Bearing in mind decision VIII/30 of the Conference of the Parties emphasising that the Parties to the Convention have the ultimate power to agree on the interpretation of the Convention

Stressing the need for the Parties to agree on an interpretation of paragraph 5 of Article 17 of the Basel Convention as an important step in the development of the Convention,

(1) Welcomes the practical initiative and activities that have taken place in response to the call of the President of the ninth meeting of the Conference of the Parties for Parties to expedite ratification of the Ban Amendment, so as to facilitate its entry into force, and further invites Parties to continue to undertake concrete actions towards encouraging and assisting Parties to ratify the Amendment, including:

- Specific actions, such as the Nordic Initiative, to assist Parties facing legal and technical difficulties in ratifying the Ban Amendment;
- Regional meetings;
- Country-specific studies of the implications of ratification and entry into force.

(2) Resolves, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention be interpreted so as to mean that the acceptance of three-fourths of the Parties at the time of the adoption of the amendment is required for the coming into force of such amendment, noting that such an interpretation of paragraph 5 of Article 17 does not compel any Party to ratify an amendment."