

**NGOs response to the draft Commission
Delegated Regulation amending Annexes III, IIIA,
IV, V and VIII to Regulation (EC) No 1013/2006 of
the European Parliament and of the Council on
shipments of waste**



July 2020

In May 2019, the Basel Convention was updated in order to reflect the impact of plastic waste trade across the globe. It was amended precisely to use the mechanisms and obligations of the Convention – including its requirements for environmentally-sound management (ESM), and the prior informed consent (PIC) control mechanism to regulate the trade in those plastic wastes which are difficult to recycle safely and therefore are most likely to end up dumped into the open environment or burnt, harming human health and the environment. Newly-controlled plastic wastes are the dirty, contaminated, mixed or halogenated plastics which trigger risks for health and the environment anywhere in the world. Their control globally was clearly warranted and thus the amendments passed by consensus and with the EU's full support.

As NGOs that worked tirelessly with the European Union to achieve the landmark Basel Convention amendments on plastic waste at COP14, it is our sincere hope that the European Union will faithfully transpose them into the existing Waste Shipment Regulation. It should certainly not be used as an opportunity to weaken the Union's current posture regarding trade in wastes whether they be on Annexes VIII, IX or II of the Convention.

However, it is with deepest concern that we see a misguided effort by the Commission, as suggested by the Council (Council Decision (EU) 2019/638) in advance of negotiations and not following adoption of the amendments, to create a de-facto reservation for the internal market of the European Union.

The Basel Convention allows no reservations by Parties, nevertheless the EU is attempting to justify this clear derogation by claiming the Waste Shipment Regulation (and possibly taken in tandem with other waste-related EU legislation) as a Basel Convention Article 11 agreement. Yet, Article 11 only allows alternate agreements "provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous and other wastes as required by this Convention." It also requires that "these agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention..."

Provisions proposed in the draft delegated regulation are clearly less environmentally sound than the Basel Convention. By adopting only a weaker version of the new listing of plastic wastes now found in Annex II, and a vastly expanded version of the Annex IX listing, EU member states unilaterally afford themselves less control by avoiding obligations placed on all other countries for many types of plastic waste shipments – for example the obligation of prior informed consent as well as the obligation to ensure environmentally sound management. The Basel amendments only proposed omitting the protection provided by PIC for certain categories of plastic wastes least likely to cause environmental harm. They are clearly meant to apply to all Parties. All Parties at the COP14 negotiations knew that to be the case.

In fact, the Convention provides an easy avenue for Parties that do not wish to accept amendments to annexes, and that is to declare that they will not abide by them by the date of entry into force. By deciding not to use this mechanism, the EU now has to fully comply with the Convention and cannot set specific rules for its common market. This violates the delegation of power to the Commission in Article 58 of Regulation (EC) No 1013/2006, which does not allow for these amendments to the annexes of the WSR, as proposed in the delegated act, to be adopted via a delegated act. The Commission proposal removes certain waste movements from the scope of control by the Waste Shipment Regulation, which would otherwise be controlled when they take place outside of the EU. This both excludes the legal requirements to assure environmentally sound management as well as protection afforded by the PIC procedure.

The Commission proposal is devoid both of any justification for doing this in terms of proof of no additional harm to the environment, nor in terms of legal justification. And indeed this action belies all evidence from the current problems that plague intra-EU plastic waste trade among the 27 Member States today. Ample evidence shows that intra-EU plastic waste shipments regularly end in illegal dumping or "waste to energy" incineration in sub-standard conditions. The evidence reveals a pattern of avoidance of environmental regulations and outsourcing of environmental pollution, underscoring the need for Basel Convention protections within the EU¹. Simple reference to Council Decision (EU) 2019/638 is not enough to create a reservation to a Convention that allows none.

¹ See Annex 1 below

The Commission should not propose a double standard that puts the environment and human health of EU communities in jeopardy, in particular by undermining the existing Waste Shipment Regulation and creating new EU only categories EU3011 and EU48, which are neither warranted nor legal, as the Basel Convention allows no reservations (see Article 26.1).

Further, should the delegated act be adopted, it will send a message that threatens to undo global governance of plastic waste trade. Given the EU's stated support for the Basel amendments and their willingness not to object to them in the legal procedure provided for such, it will be sending a message of "Do as I say, not as I do", which only opens the door for other countries to do likewise.

For these reasons as well as those listed below, **we strongly urge the European Commission to rectify its current trajectory by adopting provisions that offer the same level of environmental protection as the Basel Convention, for intra-EU plastic waste trade.** This means faithfully transposing the new plastic waste entries B3011 (Annex IX) and Y48 (Annex II) of the Basel Convention and applying existing norms within the Waste Shipment Regulation for these two Basel waste categories.

Therefore, in addition to the points covered above, we further highlight the following:

1. Restrict green-listed plastic waste flows within the EU to mechanical recycling operations

The Basel Convention restricts plastic wastes traded without PIC and considered non-hazardous to those destined for mechanical recycling (R3 operations). This was an extremely important distinction and stems from the recognition that the greatest environmental harm from the trade in plastic waste occurs when such wastes are not recycled but are instead disposed of, burnt or dumped in the open environment.

In contrast, the proposed EU delegated act fails to transpose this mandate and proposes to allow plastic wastes to be freely traded outside of sufficient controls for recovery operations including R1 operations or "waste-to-energy" incineration (or incineration with energy recovery), and coincineration in cement kilns.

Evidence gathered (Annex 1) shows that free plastic waste trade to EU countries for non-recycling destinations places a disproportionate environmental burden on local communities and deepens environmental injustice within the EU. In particular, an investigation by the Organized Crime and Corruption Reporting Project linked the co-incineration of imported wastes in Romanian cement kilns to a rise in local cancer rates.

Allowing plastic wastes to be freely traded across the EU for waste-to-energy incineration and coincineration in cement kilns would also strongly contradict the European Union's climate and circular economy efforts by undermining recycling, causing toxic pollution and releasing greenhouse gas emissions². In addition, allowing free trade of plastic waste destined for waste-to-energy incineration or coincineration in cement kilns would increase unintentional production of persistent organic pollutants (uPOPs - notably dioxins and furans), putting the EU at odds with its obligation under Article 5 of the Stockholm Convention to minimize POPs generation.

For all the reasons above, we urge the European Commission to add a requirement for recycling destinations for all plastic wastes subject to the general information requirements.

2. Exclude polymers of fluorinated ethylene (PTFE) and polymers of vinyl chloride (PVC) from green-listed plastic wastes

The amendments were passed to regulate the trade of plastic wastes that pose a risk to human health or the environment during their management as wastes or dumping into the open environment. It does not allow the trading of PTFE and PVC wastes without PIC, for these very reasons.

² Zero Waste Europe (2019) [The impact of WTE incineration on climate](#)

Upon close examination of PTFE and PVC, it is apparent that they are not only wastes that are hard to manage in an environmentally sound manner, but that they meet the Basel Convention definition for hazardous wastes (see Annex 2 below for an assessment under Annexes I and III of the Basel Convention).

Despite the hazards associated with PTFE and PVC wastes, the European Commission is proposing to include them in EU3011 (“green-listing” these wastes for trade without PIC). This would put EU communities who have not generated these wastes at risk of bearing the associated environmental burden, particularly because they could be traded without controls for “waste to energy” incineration or co-incineration in cement kilns (see Annex 2 for the list of toxic emissions).

Not only does this proposal derogate from the new Basel Agreement for trade within the EU area, but these provisions completely undermine the EU’s ambition to build a toxic-free Europe. We therefore recommend that PTFE and PVC wastes are listed as hazardous wastes, or at the very least that PIC is required for their transboundary movement within the EU.

3. Impose prior informed consent for the intra-EU trade of mixed plastic wastes other than mixes of PET, PE and PP

Basel Convention parties recognized the adverse impact of mixing on the recyclability prospects for plastic waste. This is why they only allow but one mixture of plastic wastes which must be and can be easily separated by the common float-sink processes, to be traded without controls: that is mixtures of polyethylene terephthalate (PET), polyethylene (PE) and polypropylene (PP).

Under the proposed draft regulation, Annex III of the WSR would allow a free intra-EU trade of any mix of non-halogenated plastic wastes listed in EU3011. This would allow a free intra-EU trade of bales of plastic wastes mixes that cannot be recycled together, and are difficult and costly to sort. The proposed green-listing of additional mixes of non-halogenated plastic wastes would greatly undermine the likelihood that they can be recycled in practice, and increase the risk that they would be sent to incineration with energy recovery, or co-incineration.

For these reasons, we recommend that the European Commission imposes prior informed consent on all plastic waste mixes except for PET, PE and PP, by removing plastic waste mixes from Annex III, except for mixes of PET, PE and PP.

4. Impose prior informed consent for all trade of waste fluorinated polymers and cured resins

The Basel Convention currently lists five fluorinated polymers (FEP, PFA, MFA, PVF and PVDF) and all cured resins and condensation products (in other words, all thermoset plastics) on listing B3011, allowing their free trade. However, this inclusion is a provisional legacy from the old entry B3010 elaborated in the 1990s, rather than a sign that they do not trigger concerns for human health or the environment when they are not recycled in an environmentally sound manner. Indeed, Basel Convention Parties ran out of time to discuss the environmental implications of a free trade for these wastes during its 14th Conference of Parties, and are evaluating these implications intersessionally for likely consideration at the 15th Conference of Parties.

Following a review of these fluorinated and cured plastic wastes, NGOs have come to the conclusion that many are in fact hazardous wastes, and should be subject to PIC within Annex VII and certainly subject to the Ban Amendment (Basel Article 4A) with respect to trade from Annex VII to non-Annex VII. Indeed, many of these plastic wastes are unrecyclable, and all trigger human health and environmental concerns during thermal degradation. A detailed assessment is available in our submissions to the Basel Convention’s call for information on those wastes³.

For these reasons, the current proposal to include them as non-hazardous wastes for free trade, including for “waste to energy” incineration and co-incineration in cement kilns, threatens to dangerously increase toxic pollution in EU countries importing those wastes, thereby contributing to environmental injustice within the Union.

³ See [submissions by IPEN, CIEL, BAN and GAIA to the Basel Convention’s call for information](#) on fluorinated polymers and cured resins.

We recommend that the European Commission excludes these wastes from the non-hazardous waste listings now, and manages them as Basel Annex II wastes both within and outside of the Union and OECD area. This will mean that they require the PIC procedure within the EU and OECD and are prohibited for export to developing countries.

In conclusion, we reiterate our call to the European Union to provide the environmental leadership it pledged to accomplish with the European Green Deal. Creating double standards for themselves neither serves the environment nor the premise of global leadership on its behalf. In fact, it undermines efforts which the European Union has participated in to create a coherent global framework to regulate plastic waste trade.

We therefore urge the European Union to accept the COP14 Basel amendments on plastic waste in full and remain consistent in both their deeds and words, both globally and at home.

Annex 1: Evidence of plastic waste dumping within the European Union

Note: problematic flows involving the UK were also included in the evidence below despite Brexit because the Brexit situation has not yet changed UK regulations around the trade of plastic wastes, which are still in line with the EU WSR and other standards.

June 2020: Latvia to return 600 tonnes of illegally imported plastic waste to the UK. The company who agreed to have the trade is [Why Recycle](#). The illegal import consisted of 549.38 tonnes of plastic and rubber waste. (ENDS Europe, [Latvia to return 600 tonnes of illegally imported plastic waste to the UK](#), 23 June 2020).

Feb 2020: Poland has requested the UK take back 225 tonnes of illegally exported waste found by the Polish police (Let's recycle, [Poland to return more illegal waste exports to UK](#) 11 February 2020; [The Daily Mail, 220 tons of 'recycled' waste from Britain is found dumped in a warehouse in Poland: UK taxpayers will pick up bill for it to be returned](#), 10 February 2020).

Jan 2020: mixed Italian waste found dumped in Pleven, Bulgaria, with the involvement of a criminal network involving businessmen and the Deputy Minister of the Environment at the time (Novinite, [Development: More Arrested for Illegal Import of Waste from Italy, 29 May 2020](#)); the government gave permits for imported waste to be incinerated, without any environmental impact studies (Euronews, [En Bulgarie, le traitement des déchets illégaux inquiète](#), 13 February 2020).

October 2019: Greenpeace investigators find 100 bales of Italian and German mixed wastes dumped in a disused petrol station in the Gliwice region, southern Poland. The Italian waste dumped in that location was found to have transited through the Italian sorting plant of the Di Gennaro spa company in Marcanise, which forms part of Copela, Italy's national consortium for recovery and recycling (La Repubblica, [Greenpeace rintraccia in Polonia 45 tonnellate di rifiuti italiani](#), 15 October 2019).

October 2019: Journalist Marianne Kerfridern for Arte finds German waste including plastic waste dumped in the open environment in Poland (Arte, [Décharges illégales hors de contrôle - Vox pop](#), 6 October 2019).

March 2019: Investigative journalists from the Organized Crime and Corruption Reporting Project (OCCRP) find Italian, German waste including plastic waste co-incinerated in cement kilns in Romania, with local cancers on the rise (OCCRP, [Cement's Dirty Business](#), 7 March 2019).

Annex 2: Evidence regarding the hazardousness of PVC and PTFE wastes

Plastic wastes that include constituents listed under Annex I of the Basel Convention, to the extent that they display Annex III characteristics (codes H1-13), are considered hazardous wastes under the Basel Convention. Both PVC and PTFE meet these criteria: they are Annex I constituents (organohalogens, Annex I listing Y45), and display several Annex III hazardousness characteristics, including H13: "Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above [other Annex III hazardous characteristics]".

PVC (polymer of vinyl chloride)

- Monomers and other residual parent compounds in plastics including PVC may vary from very low levels of 100 ppm to high levels of 4%⁴. Therefore, vinyl chloride may be present at significant levels in PVC. Vinyl chloride qualifies for the H11 hazardousness characteristic as a carcinogen, systemic toxicant and skin sensitizer and irritant, and is flammable (H4.1)⁵.
- The landfilling of PVC waste leaches toxic additives into the soil and wastewater, while its combustion produces dioxins and furans⁶. This qualifies PVC for H13 characteristic.

PTFE (polymer of tetrafluoroethylene)

- Monomers and other residual parent compounds in plastics including PTFE may vary from very low levels of 100 ppm to high levels of 4%⁷. Therefore, tetrafluoroethylene may be present at significant levels in PTFE. It is a probable human carcinogen and is flammable (H4.1)⁸ and explosive in the presence of oxygen (H4.2)⁹.
- Thermal degradation of PTFE (e.g. through open burning, incineration or pyrolysis) harms human health, the ozone layer, the climate and the environment, in a manner that is sufficient to merit an H13 characteristic.
- Thermal degradation of PTFE involves the emission of the following hazardous products: carbonyl difluoride (acutely poisonous H 6.1, corrosive H8 and ecotoxic H12)¹⁰, hydrogen fluoride (acutely poisonous H 6.1, corrosive H8 and ecotoxic H12)¹¹, tetrafluoromethane (very potent greenhouse gas), tetrafluoroethylene (probable human carcinogen and is flammable H4.1¹² and explosive in the presence of oxygen H4.2)¹³, trifluoroacetyl fluoride, trifluoroacetic acid, perfluoroisobutylene (also known as PFIB, a chemical weapon, and acutely poisonous H6.1)¹⁴.

⁴ Factors include polymerisation [techniques and techniques for reducing residual monomers](#); see P.H.H. Araújo et al. (2002) "Techniques for reducing residual monomer content in polymers: a review." Polymer Engineering and Science.

⁵ Healthy Buildings Network, profile for Vinyl Chloride on [Pharos database](#), retrieved on 30 January 2020.

⁶ Health Care Without Harm (2019) Briefing/Opinion - [Why PVC and PTFE should not be placed on OECD Green list of waste shipment](#).

⁷ Factors include polymerisation techniques and techniques for reducing residual monomers; see P.H.H. Araújo et al. (2002) "[Techniques for reducing residual monomer content in polymers: a review](#)." Polymer Engineering and Science.

⁸ Californian EPA: [Proposition 65](#) and a probable carcinogen according to the International Agency for Research on Cancer (2017) [Some chemicals used as solvents and in polymer manufacture](#), p. 137; US National Institute of Health, PubChem database entry: [Tetrafluoroethylene](#)

⁹ S. Ebnesajjad (2017) Applied Plastics Engineering Handbook, p. 59-60.

¹⁰ Government of Japan, National Institute of Technology and Evaluation, Chemical Risk Information Platform, [Carbonyl difluoride](#).

¹¹ EU ECHA, Summary of classification and labelling: [Hydrofluoric acid](#); New Zealand EPA [Hydrofluoric acid](#).

¹² Californian EPA: [Proposition 65](#) and a probable carcinogen according to the International Agency for Research on Cancer (2017) [Some chemicals used as solvents and in polymer manufacture](#), p. 137; US National Institute of Health, PubChem database entry: [Tetrafluoroethylene](#).

¹³ S. Ebnesajjad (2017) Applied Plastics Engineering Handbook p. 59-60.

¹⁴ S. Ebnesajjad (2013) Introduction to Fluoropolymers, p. 295; the almost-linear structure of PTFE makes it particularly prone to depolymerization into its hazardous tetrafluoroethylene monomers when heated. Eugeniusz Milchert et al. (2004), "Technological parameters of pyrolysis of waste polytetrafluoroethylene" Polymer Degradation and Stability 83; UK Government, Health and Safety Executive (2007) "[Products evolved during hot gas welding of fluoropolymers](#)"; Patty's Industrial Hygiene and Toxicology.

- Harm can also occur through the following processes¹⁵:
 - De novo synthesis of fluoro-dioxins and fluoro-benzofurans¹⁶
 - Emissions of greenhouse and ozone-depleting gases¹⁷
 - Emissions of oxidative products
 - Emissions of fluoropolymer particulate matter.

Furthermore, PTFE (referred to as “polymers of fluorinated ethylene” in the draft regulation) is part of a family of chemicals known as per and polyfluorinated alkyl substances (PFAS). PFAS are known for their toxicity and include several persistent organic pollutants recognized under the Stockholm Convention¹⁸. PFAS chemicals should be regulated as a class of chemicals based on the principle of precaution, and not molecule by molecule¹⁹.

¹⁵ Norwegian Institute for Air Research (2009), [Emissions from incineration of fluoropolymer materials](#) - A literature survey, including p. 19, 36.

¹⁶ D. Herzke (1998) Polyfluorinated dibenzo-p-dioxines and benzofuranes: Synthesis, properties, analyses, formation and toxicology. Berlin, Technical University of Berlin.

¹⁷ These include chlorofluorocarbons such as CFC-13, CFC-113; hydrochlorofluorocarbons such as HFC23; perfluorinated compounds such as PFC-14, PFC-116, PFC-318. See Norwegian Institute for Air Research (2009), [Emissions from incineration of fluoropolymer materials](#) - A literature survey, p. 32.

¹⁸ For a list of PFAS chemicals, see OECD (2018) "Toward a New Comprehensive Global Database of Per- and Polyfluoroalkyl Substances (PFASs): Summary Report on Updating the OECD 2007 List of Per- and Polyfluoroalkyl Substances (PFASs); S. Korzeniowski et al. (2019) "[The PFAS Universe: Uses, Classification & Degradation](#)".

¹⁹ PFAS chemicals are also known as “forever chemicals” because of their persistence in the environment. Several chemicals from that family are already listed as persistent organic pollutants (POPs), such as PFOS, PFOSF and PFOA, while other PFAS chemicals are currently under consideration for listing.

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Basel Action network (BAN)

European Environmental Bureau (EEB)

Environmental Investigation Agency (EIA)

Center for International Environmental Law (CIEL)

the Global Alliance for Incinerator Alternatives (GAIA)

Zero Waste Europe (ZWE)