

IMPEL/TFS

A Practical guidance for

Managing illegal shipments of waste

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**IMPEL
NETWORK**

European Union Network for the Implementation
and Enforcement of Environmental Law

Mr. Rainer Werneburg

Mrs. Katrin Cordes

Mr. Johan Huijbregts

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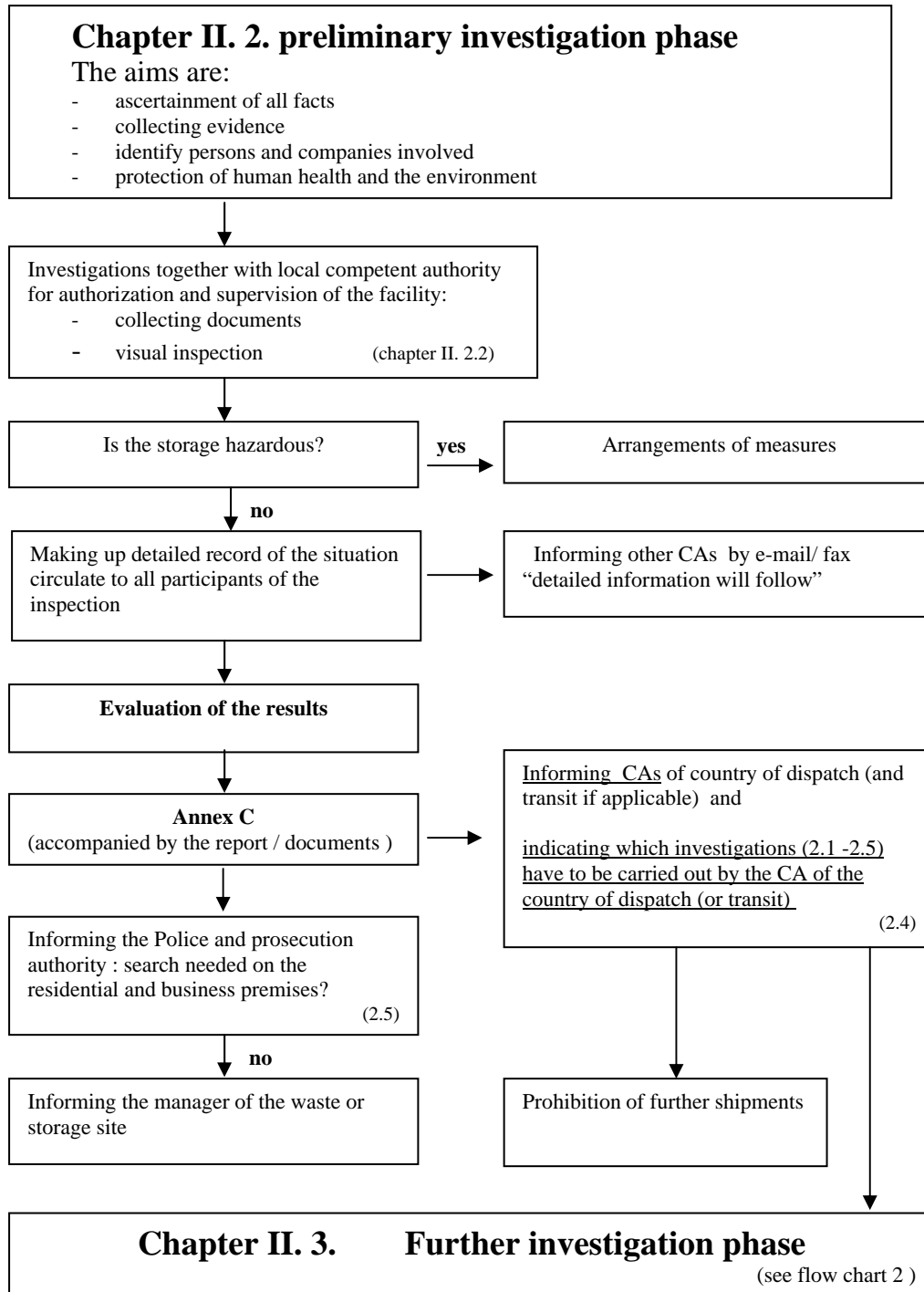
ANNEXES

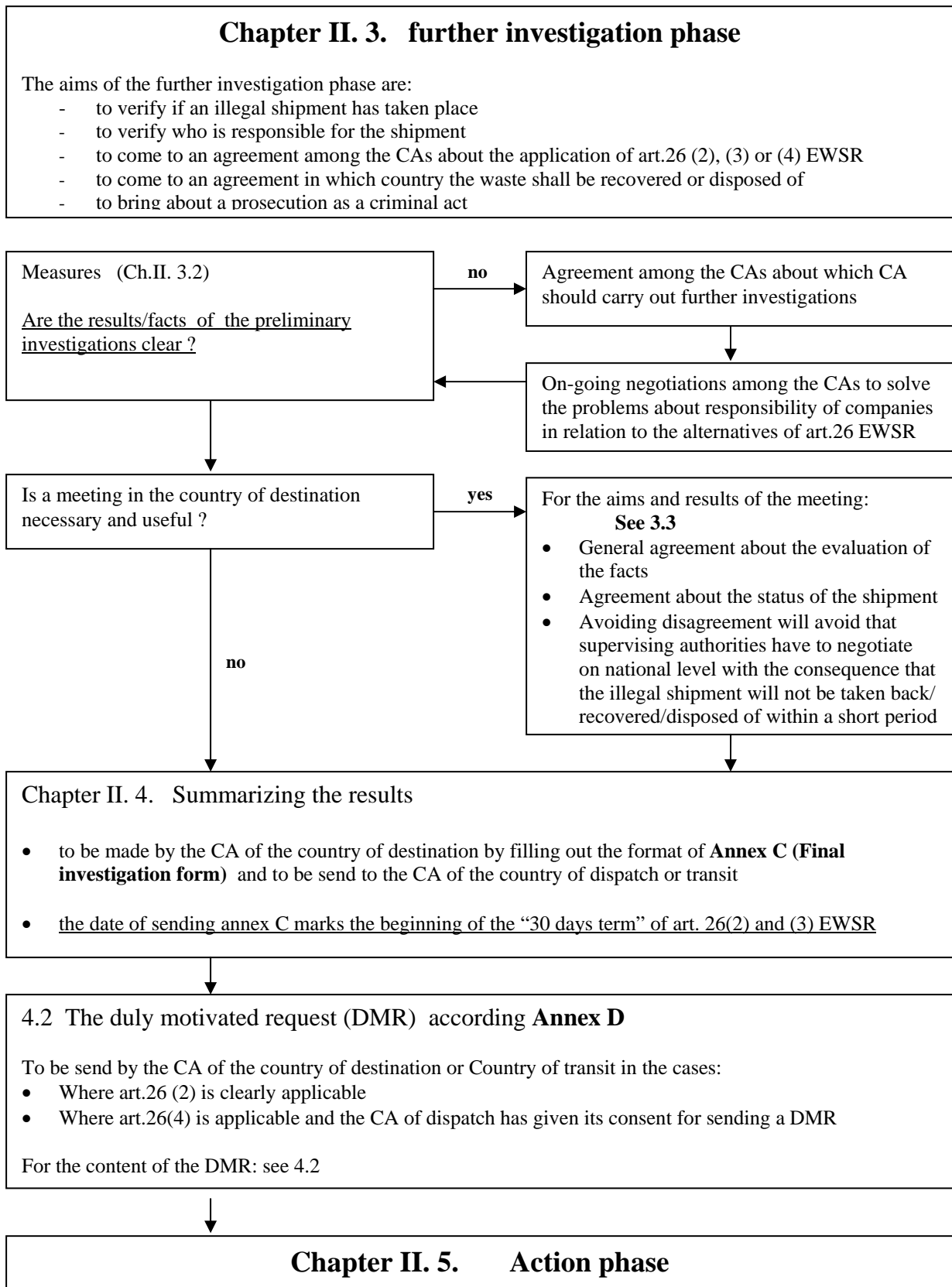
- A Information Sheet No. 1
- B Information Sheet No. 8
- C Preliminary / Final Investigation Form (stationary situation)
- D Duly Motivated Request
- E Standard Letter to the Company about Voluntary Return
- F Standard Letter to the Company (Official Order)
- G Interpol ECO Message
- H Transport Inspection Report Form
- I Standard Letter / Fax to the Company about Inspection
- J Standard Letter / Fax to the Company about Releasing the Shipment
- K Preliminary / Final Investigation Form (transport situation)

Suspicious shipment detected at a waste or storage facility

Before following the flow charts, the possibility of subsequent correction has to be regarded (only where a notification has been made and when the obligation to take back the waste should be out of proportion). Agreement for correction is needed by each competent authority (CA). These possibilities according **Chapter II. 5.1** are:

- if the amount of waste notified is exceeded (and a new notification/decision is available)
- if the shipment period is exceeded
- if the transport packaging does not meet the requirements of health and safety regulations
- if the notification or tracking document does not accompany the shipment





Chapter II. 5. Action phase

Is Art.26 (1.d.) applicable?
 In cases where a notification has been made and when the obligation to take back the is deemed to be an excessive requirement, alternative correction has to be considered in minor cases of illegality.
 Agreement for correction is needed by each competent authority (CA)
 These possibilities according Chapter II. 5.1 are:

- if the amount of notified waste is exceeded (and a new notification is available)
- if the shipment period is exceeded
- if the packaging does not meet the requirements of health and safety regulations
- if the notification- or trackingdocument does not accompany the shipment

↓ no

Art.26 (2) applicable?
 Is the illegal shipment the responsibility of the notifier/producer ?

↓ no

yes →

- Return of the waste to the country of dispatch
 - voluntarily? Country of dispatch sends letter (annex E) with conditions
 - not voluntarily? Letter about enforced return (annex F)
 (for the notification procedure and about the 30-days termin
- In exceptional cases: disposal or recovery in the country of destination

Art.26 (3) applicable?
 Is the illegal shipment the responsibility of the consignee ?

↓ no

yes →

- Disposal of the waste by the consignee or the CA of the country of destination
 (a notification procedure does not take place)

Art.26 (4) applicable?
 notifier and the consignee, both are not responsible? (investigations without results/evidence)

↓ no

yes →

- The CAs have to cooperate and agree about recovery/disposal and sharing expenses
 (a notification procedure does not take place)

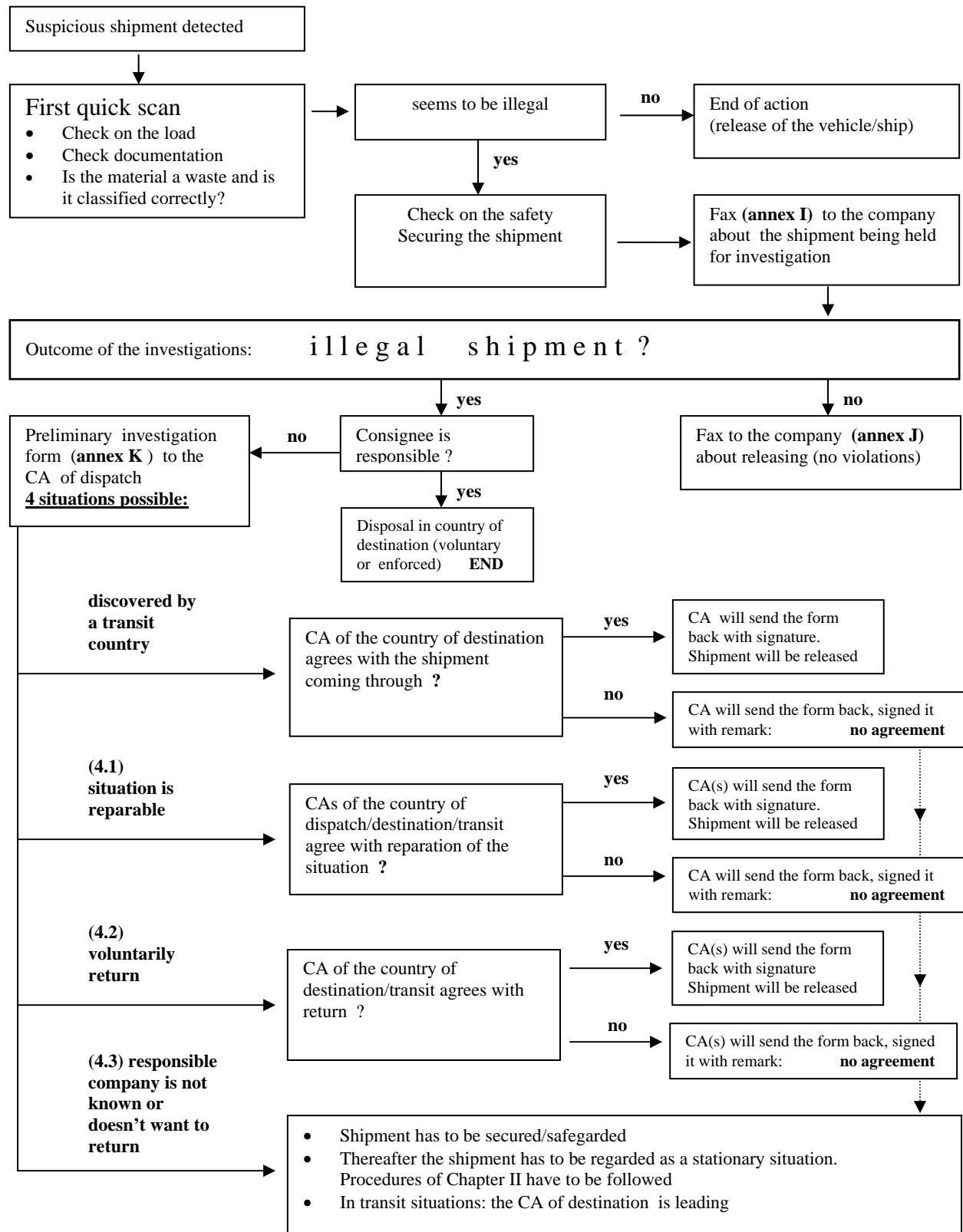
not regulated in the EWSR: Notifier and the consignee both are responsible !
 hereafter some possibilities are presented:

- **a notification exists:** The CA of dispatch should oblige the notifier to take back the waste or uses the financial guarantee to make other arrangements
- The CA of dispatch obliges the producer or carrier to take back the waste
 • If this is not possible: the CA of destination obliges the consignee
- Other cases: the CAs have to find a common agreement about which CA will take the lead in making arrangements and how the expenses should be shared

the CAs inform each other about

- completion of the return / recovery/ final disposal
- which CA will take care for prosecution of the suspect and the ECO-message to Interpol

Chapter III Suspicious shipments during transport



The CAs inform each other about

- completion of the return / recovery / final disposal
- which CA will take care for prosecution of the suspect and sending in the ECO-message to Interpol

I General

1. Introduction and summary

The issue of detection, prevention and control of illegal waste shipments has to be considered one of the priorities for the next years enforcing the Council Regulation (EEC) No. 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, hereinafter referred to as European Waste Shipment Regulation (EWSR). The illegal traffic of waste can cause negative consequences on human health and the environment. In these cases the wastes are frequently not stored or disposed of in an environmentally sound manner in the country of destination. The results often are severe damages for the soil, the ground water and other environmental interests connected with high risks for the human health.

The motivation for the responsible person or company to carry out illegal shipments is very simple: the prospect of a high profit! A lot of expenses can be spared when the wastes are not recovered or disposed of in waste installations with a high technical standard. Instead they are transported in other countries with lower environmental standards and are dumped there. In these cases often the exporter and the consignee are working closely together violating environmental laws and the European Waste Shipment Regulation.

Article 26 EWSR sets the framework for the detection, prevention and control of these criminal activities. The fight against illegal waste shipments can only be won if a strong cooperation exists between the competent authorities of the country of dispatch, country of destination and countries of transit, and if these authorities are willing to find a common solution. The need for such a trustful mutual support has increased with the accession of ten new countries to the European Union in May 2004. Furthermore cooperation with police, customs and other regulatory authorities is of central importance.

This manual provides practical guidelines for competent authorities that suspect that an illegal waste shipment has taken place.

The aims of the manual are:

- to give assistance to the competent authorities which have to deal with a case of illegal traffic

- to facilitate cooperation between the competent authorities of the countries of the European Union
- to support a uniform interpretation and application of Article 26 EWSR.

Therefore it is desirable that the manual will be accepted by all Member States, and that it will be used by all competent authorities.

If a country which is not a member of the European Union is involved in a case of illegal traffic, the competent authority of the Member State cannot demand that the competent authority of the country outside the European Union has to apply the guidance given in the manual and to use its forms and standard letters. The opinion of this authority must be respected by the authorities of the Member States.

With regard to the parties to the Basel Convention consideration must be given to the provisions of Article 9 of the Basel Convention and the manual “Guidance elements for detection, prevention and control of illegal traffic in hazardous wastes” which was adopted by the Sixth Meeting of the Conference of the Parties to the Basel Convention in December 2002. In relation to other OECD countries the provisions of the OECD Decision C (2001) 107/FINAL must be taken into consideration.

The manual has the following contents:

Besides this introduction Chapter I describes the legal background with regard to illegal waste shipments.

Chapter II contains information on illegal waste shipments in (temporary) storage. The chapter is divided into three sections with a detailed description of the measures to be carried out by the competent authorities involved:

- preliminary investigation phase
- further investigation phase
- action phase

In Chapter III information on waste shipments discovered during transportation are presented. Furthermore four flowcharts form part of the manual and these show in a step by step manner how the procedure may be conducted beginning from the preliminary investigation and proceeding up to the action phase.

Finally the annexes contain forms and standard letters which shall facilitate the practical use of the manual and the cooperation between the competent authorities involved.

2. Legal background

Transfrontier shipments of waste are regulated under the European Waste Shipment Regulation. The material in question must be waste according to Article 1 (a) of Council Directive 75/442/EEC, but certain types of wastes listed in Article 1 (2) EWSR are excluded from the scope of the Regulation.

Article 26 EWSR stipulates the situations in which waste shipments may be deemed illegal and regulates the procedure to regain legal conditions and to ensure recovery or disposal of the transported waste in an environmentally sound manner in the country of dispatch or in the country of destination.

Article 26 (1) EWSR defines illegal traffic as any transboundary movement of wastes

- (a) without notification to all competent authorities concerned pursuant to the provisions of this Regulation; or
- (b) without the consent of the competent authorities concerned pursuant to the provisions of this Regulation; or
- (c) with consent obtained by the competent authorities concerned through falsification, misrepresentation or fraud; or
- (d) which is not specified in a material way in the consignment note; or
- (e) which results in disposal or recovery in contravention of Community or international rules; or
- (f) contrary to Articles 14, 16, 19 and 21.

Examples:

- shipment of waste as a product,
- notification has taken place, but the composition of the waste is not as notified,
- notification has taken place, but the total quantity transported has already exceeded the maximum quantity notified,
- the tracking form with the number accompanying a shipment has already been used,
- the amount transported clearly exceeds the amount indicated on the movement tracking form,

- shipment of red, amber or unlisted waste as green list waste destined for recovery,
- transfer to a waste treatment site or waste disposal installation other than indicated in the notification document.

This means that Article 26 EWSR is applicable to the transboundary shipments of wastes which are subject to a formal notification procedure: waste destined for disposal, waste of the Amber List (Annex III of the EWSR), waste of the Red List (Annex IV of the EWSR) and unlisted waste. The transport of waste on the Green List (Annex II of the EWSR) does not require a notification procedure and is excluded from the scope of Article 26 EWSR.

Exception:

According to Art. 1 (3) a) EWSR only few provisions of this Regulation, e.g. Art. 17 (1) – (3) are applicable for shipments of waste destined for recovery and listed in Annex II in countries to which the OECD Decision does not apply. Based on this Article in the EC Regulations No. 1420/1999 and No. 1547/1999 those countries of destination which require a notification procedure for certain wastes of Annex II are stated. In these cases Art. 26 EWSR applies. Furthermore according to Article 1 (3) (e) EWSR the Member States may apply appropriate provisions of Article 26 when waste listed in Annex II is shipped illegally. It should be noted that not all the provisions of the WSR have been come immediately into force in relation to all of the ten new Member States which acceded to the European Union in May 2004. Some of the Accession Treaties of these States with the European Union contain temporary provisions which designate that green listed wastes shall undergo a notification procedure for a determined number of years.

The designation of discovered waste as green list, amber list, red list or unlisted waste is of key importance when proving illegal shipments. Problems are arising where the waste in question is classified differently by the competent authorities of dispatch, destination and transit. The EWSR does not provide a solution in situations where there are interpretations by the Member States but there are two Information Sheets from The European Commission adopted by the correspondents **(Annex A and B)**:

- The Information Sheet No. 1 “Illegal traffic” from 26.09.96 describes the case where a shipment of a substance is not notified because it is shipped as a product or as green list waste for recovery, while the competent authority of destination/transit is of the opinion that it concerns a waste on the Amber List or Red List or is unlisted. In this case the competent

authority of destination/transit is allowed to block shipments which are not in compliance with the EWSR, and it may be desirable that the waste is returned as soon as possible to the country of dispatch.

- The Information Sheet No. 8 from 25.05.98 presents the problem whereby the competent authorities concerned disagree on the correct classification of a certain type of waste with the corresponding effect on the procedures to be followed. In such a case, if the competent authorities are not able to come to an agreement on a common classification, the most stringent procedure shall apply.

When handling illegal shipments competent authorities are required to proceed as follows under Article 26 (2) – (4) EWSR:

- **Article 26 (2) EWSR** specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of non-compliance with the Regulation on the part of the **notifier**. The competent authority of dispatch shall ensure that the waste in question is:
 - a) taken back by the notifier or, if necessary, by the competent authority itself into the State of dispatch, or if this is impracticable;
 - b) otherwise disposed of or recovered in an environmentally sound manner,within 30 days from the time, when the competent authority was informed of the illegal traffic or within such other period of time as may be agreed by the competent authorities concerned. In this case a further notification shall be made. No Member State of dispatch or Member State of transit shall oppose the return of this waste at the duly motivated request of the competent authority of destination and where an explanation of the reason for the request is given.
- **Article 26 (3) EWSR** specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of non-compliance with the Regulation on the part of the **consignee**. The competent authority of destination shall ensure that the waste in question is disposed of in an environmentally sound manner by the consignee or, if impracticable, by the competent authority itself within 30 days from the time it was informed of the illegal traffic or within any such other period of time as may be agreed by the competent authorities concerned. To this end, they shall cooperate, as necessary, in the disposal or recovery of the waste in an environmentally sound manner.

- **Article 26 (4) EWSR** specifies what must be done if responsibility for the illegal traffic cannot be imputed to either the notifier or the consignee. The competent authorities shall cooperate to ensure that the waste in question is disposed of or recovered in an environmentally sound manner.

According to Article 26 (2) and (3) EWSR the notifier or the consignee may be responsible for the illegal shipment.

Article 2 (g) EWSR states that **notifier** means any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped:

- the person whose activities produced the waste (original producer); or
- where this is not possible, a collector licensed to this effect by a Member State or a registered or licensed dealer or broker who arranges for the disposal or the recovery of the waste; or
- where these persons are unknown or are not licensed, the person having possession or legal control of the waste (holder); or
- in the case of import into or transit through the Community of waste, the person designated by the laws of the State of dispatch or, when this designation has not taken place, the person having possession or legal control of the waste (holder).

Article 2 (h) EWSR states that **consignee** means the person or undertaking to whom or to which the waste is shipped for recovery or disposal.

Under the national laws of most of the Member States of the European Union, regulations or directives exist to regulate the procedure of handling Article 26 EWSR and the arrangements for cooperation of the competent authority with police, customs and prosecution authorities. These specific national arrangements cannot be presented in the manual, for obvious reasons.

II Enforcement actions relating to illegal shipments to waste sites

1. General remarks

Illegal shipments to waste sites can be tracked

- during the supervision of waste treatment sites
- during inspections of storage facilities/dock storage
- in the context of accidents or problems on sites
- during checks of waste producer`s documentation
- on the basis of reports made to authorities or the police

This chapter contains information for the competent authorities to help them to investigate cases of illegal traffic determined in Art. 26 (1) EWSR and it also describes the different consequences of the measures laid down in Art. 26 (2) – (4) EWSR. The phases of the investigation are subdivided into preliminary investigations and further investigations. In the cases of intentional violations of the EWSR, especially when shipments are not accompanied by the relevant documentation, Art. 26 (1) a) – c) EWSR, the investigations will often be very complex and can only be concluded after a lengthy process. Effective cooperation between the competent authority, the police, the customs office and the prosecution authority will facilitate much the investigation phase.

Where cases of unintentional violations of the EWSR occur, involving companies which routinely comply with established regulations, the investigations are simpler and can be concluded within few days. This is because the competent authorities are likely to be in possession of the notification documents and consignment notes, Art. 26 (1) d) EWSR. The two investigation phases can be united in one phase.

Finally the constant information exchange between the competent authorities in the countries of dispatch, transit and destination and their agreement about the application of Art. 26 (2), (3) or (4) EWSR at the end of the investigation phase are of great importance. Without such information exchange & co-operation the recovery or disposal of the waste in an environmentally sound manner in the country of dispatch or the country of destination will be unlikely within a short period.

2. Preliminary investigation phase

2.1 Aims and measures

The aims of the preliminary investigations are:

- establishment of all facts which substantiate the suspicion of an illegal shipment
- collection of evidence about the violation of national laws and the EWSR to facilitate a criminal prosecution
- identification of the persons and companies involved so as to make a decision on who is likely to be responsible for the alleged illegal shipment
- protection of human health and the environment if the detected waste is not stored in an environmentally sound manner at the site of the holder.

To achieve these aims the competent authorities concerned have to carry out the following measures:

- collection and examination of all documents and papers regarding the detected waste found at the sites of the holder of the waste, the waste producer, the carrier and other persons or companies involved
- a visual inspection of the waste in question, and the sampling and analysis of the waste material if that is deemed to be necessary
- to ensure the safe storage of the detected waste in case of any risk for human health and the environment
- examination and utilization of existing notification documents and consignment notes
- exchange of information between the competent authorities
- cooperation with the police, the customs office and the prosecution authority in cases of alleged intentional breaches of national laws and the EWSR.

It is the main task of the competent authority of destination to institute and to intensify the preliminary investigations. In minor cases of an illegal shipment it will not be necessary to follow every single step of the preliminary investigations described in this chapter. The investigations should be reduced to an adequate extent.

2.2 Investigations by the competent authority of destination at the storage site/facility

When the competent authority of destination has been informed about an alleged illegal shipment of wastes which is stored at a waste site, regulatory inspectors together with representatives of the authority which is competent for the authorization and supervision of the facility in question, should carry out a common inspection of the plant and the stored waste. The competent authority of destination ensures that the manager of the company and the waste storage facility will be present during the inspection. If there are indications that the storage of the waste in question is caused by an intentional violation of national laws and the EWSR the police should also be invited to participate in the control action.

2.2.1 Inspection of documents and other papers

The inspection procedure will begin with the collection of all documents and papers regarding the generation, the transport and the treating, recycling or disposing of the waste including

- disposal contracts
- business records
- weighing slips
- CMR forms, terms of delivery
- other delivery documents
- invoices
- notification documents and consignment notes, if existing.

It is extremely important that the situation encountered at the site is documented in detail. When conducting investigations, copies of all documentation found should be made. Often certain documents contain information about the waste producer, the carrier or other persons or undertakings involved in the shipment of the waste. If there are signs of violation the inspectors should be aware that evidence must be taken in a manner consistent with normal criminal investigations and evidence must be collected and prepared in a way such that it would be admissible evidence in a court of law.

2.2.2 Visual inspection of the waste and the facility; sampling

After the control of the documents a visual inspection of the stored waste in question is necessary including the storage facility. The situation encountered must be documented with photographs, preferably by a digital camera because the pictures may be sent electronically. In each Member State checks should be made in relation to the admissibility of digital / conventional photographic evidence for court purposes.

In order to find out who is responsible for the shipment the exact type, code, designation and amount (weight, number of containers, e.g. fasteners / seals) of the alleged illegally shipped waste must be determined.

Examples:

In the case where waste has been compressed into bales it must be specified whether and if so, to which extent the bales have to be opened and examined. If necessary, the reason why only few bales have been opened must be given.

In the case of closed containers it must be ascertained whether a sufficiently thorough analysis of the waste is possible by means of visual inspection and examination of visible parts, and whether these provide evidence for any additional loads other than those that are visible.

It must be ascertained whether the waste found can be attributed to particular persons or undertakings, e.g. based on marked revenue stamps on bales or other forms of labelling.

The suspect material should be checked to determine whether wastes from various producers were mixed prior to shipment from the country of origin, or if mixing with new wastes has taken place at the country of destination.

Furthermore the inspectors have to decide if it is necessary to take samples from the waste to determine precisely what the characteristics of the waste are, e.g. the waste may present a high risk for human health and the environment. The analysis of the waste may give indications to its origin.

Finally the inspectors, if appropriate, may control the equipment and processes at the facility to assess if they are consistent with the recycling or disposal operations indicated by licenses and permits of the facility.

2.2.3 Measures to ensure a safe storing of the waste

During the control of the facility and the waste the inspectors should examine whether the waste is stored in an environmentally sound manner or, if the type of storage presents a high risk for human health, the environment, public security or public order. Unsafe storage conditions can be caused by

some special hazard of the waste, e.g. insufficient packaging, rusty barrels, unsafe surface of the store, unfavourable ground water conditions, fire hazard etc. In such cases the inspectors must ensure that the manager of the facility/store will provide safe storage within a short time. If the manager is not in the position or refuses to fulfil his obligation the competent authority may apply immediate measures exercising default power: the competent authority may engage an undertaker who will provide the necessary, adequate and safe storage. The costs of the measure may be recovered from the manager of the facility where the non-compliance has taken place..

2.3 Evaluation of the results of the inspection by the CA of destination

As soon as possible after the inspection of the facility where the suspect waste shipment was found the inspectors should write a detailed record of the control action and send a copy of this report to all participants of the inspection. If there are indications that persons or undertakings in other countries are involved in the shipment of the waste the inspectors immediately inform the competent authorities of the countries concerned about the suspicion. This information may be sent via e-mail or fax announcing that further detailed information will follow.

One of the main tasks of the inspectors is to examine and evaluate in detail the documents which were taken (copies) from the inspected facility and to evaluate the results of the visual inspection of the facility and the waste. Their assessments should have regard to the matters:

- evidence of an illegal transboundary shipment of waste
- which persons and undertakings are involved in the shipment and who may be responsible for the illegality
- evidence of the existence of a criminal act.

In the case of an illegal shipment without notification it may be particularly difficult to find the responsible person or undertaking. The following parties must be identified through the collaboration of the competent authorities:

- the producer according to the definition laid down in Article 1 (b) of Directive 75/442/EEC, anyone whose activities produce waste and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste
- the consignee
- the carrier

- the broker
- any other responsible person or undertaking.

In any case the names of the undertaking, address, contact information, its responsible person/representative have to be identified.

The work of the inspectors may be made somewhat easier where notification documents exist. In the event of an illegal shipment for which notification has been made, the following matters may be clarified by examining in detail the notification form and the consignment note / transport document:

- whether the undertakings/persons involved in the actual shipment are identical to those listed in the notification documents,
- which section of the notification document or which conditions applied to the notification have been contravened,
- who the responsible undertakings and their responsible persons/representatives are; i.e., the notifier, the producer, the consignee, the carrier and the broker.

The inspectors of the competent authority of destination should record the following information in a specific format as laid down in **Annex C – preliminary investigation form**:

- the notification number, if notification documents exist
- the name and the address of the facility/site
- the operator/undertaking running the storage facility/site
- the investigated facts of the case and the available evidence
- a record of the type and the amount of the waste (weight, number of packages, etc.), the designation of the waste and its physical properties (e.g. powder, solid, liquid)
- the extent to which the waste shipment can be identified (e.g. container numbers and description of packaging materials)
- a preliminary description of the chemical composition of the waste
- characteristic components of the wastes in respect of their toxicity, other hazardous potential, Y-number, H-number, any health and safety data, the dangerous goods note, documentation pertaining to the ADR Agreement
- assignment of the wastes to the Annexes II, III, IV or V of the EWSR

2.4 Provision of information to the authorities involved

At this stage of the investigations the competent authority has to inform the following authorities about the results:

- the competent authority of dispatch
- the competent authority of transit, especially if a person/undertaking involved in the shipment is resident in this country
- the police and/or the customs office (if involved / if applicable)
- the prosecution authority if the illegal shipment can be considered as a criminal act.

The information to these authorities should be complete and contain the following statements and documents:

- record of the visual inspection of the facility/site and the waste
- copies of all documentation found at the site or available to the competent authority of destination
- the form Annex C filled in by the competent authority
- a summary of the results of the investigations
- indications as to what investigations should be carried out by the other authorities to clarify all facts and responsibilities of the illegal shipment

These information should be communicated via e-mail or fax to the addressees.

Does the investigation of the situation on the consignee`s premise prove that other persons/undertakings such as brokers, carriers, operators of treatment plants, etc., in the country of destination may have participated in the illegal shipment, the competent authorities with jurisdiction over these persons/undertakings must be informed so that the respective checks can be made and the appropriate documents safeguarded.

2.5 Information of the manager of the waste facility/site

Before informing in detail the manager of the waste facility/storing site about the results of the inspection the competent authority of destination should come to an agreement with the police or the prosecution authority in relation to this matter. Provision of information to the manager of the site would be unfavourable when the prosecution authority intends to search the residential and business

premises of the waste facility and safeguard evidence some days later. Therefore it is very important to harmonize the investigations between the two authorities.

Finally the competent authority with jurisdiction over the waste facility informs the manager of the site about the prohibition of acceptance of further transports of the waste in question and about the prohibition of mixing, treatment or further transport of illegally shipped waste, since evidence may be suppressed by such measures.

2.6 Investigations by the competent authorities of dispatch and transit

The competent authorities of dispatch and transit have been informed in detail about the results of the preliminary investigations carried out by the competent authority of destination, because there are indications that persons or undertakings with residence in these countries are involved in the alleged illegal shipment. After having examined the information carefully the competent authorities have to investigate if an illegal shipment has taken place and which persons/undertakings in the respective country have participated in it.

Regarding the investigations the competent authorities of dispatch and/or the competent authority of transit should consider the same options as the competent authority of destination. Therefore the measures mentioned in No. 2.1 – No. 2.5 of this chapter can be applied to their investigations.

When the persons/undertakings involved in the alleged illegal shipment have been identified by the competent authorities they must order that further transports to the waste facility in the country of destination are prohibited immediately.

Finally the competent authorities collect all the results of their investigations (inspection of waste facilities, documents, photos, etc.) and send these together with a report to the competent authority of destination via e-mail or fax.

3. Further investigation phase

3.1 Aims

The aims of the further investigation phase are:

- to verify if an illegal waste shipment has taken place
- to verify who is responsible for the illegal shipment
- to come to an agreement among the competent authorities of dispatch and destination about the application of Art. 26 (2), (3) or (4) EWSR
- to come to an agreement in which country the waste in question shall be finally recovered or disposed of
- to make possible a prosecution as a criminal act

To reach these aims, continual information exchange between the competent authorities involved is of high importance.

3.2 Measures

First of all the competent authorities have to examine and evaluate the results of the preliminary investigations carried out by themselves, the police, etc. Every effort should be made to ensure that all the relevant competent authorities possess identical knowledge about the existing information. That means that the information exchange between the competent authorities must be complete without holding back important information.

Having concluded the evaluation each competent authority has to decide for itself if the results of the investigations are sufficient to verify that an illegal shipment has taken place and who is responsible for it or, if additional investigations must be carried out. Further investigations may be necessary in very complicated cases with complexity in relationships between companies, e.g. the use of subsidiary companies, foreign brokers and agents, the sale of wastes to foreign companies prior to physical transfer of the waste, in all cases that obscure the identity of the exporter. The competent authorities concerned must come to an agreement about which facts and problems must be clarified and which competent authority has to carry out the necessary investigations.

On the other hand an agreement about the responsibility and the application of one of the alternatives laid down in Art. 26 (2), (3) and (4) EWSR should be more easily realised in the cases where a notification procedure has been carried out and where a financial guarantee exists that can be called up.

To select one of the alternatives of Art. 26 EWSR is more difficult when the responsibility for the illegal shipment can be attributed to the carrier as well as to the consignee and a financial guarantee

doesn't exist. This is the most frequently experienced situation. To resolve these problems and to find an adequate solution on-going negotiations by the competent authorities are of high importance.

3.3 Meeting in the country of destination

When existing problems about the necessity of further investigations caused by the complexity of the case or about the attribution of the responsibility cannot be cleared by information exchange via e-mail it can be useful to organise a meeting in the country of destination to conduct the negotiations between the competent authorities concerned. The following points may be discussed during this meeting:

- inspection of illegally shipped waste
- presentation of work carried out by authorities participating in the investigations
- exchange of additional documents that provide proof or point to who is responsible for the illegal shipment or participated in it
- items that are not yet adequately clarified, and coordination of further measures for the additional clarification of facts
- application of Art. 26 (2), (3) or (4) EWSR and the further treatment of the waste in question as well as a schedule

All participants of such meetings should work to find a common agreement. The meeting may have the following results:

- general agreement about the evaluation of the facts, but additional investigations must be carried out to clarify certain points. When the facts have been clarified the competent authorities may take the relevant decisions based on general agreement.
- agreement of the status of the shipment, about the attribution of the responsibility and about the application of Art. 26 (2), (3) or (4) EWSR. The investigations may be closed.
- the competent authorities involved were not able to find a common solution. In this case they have to report to their supervising authorities and negotiations must be conducted on national level between the countries concerned. The consequence of the disagreement will be that the illegally shipped waste will not be taken back, recovered or disposed of within a short period. The competent authorities should engage themselves earnestly to avoid this negative and unsatisfactory result.

4. Special problems after the conclusion of the investigation phase

4.1 Beginning of the 30 days term mentioned in Art. 26 (2) and (3) EWSR

Waste shipped illegally must be taken back or disposed of or recovered in an environmentally sound manner within 30 days from the time when the competent authority of dispatch, Art. 26 (2), or the competent authority of destination, Art. 26 (3) EWSR was informed of the illegal traffic. Considering the fact that the term of 30 days is very short the information must be so complete and clear that the competent authority is in the position to pass into the action phase. This moment has come when the investigations have been completed. To show clearly the beginning of the term the competent authority of destination, after the conclusion of the further investigation phase, shall summarize the results in a specific format laid down in **Annex C – final investigation form**, and send it via e-mail or fax to the competent authorities of dispatch and transit. The day the information is sent marks the beginning of the 30 days term.

4.2 The duly motivated request of the competent authority of destination, Art. 26 (2)

Only in the case of Art. 26 (2) EWSR, when there exists an obligation to return the waste to the country of dispatch, the EWSR explicitly offers the occasion to the competent authority of destination to send a **Duly Motivated Request** with the explanation of the reason to the competent authority of dispatch. In the cases of Art. 26 (4) EWSR or when the notifier as well as the consignee are responsible for the illegal traffic, a duly motivated request is only permissible when the competent authority of dispatch has given its consent.

The advantage of the request is that no Member State of dispatch or Member State of transit shall oppose the return of the waste in question.

It is recommended that the duly motivated request should be sent by the competent authority of destination together with the communication about the final results of the investigations. The request may be drawn up on the basis of the Dutch example given in **Annex D** (for EU Member States only). In particular the duly motivated request should contain the following information and explanation:

- reason why the shipped material is to be regarded as waste

- type of waste, the waste code, the quantity of waste, its assignment to a list in the Annexes II – V of the EWSR
- description of the nature of the illegal shipment in accordance with Art. 26 (1) EWSR
- period in which the shipment took place
- description and the address of the facility where the waste is stored
- producer of the waste or other responsible person / company with name and address
- carrier with name and address
- reason why the shipment is illegal
- a request to the competent authority of dispatch to ensure that the notifier or, if necessary, the competent authority itself takes back and carries out the disposal or the recovery of the waste in an environmentally sound manner.

5. The action phase – application of Art. 26 (2), (3) and (4) EWSR

5.1 General remarks

Art. 26 EWSR specifies an obligation of the Member State to ensure that the person/company responsible for the illegal shipment disposes of or recovers the waste in question in an environmentally sound manner in the country of dispatch or destination or in a third country. If the responsible person/company does not fulfil the obligation the Member State itself takes over the responsibility and carries out the necessary measures. Under this arrangement it is guaranteed that the negative results of the illegal shipment for the environment will be avoided.

Art. 26 EWSR determines the measures to be carried out according to the attribution of responsibility. However the most common case of an illegal shipment, that the notifier / producer / carrier **and** the consignee are responsible, is not explicitly regulated by the EWSR.

Generally the competent authority is obliged to apply Art 26 EWSR. When wastes have been shipped without notification it is not permissible to render these shipments legal by their retrospective notification. However it should be considered that in minor cases of illegality, Art. 26 (1) (d) EWSR, an obligation for the notifier to take back the waste could be deemed to be excessive. A subsequent correction may be made in the following cases in favour of companies which have violated the EWSR unintentionally:

- if the amount of waste notified is exceeded

- if the shipment period is exceeded
- if the transport packaging does not meet the requirements of health and safety regulations
- if the notification or movement document does not accompany the transport, but they exist.

The respective competent authorities must agree on the necessary measures such as subsequent notification or ensuring that proper packaging of the waste will be provided in future. This shall have no effect on the application of provisions which sanction the infringement of the EWSR or the national law.

5.2 Art. 26 (2) EWSR – responsibility of the notifier

Art. 26 (2) EWSR requires the following measures be fulfilled:

- the taking back of the waste to the country of dispatch or, if impracticable,
- alternative disposal or recovery of the waste in an environmentally sound manner in the country of destination or in a third country.

The normal case is that the responsible person/company as notifier, producer or carrier has to take back the waste to the country of dispatch. The disposal or recovery of the waste in the country of destination or in another country must be an exception.

An exception can be accepted if, for example, in the country of dispatch an adequate facility does not exist. Against that the higher expenses for taking back and disposing of the waste in the country of dispatch in comparison to the lower costs in the country of destination cannot be judged as an exception. It is the competent authority of dispatch and not the person/company responsible who has to decide if the waste must be taken back or otherwise disposed of in the country of destination or in another country.

The competent authority may exercise the following options to ensure that the waste will be taken back to the country of dispatch:

- if the person/company responsible is willing to take back the waste voluntarily the competent authority of dispatch sends to the responsible person a letter (**see form in Annex E**) which informs him about the evidence of an illegal shipment and about the obligation on the responsible person and the conditions which the responsible must respect to take back the waste.

- If the responsible person/company refuses to take back the waste the competent authority of dispatch communicates to the responsible person an official order to take back the waste and to recover or dispose of the waste in an adequate and authorized facility in the country of dispatch. The order contains a short term for the responsible person to fulfil his obligation and informs him that in case of non-compliance the competent authority will order another company to carry out the return of the waste and its recovery or disposal, and that the responsible person will be charged with the expenses of that other company (**see format in Annex F**). If the responsible person/company does not comply with the order the competent authority itself takes over the responsibility, arranges the return and the disposal of the waste and charges the responsible person with the expenses. If a notification and a financial guarantee exist the competent authority can use the guarantee to pay the expenses.

To return the waste into the country of dispatch or to recover/dispose of the waste in a third country a notification procedure must be carried out. Art. 26 (2) EWSR gives no indication to which authority the notification documents have to be sent. Considering the meaning of the provision, the return of the waste should be notified to the competent authority of destination where the waste is stored. In the cases of Art. 3 (8) or Art. 6 (8) EWSR the competent authority of dispatch sends the documents submitted by the notifier to the competent authority of destination which involves the competent authorities concerned.

The return of the waste; or alternatively the recovery/disposal, shall be monitored by the competent authorities concerned who should jointly arrange a mutual information exchange about the completed return and the final disposal of the waste.

The EWSR states that all the measures mentioned above shall be completed within 30 days from the time when the competent authority was informed of the illegal traffic. This short deadline is likely to be met when the responsible person/company voluntarily takes back the waste. If an official order must be sent to the responsible who refuses to fulfil his obligations it will be rather difficult, if not impossible, to respect the term. In this case the competent authority of dispatch informs the competent authority of destination about the reasons for the non observance of the term and proposes to extend the term for a certain period. The competent authority of destination should agree to the extension of the term if the request is reasonable.

Special problems arise for the competent authority of dispatch when, for instance, the responsible person/company is not resident in the country of dispatch or when the company goes bankrupt or is liquidated. In such cases responsibility may fall to the competent authority of dispatch to arrange for the proper return or alternative disposal of the illegal shipment, with the agreement of the competent authority of destination.

5.3 Art. 26 (3) EWSR – responsibility of the consignee

According to Art. 26 (3) EWSR the competent authority of destination shall ensure that the waste in question is disposed of in an environmentally sound manner by the consignee or, if impracticable, by the competent authority itself within 30 days from the time it was informed of the illegal traffic (**Annex C**).

The principles mentioned in No. 5.2 in this chapter are relevant for this paragraph too. A notification procedure does not take place.

5.4 Art. 26 (4) EWSR – no responsibility for the notifier or the consignee

Where responsibility for the illegal traffic cannot be imputed to either the notifier or the consignee, the competent authorities shall cooperate to ensure that the waste in question is disposed of or recovered in an environmentally sound manner. This situation occurs when the investigations and assessments are extremely difficult to conduct and when it is not possible to collect evidence to attribute the responsibility to the notifier or the consignee.

The consequence is that the competent authorities have to bear the expenses of the effects of the illegal shipment. Therefore they must cooperate to come to an agreement to guarantee a recovery/disposal of the waste in an environmentally sound manner reducing the expenses to an adequate limit. The agreement may include:

- identification of the type, amount and designation of the waste and the identification of the storage site
- selection of the country and the waste facility where a recovery or disposal of the waste can be carried out in an environmentally sound manner at reasonable costs
- identification of the necessary expenses for packaging, loading, transport, insurance and recovery or disposal of the waste

- sharing of all costs to be borne by the countries of dispatch and destination and determination of the share which each party has to pay
- selection of the company which arranges the necessary measures
- mutual information sharing about the completion of the recovery/disposal
- further collaboration and exchange of information if new facts about the illegal shipment will come to the attention of one of the competent authorities. When later an attribution of the responsibility will be possible the responsible party should be charged with the expenses borne by the competent authorities.

5.5 Responsibility of the notifier / producer / carrier and the consignee

The situation which presents the most common form of an illegal shipment is not explicitly regulated by the EWSR. Therefore the competent authorities involved are obliged to come to an agreement to find a common solution which guarantees the elimination of the damaging consequences of the illegal shipment in an effective manner. The solution which is the most effective is dependent to a large extent on the particular circumstances of the isolated case. In this manual only some indications for finding a common effective solution can be presented.

When a notification exists and a financial guarantee has been provided by the notifier the competent authority of dispatch should oblige the notifier to take back the waste. The authority has the right to use the financial guarantee to pay the expenses incurred by a company which was ordered by the authority to fulfil the taking back obligation, if the notifier is not willing to return the waste to the country of origin.

Also in many cases of an illegal shipment without a notification it is effective to charge the producer or the carrier with the obligation to take back the waste. However there is a lack of effectiveness when the competent authority of dispatch finds out that the responsible person or company is insolvent, has gone bankrupt or the company has been liquidated. Before this authority takes over the responsibility it is legitimated and justified that the competent authority of destination obliges the consignee to recover or to dispose of the waste in question in an environmentally sound manner in a facility in the country of destination or, if impossible, in the country of dispatch or in another country.

If this solution also fails, the competent authorities must find a common agreement to decide which authority takes the lead to arrange the recovery or disposal and how the expenses should be shared. To find a satisfactory solution in these cases it is necessary to fall back upon the principles of the regulations in Art.26 (2), (3) and (4) EWSR.

5.6 Criminal proceedings and informing Interpol

The competent authorities in the countries of dispatch and destination should agree which authority will be responsible for the written report and prosecution in respect of the infringement and which authority informs the National Central Bureau of Interpol in Lyon by sending the Interpol ECO Message (see **Annex G**). Following the criminal proceedings or completion of other enforcement measures the competent authority responsible shall inform the other competent authorities about the outcome of the proceedings.

III Official measures on illegal shipments during transport

1. General remarks

During transport inspections authorised officers can stop and check vehicles/ships. They can take samples and if necessary send back transports. These officers should have suitable communication equipment (for example a mobile) to contact the competent authorities concerned. A digital camera, a portable copier and appropriate sampling equipment are also recommended. For more information on how to carry out transport checks see the TFS manual on transport checks. It is also recommended that inspecting officers use the “Transport Inspection Report Form” (see **Annex H**) and inform all competent authorities immediately.

When an illegal shipment is detected, the handling of the case may differ depending on whether or not the shipment has been notified. In some cases it may not be necessary to resort to formal enforcement action. Sometimes the responsible company prepares the return of shipment immediately and on a voluntary basis. If the shipment cannot be returned immediately, it must be secured and appropriate safety measures have to be taken.

In cases of violation of other traffic regulations (e.g. ADR, etc.) the competent authorities for the enforcement of that legislation should be informed.

2. Inspection of the shipment (investigation phase)

Below are some points that can be covered during an inspection.

- Checking accompanying documents
- If available the checking may include:
 - Notification document
 - Movement document
 - Decisions of the competent authorities
 - Consignment note
 - Weight cards
 - CMR forms
 - Analysis documents, safety data sheets etc.
- Checking the load
- Receiving an impression by
 - visual observation of the composition of the waste
 - visual observation of the percentages of the various components of the waste material

It is recommended that photographs of the load are taken with a digital camera as in many cases it facilitates the task of the competent authority in the country of dispatch in judging the nature of the load if photographs can be e-mailed immediately.

The safety of the inspection team, the public and the environment must take precedence at all times. The necessity to take samples should be considered in each individual case and depends on many factors. If sampling is essential, ensure that it is as representative as possible.

The following information might be useful in uncovering illegal shipments:

- Place of loading
- Producer / Carriers of waste
- Broker/ Holder of the waste
- Consignee (initial destination)
- Final destination

If the inspection raises suspicions, if some documentation is not available or the inspection can not be completed within a short period of time, it is recommended that the competent authority of the country of inspection informs the company directly involved (as far as known) about the transport being held by fax.

An example of such a fax is shown in **Annex I**.

3. Further Procedures

3.1 The shipment is not illegal

When the shipment is considered not to be illegal, it may be released. If the company has been sent a fax regarding the shipment being held (**Annex I**), it is necessary to send a fax with the outcome (“no violations”), (**Annex J**).

3.2 The shipment is illegal

When the shipment is illegal, it may require securing.

The following situations are examples where the shipment may need to be secured:

- the driver intends to escape
- the identity of the parties is unclear (no documents)
- the vehicle is leaking
- presence of extremely hazardous waste, possibly detrimental to the environment (PCB etc.)
- difficult working conditions such as darkness or severe weather, rendering samples impossible
- outside the working hours of the competent authority in the country of dispatch.

The identity of the vehicle and its load should always be established.

It is important to try to seal the vehicle (in the case of tank trailers as best one can) or have it sealed by the nearest customs office.

Complete a preliminary report concerning an illegal shipment as far as possible and inform the competent authority in the country of dispatch by sending the Preliminary Investigation Form as shown in **Annex K** (for transport situations).

This is essential to ensure that the illegal shipment can be returned to the country of dispatch as soon as possible, in accordance with Information Sheet 1 (Final) as agreed by the Correspondents' meeting in Brussels on 26-09-96 (see **Annex A**).

The form, completed as far as possible, should then be sent by fax or email. This involves the competent authority that discovered the illegal shipment making a proposal to solve the problem by completing the corresponding section on the form.

4. Outcome of the investigations and the corresponding procedure to be followed

The action to be taken by the competent authorities and the procedure to be followed depends on the situation. These situations are discussed below. The authority which discovered the illegal shipment should request the agreement of the other competent authorities by sending the completed format of **Annex K** (Final results). This report requires signing by all the competent authorities involved before release of the shipment, rectifying the situation or a voluntary return.

4.1 Shipment is illegal and discovered by the country of transit

According to the competent authority of transit a notification is required. The competent authority of transit then contacts the competent authority of destination, informing it of the shipment and its status by completing the form in **Annex K**. After agreement between the competent authorities, the shipment will be released and the competent authority of the anticipated country of destination will take adequate measures concerning the shipment. Only in cases of direct risk of damage to the environment will the transport be held in the country of transit.

If the (anticipated) competent authority of destination does not agree with the release of the shipment to its destination, it sends a duly motivated request to the competent authority of dispatch, if required. All competent authorities will cooperate to solve the case.

4.2 Shipment is illegal, but the situation does not require the return of waste in accordance with Article 26

The shipment is discovered in the country of destination or in the country of transit.

Rectification can be considered in the following cases:

- Notified waste quantity exceeded by a limited amount
- No notification or movement document accompanying the shipment

The competent authority in the country of destination/transit that discovered the shipment should complete the form in **Annex K** and send it to the competent authorities involved. When these authorities agree to take no further action, (by signing off the appropriate section of **Annex K** and returning it to the inspecting competent authority) the transport will be released.

4.3 Shipment is illegal, but the company responsible is willing to return it voluntarily

The competent authority in the country of destination/transit that discovered the illegal shipment should complete the form in **Annex K** and request the competent authority of dispatch to agree to the proposal made on the form. The shipment can be released after a notification has been authorised.

According to Information sheet 1 (**Annex A**), the shipment must be returned as soon as possible and the notification procedure must be kept as short as possible.

Should the competent authorities involved agree to it, a simplified notification procedure may be followed. A notification form must be completed and sent to the competent authorities concerned.

4.4 Shipment is illegal. The company responsible is unknown or is unwilling to return the waste voluntarily (motivated request phase)

In this case the shipment must be secured and stored in the country of the competent authority that discovered the shipment. Hereafter the procedures described in chapter II apply.

This will most often result in a duly motivated request, addressed to the country of dispatch, of disposal in an environmentally sound manner, as agreed upon by the competent authorities.

5. Completion of the return of the transport (action phase)

Should there be a risk of losing the shipment, the competent authority in the country of destination/transit can supervise the shipment until arrival at the border of the country of dispatch. The competent authority in the country of dispatch can supervise the shipment from that border to the place of origin / place of unloading.

As soon the shipment has arrived and has been accepted, at the point of arrival the competent authority in the country of dispatch should inform the other authorities involved that the shipment has been successfully returned.

The competent authorities should agree which of them will report an offence to the police or an administration offence. Concerning the ECO message, see No. 5.6 of chapter II.



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL XI
 ENVIRONMENT, NUCLEAR SAFETY AND CIVIL PROTECTION
 Directorate E - Industry and environment
 XI.E.3 - Waste management

Brussels, 26.9.96
 D (96)

INFORMATION SHEET N° 1/FINAL

REGULATION (EEC) N° 259/93 ON SHIPMENTS OF WASTE

Subject: **ILLEGAL TRAFFIC; take back request by CA (=competent authority) of destination in case of different interpretation as to classification of waste (green vs. amber/red/unlisted) or as to the distinction waste vs. product**

Problem: interpretation/implementation
general/specific
encountered by competent authorities/economic operators

Relevant Article(s) of Reg. 259/93: Article 26.2

Outline of the problem:

A shipment of a substance is not notified because it is shipped as a product or as green list waste for recovery, while the CA of destination/transit is of the opinion that it concerns a waste on the amber or red list (or unlisted). Can the CA of destination/transit require that the notifier, alternatively the CA of dispatch, take back the waste because the Regulation - according to the interpretation of the CA of destination - has been violated?

Discussed at correspondents meeting of: 07.11.1995 and 06.06.1996 (approved)

Common understanding of correspondents:

- * The exporter of a substance should check the status of that substance in the country of destination/transit before dispatching. The contract between the exporter and the importer should point this out and cooperation between the CA's involved should take place in such cases.
- * The CA of destination/transit is allowed to block shipments which are not in compliance with the provisions of Reg. 259/93 and it is desirable that the waste is returned as soon as possible to the country of dispatch.
- * The notification procedure for the return of the waste should be shortened as much as possible with the cooperation of all competent authorities involved.
- * In the intermediate period the waste should be safely stored by the CA of destination/transit and which should receive compensation for this from whoever it is decided was responsible for the illegal shipment.

* If after investigation it turns out the shipment was legal, the country of destination would take the waste back again.

Necessity/possibility to take into account in future revision of Reg. 259/93:yes/no

Introduce the suggestions under "common understanding" into Article 26.2.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL XI
ENVIRONMENT, NUCLEAR SAFETY AND CIVIL PROTECTION
Directorate E - Industry and environment
X1.E.3 - Waste management

Brussels, 25.5.98
D (98)

INFORMATION SHEET N° 8/FINAL

REGULATION (EEC) N° 259/93 ON SHIPMENTS OF WASTE

Subject: **ARTICLE 1(3)d:** procedure to be followed after a Member State has decided to control a waste listed on Annex II pursuant to Article 1(3)d (or in case competent authorities disagree on the correct classification of the waste)

Problem: interpretation/implementation
general/specific
encountered by competent authorities/economic operators

Relevant Article(s) of Reg. 259/93: Article 1(3)d

Outline of the problem:

Competent authorities (CAs) sometimes require a shipment to be notified and controlled, even when it concerns a waste which is listed on Annex II destined for recovery, while other CAs do not (case of Article 1.3.d). Alternatively, CAs can disagree on the correct classification of a certain type of waste with the corresponding effect on the procedures to be followed. In such a case where different CAs consider different control procedures should apply, which is the procedure to be followed?

Discussed at correspondents meeting of: 06.06.1996, 12-13.6.97, 1-2.12.97
(approved)

Common understanding of correspondents:

* If it becomes apparent that CAs differ of opinion as to the correct procedure to apply to a specific shipment due to different classification of the waste in question, the CA which considers a (more stringent) control procedure should apply, should first of all contact the other CA(s) to explain its views, discuss and examine a mutually acceptable solution.

* If it is decided that indeed one of the control procedures laid down in Reg. 259/93 shall apply, the notifier shall be required to notify all CAs concerned in accordance with the procedure decided upon. If the CAs cannot agree, in principle the most stringent procedure shall apply.

..

* In the case where all CAs involved in a shipment agree that the waste is listed on Annex II, a unilateral decision to control a shipment of such waste destined for recovery can only be based on Article 1.3.d. This provision can be invoked in exceptional, ad hoc cases, for environmental or public health reasons. Any recurrence to this provision has to be notified immediately to the Commission and the other Member States, stating the reasons for this decision.

Consider in future revision of Regulation 259/93: yes/no

Need to specify what to do and which procedure to apply in case different CAs consider that different control procedures should apply, either on the basis of Article 1.3.d or due to the fact that CAs disagree on the classification of a waste.

Preliminary*/ Final* investigation form (* delete as applicable)**Illegal shipment detected at storage facility**

operator/company: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

adequate environmental licence for storage yes / no*

responsible CA for the facility: _____

type of storage (outside or inside, open or closed containers etc.): _____

existing risks for environment/health yes / no*

If yes, explain: _____

Documentation enclosed customs document bill of lading safety data sheet weighing slips business journal invoices contract disposal/recovery* CMR/ terms of delivery* TFS-documents other documents: _____**Waste type**

characteristics solid/liquid/gaseous WSR-code: _____

dangerous goods yes / no* Y/H-number: _____

photographs yes / no* EURAL-code: _____

samples taken yes / no* analysis yes / no*

packaging: _____ amount: _____

identification (container number etc): _____

Origin of the waste

producer/disposer*: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

Intended final treatment

company: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

adequate environmental licence for treatment yes / no*

responsible CA for the facility: _____

intended treatment: _____ code : _____

Party responsible for illegal shipment

company: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

Type of Illegal Shipment:

missing article 11 information

notification is required but has not been given, because: _____

shipment is not in accordance with the notification, because: _____

shipment is not in accordance with national law, because: _____

other: _____

Measures taken:

Southwest Inspectorate for Housing, Spatial Planning and the Environment
Mailing address:

PO Box 5312, 2280 HH Rijswijk, the Netherlands

Annex D

Address:

Huis te Landelaan 492, Rijswijk, the Netherlands
Tel: +31 (0)70 -3985811, Fax +31 (0)70 -3985850

REGISTERED MAIL

Handled by: drs.P.J.W. van Oosterhout
Extension no.: +31 (0) 70-3985824

VI/ZW-553/EvD

25

February 2002

Motivated request for return of waste materials, contravention of Council Regulation (EEC) on the supervision and control of shipments of waste within, into and out of the European Community (Regulation 259/93).

Dear Sir,

On 23 November 2000, staff members of the Inspectorate for Housing, Spatial Planning and the Environment found a consignment of waste materials in 29 containers in Rotterdam, the Netherlands. The consignment proved to befrom the State of I consider this consignment as (hazardous) waste material. It turned out that the [company name] from [place], [state] was responsible for bringing the waste products into the Netherlands. This consignment of waste materials was transported in violation of the European Regulation on the supervision and control of shipments of waste within, into and out of the European Community (Regulation 259/93).

On [ddmmyy], I issued a written request to the company to return the waste materials to their State of dispatch. However, up to this day, the waste materials have not been returned. I therefore request that you take immediate administrative action to ensure that the aforementioned waste is returned to the [state of dispatch], either by the company or the government body responsible. In addition, you are requested to keep me informed of the process.

Inspection of [ddmmyy]

On [ddmmyy] respectively, staff of the [National Transport Inspectorate] and [the Inspectorate for Housing, Spatial Planning and the Environment] carried out an inspection concerning a consignment of 29 containers in the Rotterdam harbour district.

The containers were loaded with [describe]. I consider this materials waste because [.....]

Further inspection has revealed that these waste materials were brought to the Netherlands via transfrontier shipment. As there is no evidence of useful application, I assume that the waste materials were destined for [disposal/....] [R/D code] as mentioned in annex [IIA/IIB] (96/350/EC) of directive 75/442/EEC as changed by directive 91/156/EEC.

[bij nuttige toepassing] This waste is [not] mentioned in annex [II, II, IV] of EC regulation 259/93/EEG [under code..]

[in case of third countries article 17] In case of the transfrontier shipment of waste mentioned in annex II (green list) to [mention state] notification by procedure [annex IV (red list)/artikel 15 (verwijdering) is nessecary because of EC regulation [1547/1999 or 1420/1999].

According to our information and with regard to the transport of such waste materials, [company name, adress, state], is to be considered as the notifier, as referred to in article 2 under g of the European Regulation on shipments of waste (EEC/259/93).

Violation

Transporting of these waste materials to the mentioned destination for the purpose of [disposal/...] requires that [the Ministry of Housing, Physical Planning and the Environment] be notified and/or its permission granted. It was found that no such notice was given and subsequently, that no permission was granted. The company in question has therefore violated article 26 (1) of the European Council Regulation on shipments of waste (Regulation 259/93).

Rectification of violations

I have requested [name company] in writing (by letter ddmmyy, ref) that they return the waste materials voluntarily to their State of dispatch, the state of [...]. You have received a copy of this letter. Up to this day, the aforementioned company has not returned the waste materials to their State of dispatch.

Request to institute administrative proceedings, if deemed necessary

With reference to article 26 (2) of EC Regulation 159/93 I request that you take administrative action to ensure that the waste materials in question are returned to the state of [...] as soon as possible, either by the [name company] or the government body responsible.

If this proves not to be possible, then I request that you see to the disposal or recycling of the waste materials in an alternative environmentally responsible way.

I request that you inform me of your viewpoint as soon as possible and keep me informed of any progress.

Further information

For further information regarding the contents of this letter or the progress of this case, please contact [...], members of my staff.

I hope to have provided you with the information you require and thank you in advance for your cooperation in this matter.

Yours sincerely,

[company name]
[address]
[city]

[date]

[reference nr.]

**COUNCIL REGULATION (EEC) No 259/93
CONFIRMATION OF RETURN OF SHIPMENT OF WASTE TO THE COUNTRY
OF ORIGIN**

Dear Sir or Madam,

On [date] at approximately [time], [insert job title e.g. **Enforcement Officers**] of the [inspecting authority] came across a consignment of waste at [name and address]. This consignment, having come from [country of dispatch], can be described as [type of waste]. It was also discovered that your company brought these waste materials into [country of destination] for [aim (D or R operation)]. I am writing to provide you with some information about this consignment of waste materials.

Legal position

Rules relating to the transfrontier transport of waste materials are included in EC Regulation 259/93 on the supervision and control of the transport of waste materials within, into and out of the European Community (referred to below simply as ‘the Regulation’).

This Regulation distinguishes between waste materials intended for recovery (e.g. recycling) and those intended for final disposal (e.g. dumping).

Transfrontier transportation of waste materials intended for recovery is subject to the following rules:

Appendices II, III and IV of the Regulation contain lists of waste materials (the green, amber and red lists). Transfrontier transportation of waste materials intended for recovery that appear on the amber or red lists is not allowed without the consent of the competent authorities in the country of origin, the destination country and any countries through which the materials are to pass. Waste materials not mentioned in one of the lists are considered to belong to the red list. [In the Netherlands, the competent authority from whom consent has to be obtained is the Minister of Housing, Spatial Planning and the Environment.]

If no notification is made of the transfrontier movement of waste materials, this is classed as illegal traffic as defined in Article 26, clause 1, paragraph a of the Regulation. (insert details of offence in national legislation.)

Inspection on [date]: offence

With regard to the waste materials brought in by your company it can be alleged that these waste materials can be considered as listed on the **[amber list/red list/unlisted]** **[code]**.

Return shipment of waste materials

In the meantime your company [mr./mrs.....] has assured me that the waste will be returned to the country of dispatch within [...term].

In returning this shipment, you will need to notify the return to **[...authority, address and phone number]**.

I shall also be in contact with the competent authorities in the country from which the shipment was made.

Legal action

I am hereby informing you that if you do not return the waste within the stated time period that I will avail myself of my authority to take formal action by means of **[type of legal action/administrative measures]** as referred to in **[...article]** of the **[list domestic legislation]**. For this purpose I will also be in contact with the competent authorities in the country from which shipment was made.

Bringing the materials into [... country name]

If, after returning the shipment, you still intend to bring these waste materials into **[.. country]**, or to transfer them through **[... country]**, you have to notify the **[...Competent authority]**

Settlement of return shipment of waste materials

In regard to the settlement of the return shipment of the waste materials, I urge you to contact **[Mr. / Mrs....] [... name]** of the **[authority...]** at telephone **[...]**.

A copy of this letter will be sent to **(addresses)**

On behalf of the **[...competent authority]**

Yours sincerely,

Order to the notifier for the return of illegally shipped wastes by the competent authority in the country of dispatch

[competent authority]

[notifier/producer]

COUNCIL REGULATION (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community
Return of waste belonging to [company] from [place and country]

Request for return by [CA in the country of destination] from [date] [reference number]

Order for the return of waste

Dear [],

The following is ordered in respect of the return of illegally shipped waste [description, waste code] from [place and country]:

Order:

1. [company] is hereby obliged to return the following waste:

[quantity, type of waste, waste code] stored in [exact description of place of storage].
2. The following documents must be submitted to the [competent authority in the country of dispatch] by [date]:
 - an irrevocable order for the return of the waste placed with a suitable transportation company
 - complete documentation for the notification of the return in accordance with EU Regulation N° 259/93
3. The return must be effected without delay, and in any case no later than by [date].

...

4. If you fail to comply with the above-mentioned obligations at all or by the specified date, the [competent authority] will commission a third party to effect the return at your expense.

All costs incurred in connection with the return and environmentally sound disposal of the wastes shall be charged to you.

Reasons:

The [competent authority in the country of destination] wrote to the [competent authority in the country of dispatch] on [date] requesting the return of the waste.

The waste concerned is [quantity, type of waste, waste code], which is stored in [exact description of place of storage].

[Reason for the illegality of the shipment]

The shipment [description of wastes] was effected illegally within the meaning of Article 26 Section 1 [] of Regulation N° 259/93.

[Reason why the producer of the waste is responsible for its return]

Right of appeal:

INTERPOL ECO MESSAGE

WASTE PRODUCTS

RADIOACTIVE SUBSTANCES

WILD FLORA AND FAUNA

| | |
|---|--|
| <p>1) Incident type</p> <p>Operation name / UK Reference Number</p> <p>Legislation contravened</p> | |
| <p>2) Place and circumstances of discovery</p> | |
| <p>3) Date / Time of discovery</p> | |
| <p>4) (a) Waste Products</p> <p>Radioactive substances Endangered Flora and Fauna</p> <p>(b) Number or quantity and estimated value</p> <p>(c) EURAL- code and WSR- code</p> | |
| <p>5) Identity of person(s) involved</p> <p>a) date of arrest (if applicable)</p> <p>b) family name (maiden name)</p> <p>c) first name(s)</p> <p>d) sex</p> <p>e) alias</p> <p>f) date and place of birth</p> <p>g) nationality</p> <p>h) address</p> <p>i) information contained in passports or ID</p> <p>j) occupation</p> <p>k) position in one of the companies listed in 6 below, if any</p> <p>l) other information</p> | |

Transport inspection report form

| | | |
|--|--|-------------------------|
| Country | : | |
| Authority | : | |
| Contact person | : | |
| Field inspector | : | |
| Tel. number | : | |
| Fax. number | : | |
| Date | : | |
| Date of the transport inspection:/../.. | | |
| Location of the inspection: | | |
| Transporter 1: | | |
| Address: | | |
| Location: | | |
| Name of the lorry driver: | | |
| Number-/identification plate: | | |
| Transporter 2: | | |
| Address: | | |
| Location: | | |
| Name of the lorry driver: | | |
| Number-/identification plate: | | |
| CHECK OF TFS AND OTHER DOCUMENTS | | |
| TFS document number: | | |
| Copy of authorities' document | : | attached / not attached |
| Copy of transporters' document | : | attached / not attached |
| Check of transporters' documentation: | | |
| - | Are the TFS documents unknown to you/vice versa | |
| - | Is the description of waste on the TFS document in accordance with the actual composition of the waste which is transported? | |
| - | Is the amount of waste as described on TFS-form (section 23) in accordance with the amount as described on the weighing slips? | |
| - | Is the amount and the description of the waste as described on the TFS-document and the weighing slips in accordance with the relevant items on the custom papers? | |
| - | Is the actual route in accordance with the route as mentioned on the TFS-document? | |
| - | Did you take samples? Y / N (if so: see procedure for sampling and safety procedures) | |
| NB: Send this list and accompanying documentation to the authorities of the producer, the (eventual) broker and the consignee. If these are not known, send them to the country coordinators! | | |

[company name]

[Address]

[city]

[date]

[reference.]

Re: Investigation into compliance with EC Regulation 259/93

Dear [Sir or Madam...],

On [date...] at approximately [time...] at [location...], employees of [inspecting authority...] inspected a [vehicle/ship...]. An initial inventory revealed a possible transfrontier transport of waste materials. It has also become apparent that your company, as the holder of these waste materials, is either responsible for or is otherwise involved in this transport. For this reason, I am hereby providing you with the following information.

Legal position

Rules relating to the transfrontier transport of waste materials are included in EC Regulation 259/93 on the supervision and control of the transport of waste materials within, into and out of the European Community (referred to below simply as 'the Regulation').

Control dated [date...] : investigation and consequences

Officers of the [inspecting authority...], in collaboration with employees of the [competent authority...], are currently conducting an investigation into the composition of the cargo contained in the previously mentioned mode of transport as well as the accompanying documents. While awaiting the results of this investigation, it is not permitted to move the means of transport other than as indicated by the supervisory officers of the [inspecting authority...].

I will be in contact again as soon as the results of this investigation become available.

Information

For additional information, please contact [...] on telephone number [...] or [Mr./Mrs. Name...] of the [competent authority...] on telephone number [...].

I trust that I have provided you with sufficient information.

A copy of this letter will be sent to [...].

On behalf of ...

Yours faithfully,

:
[company name]
[Address]
[city]

[date]

[Reference nr.]

Release of transport following investigation

Dear Sir/Madam,

In my letter dated [...] (reference no. ...), I informed you of an investigation that was being conducted into the composition of the cargo contained in a [truck nr.../ships name.../container nr...]. This letter is to inform you of the results of that investigation.

Control dated: no offences

Following an investigation into the composition of the cargo and its accompanying documents and after acquiring intelligence from other sources, it has become clear to my employees that no offence has been committed in regard to the [list domestic legislation] or to Council Regulation EEC No. 259/93 on the supervision and control of the transport of waste materials within, into and out of the European Community .

I hereby consider this investigation closed and grant you permission to continue onward with this transport (in compliance with the legal provisions).

Information

For additional information, please contact [...] on telephone number [....] or the officer in charge of the [competent authority...], [Mr./Mrs....] on telephone number [....].

I trust that this information is sufficient.

A copy of this letter will be sent to [...]

On behalf of [.....],

Yours sincerely,

Preliminary*/ Final* investigation form (* delete as applicable)**Illegal shipment detected during transport**

discovered at: _____ date: _____

By: Mr./Mrs.* _____ of: _____

transporter: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

transport: inland waterway/road/sea/rail/other* identification: _____

Documentation enclosed customs document bill of lading safety data sheet weighing slips business journal invoices contract disposal/recovery* CMR/ terms of delivery* TFS-documents other documents: _____**Type of waste**

Characteristics solid/liquid/gaseous WSR-code: _____

dangerous goods yes / no* Y/H-number: _____

photographs yes / no* EURAL-code: _____

samples taken yes / no* analysis yes / no*

packaging: _____ amount: _____

identification (container number etc): _____

Origin of the waste

producer/disposer*: _____

address: _____

contact person: _____ country: _____

phone number: _____ fax number: _____

Possibilities according to the manual of Illegal Shipments:

• **discovered within country of transit**

CA of destination agrees with release of shipment name:

signature:

CA of destination does not agree with release of shipment and will send a duly motivated request to the CA of dispatch or will dispose of the shipment in an environmentally sound manner.

name:

signature:

• **illegal situation is reparable**

agree with reparation: (name and signature)

Country of dispatch Country of transit Country of destination

disagree with reparation: (name and signature)

Country of dispatch Country of transit Country of destination

• **responsible company is willing to return shipment voluntarily**

agree with return: (name and signature)

Country of dispatch Country of transit Country of destination

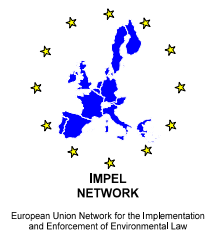
Disagree with return: (name and signature)

Country of dispatch Country of transit Country of destination

Measures taken:

shipment secured address: _____

place: _____



TFS

January 2005

A Practical guidance for
Managing illegal shipments of waste