



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 December 2013

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**ENV 189
COMER 44**

DECLASSIFICATION¹

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on 6 December 2013.

RESTREINT UE



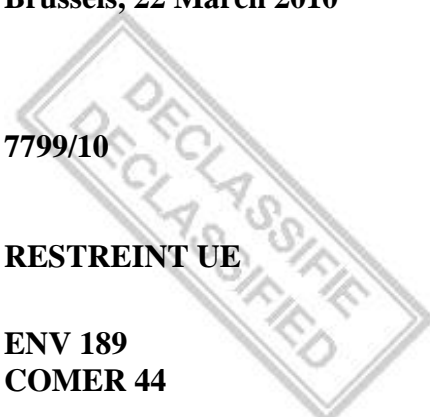
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Brussels, 22 March 2010

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COVER NOTE

from: European Commission
date of receipt: 19 March 2010
to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union
Subject : Recommendation from the Commission to the Council authorizing the Commission to participate, on behalf of the EU, in the negotiations of the contracting Parties to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on issues related to the "Ban Amendment" to the Basel Convention adopted by Decision III/1

Delegations will find attached Commission document SEC(2010) 266 final.

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EUROPEAN COMMISSION

Brussels, 19.3.2010
SEC(2010) 266 final

RESTREINT UE

Recommendation from the Commission to the

COUNCIL

Authorizing the Commission to participate, on behalf of the EU, in the negotiations of the contracting Parties to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on issues related to the "Ban Amendment" to the Basel Convention adopted by Decision III/1

A. EXPLANATORY MEMORANDUM

1. The EU is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal of 1989 (the "Basel Convention").
2. The Basel Convention establishes a control procedure for the export and import of hazardous waste between Parties. The Convention entered into force in 1992 and now binds 172 Parties.
3. The Basel Convention operates on the basis of the prior informed consent procedure. This means that exports of waste could only be authorised through official channels once the importing country has been notified of the intention to ship waste, the contents of the shipment and the facility where the waste is destined and in addition, this country has given its explicit consent to receive such a shipment. The same type of prior informed consent procedure is applied successfully under other environmental treaties such as the Cartagena Protocol on Biosafety and the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
4. Since the first Conference of the Parties (COP) to the Basel Convention, the question of prohibiting export of hazardous waste from certain countries to other countries has been debated. On 22 September 1995, the third Conference of the Parties to the Basel Convention adopted by Decision III/1 an amendment to the Basel Convention (the "Ban Amendment"). This amendment requires that each Party listed in Annex VII (Parties and other States which are members of OECD, EU, Liechtenstein) immediately prohibits all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII. Moreover, each Party listed in Annex VII is obliged to phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(i)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Pursuant to the same amendment, such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Basel Convention.
5. The EU accepted the Ban Amendment on 30 September 1997.
6. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste 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.
7. The Ban Amendment has not yet entered into force. As of December 2009, 65 Parties to the Basel Convention had ratified the Ban Amendment. Parties are currently 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. There are 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 eighth

Conference of the Parties to Basel Convention, negotiations to resolve the ambiguity of the above provision through agreement on its legal interpretation continue but are stalled because of political controversies.

8. Given the length of time that has elapsed since the adoption of the Ban Amendment and in order to break the current deadlock, the Indonesian President of the ninth Conference of the Parties developed a statement "on the possible way forward on the Ban Amendment" that has been unanimously acknowledged by Parties through decision IX/26.
9. 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 will serve to contribute to gathering momentum to encourage ratification of the Amendment and to expedite its entry into force.
10. Responding to this invitation, Indonesia and Switzerland have launched a country-led initiative and will report on the progress achieved during the next Open Ended Working Group of the Parties to Basel Convention.
11. The objective of the country-led initiative is to develop recommendations for the tenth meeting of the Conference of the Parties to the Basel Convention 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 developing countries, constitute an environmentally sound management of hazardous wastes as required by the Basel Convention. These recommendations are likely to result in talks on measures reforming or being complementary to the Ban Amendment and are therefore capable of leading to development of COP decisions that may affect EU legislation.
12. In view of coherence of the EU's action at international level with its internal policy and legislation and given likely impacts of discussions during Open Ended Working Groups and Conference of the Parties regarding issues related to the Ban Amendment on EU's internal rules, the Commission submits to the Council recommendations to authorise participation on behalf of the EU in discussions of the Parties to Basel Convention on issues related to the Ban Amendment.

B. RECOMMENDATION

In the light of the above, the Commission recommends that:

- a) the Council authorises the Commission to participate, on behalf of the EU, in the discussions of the contracting Parties to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal related to the amendment adopted by decision III/1 of the third Conference of the Parties to the Basel Convention (the "Ban Amendment") on 22 September 1995;
- b) the Commission conducts these negotiations on behalf of the EU in consultation with the special committee appointed by the Council to assist the Commission in this task, in accordance with the negotiating directives set out below;
- c) the Commission reports to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

NEGOTIATING DIRECTIVES

1. The Commission shall ensure that contracting Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal continue to be encouraged to ratify the Ban Amendment.
2. The Commission shall ensure that the precondition for any alternative system that could be proposed to replace the Ban Amendment or any modification that could be proposed to the Ban amendment should be that all Parties of the Basel Convention would go along with this alternative system or modification and ratify the resulting amendment.
3. The Commission shall ensure that, any alternative amendments to or modification of the Ban Amendment, should be equivalent to the Ban amendment with regard to its environmental objectives.