



European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL/TFS

A Practical guidance for

Managing illegal shipments of waste

December 2008

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Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is Gulledele 100, Bruxelles, B-1200 Belgium.

The Association is the continuation of the informal network, which was commonly known as the IMPEL Network.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of environmental legislation, with special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law, and, as such, it is a unique network. During the previous 14 years IMPEL has developed into a considerable, widely known informal organisation, which is driving the development of the best practice on the ground. This work has resulted in IMPEL and its activities being mentioned in a number of legislative tools, e.g. 6th Environment Action Programme and Recommendation on Minimum Criteria for Environmental Inspections (2001/331/EC)

In accordance with the 6th Environment Action Programme, the core of the IMPEL activities concerns the capacity building, minimum criteria for environmental inspections, exchange of information and experiences on implementation, enforcement and international enforcement collaboration on existing European environmental legislation, development of common views of MS Inspectorates on the coherence and practicality of current EU legislation and on commenting issues of practicality and enforceability at an early stage in the development of new EU legislation, before a proposal is formally tabled.

Information on the IMPEL Network is also available through its website at:

<http://europa.eu.int/comm/environment/impel>

Title report: A practical guidance for managing illegal shipments of waste	Number report: 2007/3
Project Manager: Mr E. Rainer Werneburg (Germany) Project Group Members: Mrs Katrin Cordes (Germany), Mr Johan Huijbregts (The Netherlands), Mrs Jana Samkova (Czech Republic)	Report adopted at IMPEL Plenary Meeting: December 2008 in Clermont-Ferrand Number of pages Report: 46 Annexes: 24
Executive Summary: <p>In 2002 the IMPEL TFS network presented a manual for the return of illegal shipments of waste, which has been revised in 2005. With the present revision the manual has been adapted to the provisions of the new WSR.</p> <p>This manual provides practical guidelines for competent authorities that suspect that an illegal waste shipment has taken place.</p> <p>Chapter I of the guidance describes the legal background with regard to illegal waste shipments.</p> <p>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.</p> <p>In Chapter III information on waste shipments discovered during transportation is presented. Furthermore, integrated parts of the manual are four flowcharts which show in a step-by-step manner how the procedures may be conducted beginning at the preliminary investigation and proceeding up to the actions phase.</p> <p>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. Apart from the competent authorities the manual can be partly used by other authorities carrying out transport controls.</p>	
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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 enforcing Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, hereinafter referred to as Waste Shipment Regulation (WSR). 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 are often severe damage to the soil, the ground water and other environmental interests connected with high risks for 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 expense can be spared if the wastes are not recovered or disposed of in waste installations with a high technical standard. Instead, they are transported to 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. Key findings from the IMPEL TFS projects “Seaports” and “Verification on waste destination” have stated that up to 50 % of the transports leaving Europe via seaports are illegal. Especially illegal exports of car wrecks and old vehicles to Africa, of electronic waste to Asia and Africa and municipal waste to the Czech Republic, Poland and Hungary have shown the necessity that the competent authorities of the countries concerned must work closely together to resolve these problems.

Article 24 WSR sets out the framework for the detection, prevention and control of these illegal activities. Article 50 (5) WSR determines the obligation of the EU Member States to cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. 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 and of Romania and Bulgaria at the beginning of 2007. Furthermore cooperation with police, customs and other regulatory authorities is of central importance.

In 2002 the IMPEL TFS network presented a manual for the return of illegal shipments of waste, which has been revised in 2005. With the present revision the manual has been adapted to the provisions of the new WSR.

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 24 WSR,
- to present recommendations for the Commission which may adopt guidelines for the cooperation of competent authorities with regard to illegal shipments according to Article 59(1)(e) WSR.

Therefore it is desirable that all Member States will accept the manual, and all competent authorities will use it.

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 manual and to use its forms and standard letters. The authorities of the Member States must respect the opinion of this authority.

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 the legal background is described with regard to illegal waste shipments in chapter I. The new WSR contains various new provisions on this item which have to be respected by the inspectors of the competent authorities, and which determine their investigations and their decisions.

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,
- actions phase.

At the end of each section a flow chart shows in a step-by-step manner how the procedure may be conducted beginning at the preliminary investigation phase and proceeding up to the actions phase. Especially in the section “actions phase” the provisions of Article 24(2) – (5) WSR are presented in detail because the competent authorities must come to an agreement about the application of these provisions by the end of the investigations. It is obviously easier to come to an agreement if the competent authorities express a common interpretation regarding the provisions of Articles 24 and 25 WSR. Therefore the manual contains recommendations for the interpretation and application of these provisions.

In Chapter III, information on waste shipments discovered during transportation is presented. This chapter is closed by another flowchart.

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.

Apart from the competent authorities, the manual can be partly used by other authorities carrying out transport controls (**Chapter III, Flowchart 4, Annexes G1, G2, H and I**).

2. Legal background

Transfrontier shipments of waste are subject to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (WSR). Furthermore, based on Article 37 WSR, the Commission has adopted the Regulation (EC) No. 1418/2007 of 29 November 2007 concerning the export to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply. The term ‘illegal shipment’ is defined in Article 2(35) WSR. Article 24 WSR contains different procedures and measures to be carried out by competent authorities if a shipment is illegal, and Article 25 WSR sets up rules for the division of costs in these cases. Furthermore, special details about illegal shipments are dealt with in various other provisions of the WSR. Therefore the most important provisions are presented and commented in this chapter.

2.1 Article 2(35) WSR (text in Annex A)

This provision establishes a legal definition of the term 'illegal shipment' and presents seven different cases in the paragraphs (a) – (g) which are commented as follows:

- (a) A shipment of waste without notification to all competent authorities concerned has to be considered as illegal if a violation against an obligation to notify has taken place. These obligations are set out in Article 3 and in Article 37 WSR for export of green listed wastes. A shipment is illegal if the notifier de jure has not submitted a prior written notification to the competent authority of dispatch or, if the notification has not been submitted to the all competent authorities concerned (the notification has not been properly carried out).
- (b) A shipment which requires a notification has to be classified as illegal if the competent authorities concerned have not given their written consent with or without conditions for the planned shipment pursuant to Articles 9 and 10 WSR. Only to the competent authority of transit is assigned the power to use the construction of 'tacit consent' if no objection is lodged. If one consent is missing, the shipment is illegal.
- (c) A notification with the requested contents exists, but, at least, one consent has been obtained from the competent authorities concerned through falsification, misrepresentation or fraud. These illegitimate actions can have reference to details in the notification and movement documents, to the contract according to Article 5 WSR and to other documents which are required for submitting the notification. The competent authority has been caused by the conduct of the notifier to give its consent to the notification.
- (d) Every discrepancy between details in the notification and movement documents and the actual shipment effected leads to its illegality.

Examples:

- Notification has taken place but the composition of the waste is not as notified.
- The amount transported clearly exceeds the amount indicated in the movement document.
- The total quantity transported exceeds the maximum quantity notified.
- The numbered movement document which accompanies a shipment has already been used.

- Transfer of the waste to a recovery or disposal facility other than indicated in the notification document.

In exceptional cases the application of Article 24 WSR can cause unjustifiable and disproportionate results. Therefore it has to be identified under which conditions it is possible to permit the non-applicability of Article 24 and to agree that the illegal shipment can be completed as intended. Further details are laid down in **chapter II 4.1**.

- (e) A shipment of waste may not be effected in a way, which results in recovery or disposal in contravention of Community or international rules. These are rules containing requirements for recovery or disposal in an environmentally sound manner, for instance Directive No 2006/12/EC on waste, replaced by Directive No. 2008/98/EC, directives of the EC which refer to special waste streams or further international rules mentioned in the introduction of the WSR. A shipment may be illegal, even if all competent authorities concerned have given the consent to the notification.
- (f) The competent authority has to ensure that the shipment will be effected in accordance with the imports and exports prohibitions laid down in Articles 34, 36, 39, 40, 41 and 43 WSR.
- (g) This provision states that the green listed wastes mentioned in Article 3 (2) WSR which are assigned to Annexes III, IIIA or IIIB of the Regulation, as well as small quantities of waste destined for laboratory analysis according to Article 3(4) WSR come within the scope of application of the Articles 24 and 25 WSR.

Wastes destined for recovery operations pursuant to Article 3 (2) WSR which are not listed in the above mentioned Annexes are subject to the procedure of prior written notification and consent according to Article 3(1) and Article 4 WSR. Their shipment without notification is illegal. An illegal shipment exists in the same manner if the special requirements of Article 3(4) WSR are not kept, for instance the waste is not destined for laboratory analysis or the maximum quantity of 25 kg is exceeded. Furthermore a waste shipment has to be considered illegal if a discrepancy is discovered between the actual shipment effected and the contents of the document listed in Annex VII of the WSR or if the document does not accompany the transport. Considering that every deviation leads to the illegality of the shipment the competent authorities concerned should examine if in exceptional cases the applicability of Article 24 WSR can be excluded. Further details are laid down in **chapter II 4.1**.

2.2 Article 24 WSR (text in Annex A)

Article 24 WSR describes in a detailed manner the actions and measures to be taken by the competent authorities concerned if a case of illegal shipment of waste is detected. The paragraphs of the provision distinguish different cases according to the responsibility for the illegal shipment and are described in the following sections of this manual:

- Article 24(1): chapter II 1 – 3
- Article 24(2) –(5): chapter II 4
- Article 24(7): chapter II 2.2.3
- Article 24(9) chapter II 4

2.3 Article 25 WSR (text in Annex A)

With reference to Article 24(2), Article 25(1) establishes that the costs for transport, recovery and disposal and storage (from the time the competent authority of dispatch has become aware that a shipment is illegal) shall be charged with priority to the notifier de facto, the notifier de jure or other natural or legal persons as appropriate. A subsidiary responsibility is assigned to the competent authority of dispatch.

With reference to Article 24(3) WSR, Article 25(2) establishes that the costs arising from recovery or disposal, including possible transport and storage costs shall be charged to the consignee or, if impracticable, to the competent authority of destination.

With reference to Article 24(5) WSR, Article 25(3) establishes that the costs arising from recovery or disposal, including possible transport and storage costs shall be charged with priority to the notifier and/or to the consignee. If this is impracticable the costs shall be charged to other natural or legal persons as appropriate. A subsidiary responsibility is assigned to the competent authorities of dispatch and destination. It is the task of these authorities to find a common solution on the distribution of costs, e.g. the storage costs can be allocated to the consignee and the costs for repatriation and recovery or disposal of the waste to the notifier.

Article 25(4) emphasizes that the person who arranges the shipment of green listed waste pursuant to Article 3(2) and (4) WSR shall be subject to the same obligations as the notifier.

2.4 Other provisions

- **Article 2(14) WSR (text in Annex A)**

This provision contains a legal definition of the term `consignee`. In case of an illegal shipment of waste the obligations of the consignee are regulated in Article 24(3) and Article 25(2) and (3) WSR.

- **Article 2(15) WSR (text in Annex A)**

This provision contains a legal definition of the term `notifier` and a list of natural and legal persons legitimated to act as notifier. The original producer, the licensed new producer and the licensed collector have an equal ranking and have the power to authorise a registered dealer or broker to act on their behalf as notifier. Against that, the holder can only be notifier if the persons mentioned before are unknown or insolvent. In case of an illegal shipment of waste the obligations of the notifier are regulated in Article 24(2) and Article 25(1) and (3) WSR.

The last two sentences of Article 2(15)(a) provide special rules for the execution of the take back obligations in Article 24 WSR. The first sentence is aimed at a scenario where there has not been a notification, but there should have been and a dealer or a broker is involved. This could possibly leave the competent authority in a situation where the broker and an earlier holder of the waste argue over who is responsible for the lack of notification of the not notified shipment, while the competent authority cannot arrive at a conclusion over who has the duty to take back the waste. Without notification the competent authority may not be able to establish the responsibility of the dealer or the broker or to locate him if an illegal shipment is detected. The competent authority is more likely to be able to find the site that the waste came from. Therefore the competent authority is not obliged to choose the first option of the dealer or broker but can direct its investigations towards the original producer, the licensed new producer or the licensed collector. The second sentence is aimed at circumstances where competent authorities are in possession of a notification form and therefore have the name of the broker or dealer who is the first option to fulfil the take back obligations. If the dealer or broker should fail to fulfil the first option then the subsidiary obligation falls on the person who authorised him to act on his behalf.

- **Article 5(3) WSR** states that the contract between the notifier and the consignee for the recovery or disposal of the waste shall include obligations pursuant to Article 24(2) and (3) WSR.

- According to **Article 6(2) WSR** the financial guarantee or equivalent insurance is intended to cover costs arising in the context of cases where a shipment or the recovery or disposal is illegal as referred to Article 24 WSR.
- **Article 6(6) WSR** describes the case where the waste shipped is destined for interim recovery or disposal operations and a further recovery or disposal operation takes place in the country of destination. If the financial guarantee or equivalent insurance is released after the completion of the interim operation and the competent authority of destination does not require a new financial guarantee or equivalent insurance to cover a further shipment to a recovery or disposal facility, this authority shall be responsible for obligations arising in the case of an illegal shipment.
- According to **Article 6(7) WSR** the competent authority within the Community which has approved the financial guarantee or equivalent insurance shall have access thereto and shall make use of the funding, including for the purpose of payments to other authorities concerned, in order to meet the obligations arising in accordance with Article 25 WSR.
- According to **Article 18(2) WSR** the obligations to take back the waste or ensure its recovery in an alternative way and provide, if necessary, for its storage in the meantime, must be included in the contract between the person who arranges the shipment of waste for recovery pursuant to Article 3(2) WSR and the consignee. Concerning waste according to Article 3(4) WSR the conclusion of a contract is not required in Annex VII of the Regulation.
- According to **Articles 22(8) and 24(6) WSR** the obligations laid down in Articles 24(3) and 25(2) WSR shall apply if a facility issues a certificate of recovery or disposal pursuant to Articles 15 and 16 WSR in such a way as to result in an illegal shipment, with the consequence that the financial guarantee is released.
- In cases of exports of waste pursuant to **Article 35(3)(f) and Article 38(3)(e) WSR** these provisions provide that the contract between the notifier and the consignee shall stipulate that, if a facility issues an incorrect certificate of recovery or disposal, with the consequence that the financial guarantee is released, the consignee shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and from its recovery or disposal in an alternative environmentally sound manner.

- If a customs office from the Community discovers an illegal shipment of waste subject to an import or export, **Articles 35(6), 38(7), 42(5), 44(5), 45, 47 and 48 WSR** provide the exchange of information between the customs office, the competent authority in the country of the customs office and the competent authorities of the countries of dispatch and destination and commits the competent authority in the country of the customs office to ensure temporary detention of the waste.
- According to **Article 50(1) WSR** Member States shall lay down the rules on penalties applicable for infringements of this Regulation and shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.
- According to **Article 50(5) and (6) WSR** Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments, identifying those members of their permanent staff responsible for the cooperation. In the meantime these members have been notified by the Member States to the Commission.

II Enforcement actions relating to illegal shipments to waste sites

1. General remarks

Illegal shipments to waste sites can be detected:

- 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 Article 2(35) WSR and it also describes the different consequences of the measures laid down in Article 24(2), (3) and (5) WSR. The phases of the investigation are subdivided into preliminary investigations and further investigations. In the cases of intentional violations of the WSR, especially when shipments are not accompanied by the relevant documentation, Article 2(35) (a) – (c) WSR, 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 of the investigation phase.

Where cases of unintentional violations of the WSR occur, involving companies which routinely comply with established regulations, the investigations are simpler and can be concluded within a few days. This is because the competent authorities are likely to be in possession of the notification and movement documents, Article 2(35)(d) WSR. 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 on the application of Articles 24(2), (3) or (5) and 25 WSR at the end of the investigation phase are of great importance. Without such information exchange and cooperation 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 WSR 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 and movement documents,
- 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 WSR.

It is the main task of the competent authority of destination to institute and to intensify the preliminary investigations. If the waste is detected in a country of transit the competent authority of this country has to initiate 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/transit at the storage site/facility

In most cases the illegally shipped waste is detected in the country of destination. Therefore this chapter describes the tasks of the competent authority of destination. If the waste is detected at a storage site in a country of transit the competent authority of this country has to assume the obligations laid down in this chapter.

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 inspectors 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 WSR 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 and movement documents, 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 if 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 according to Article 24(7) WSR 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 and/or the licensing/supervising authority may apply immediate measures exercising default power: an undertaker may be engaged 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 competent authority 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, completed in the format laid down in **Annex B1 – Company inspection result form** - 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. At this early stage of the investigations it may be unknown to the competent authority of destination which authority is involved in the country of dispatch. If this authority cannot be easily identified the competent authority shall inform the competent authority which is designated as the competent authority of transit in the state of dispatch, or alternatively the correspondents according to Article 54 WSR,

the National IMPEL TFS Contact Point (NCP) or another IMPEL TFS representative in the country of dispatch who will indicate the right competent authority of dispatch and will transmit the information to this right competent authority.

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, Article 2(9) WSR,
- the holder, Article 2(10) WSR,
- the collector, Article 2(11) WSR
- the dealer, Article 2(12) WSR,
- the broker, Article 2(13) WSR,
- the consignee, Article 2(14) WSR,
- 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 and movement documents:

- 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 B2 – 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 III, IIIA, IIIB, IV or V of the WSR.

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 forms **Annex B1 and B2** 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.

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

If the investigation of the situation on the consignee's premise proves 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 if 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 licensing/supervising 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.

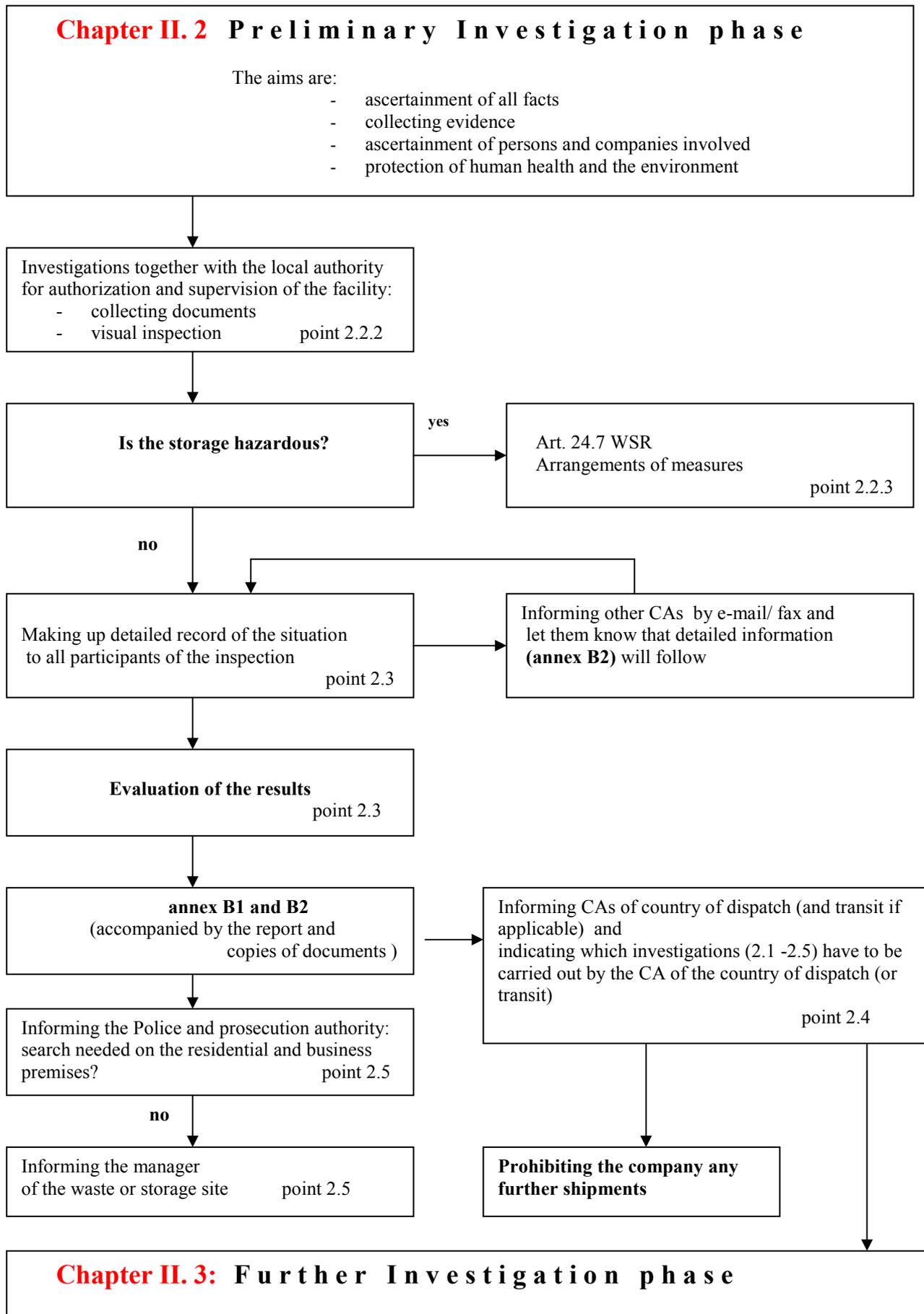
When the persons/undertakings involved in the alleged illegal shipment have been identified by the competent authorities they or the licensing/supervising authorities must order that further transports to the waste facility in the country of destination are prohibited immediately.

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. The forms laid down in **Annex B1 and B2** should be used.

The following flowchart presents a summary of the steps of the preliminary investigation phase.

Suspicious shipment at a waste facility

Flowchart 1



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, transit and destination about the application of Article 24(2), (3) or (5) WSR,
- to agree about the procedures (notification or duly reasoned request),
- to come to an agreement in which country the waste in question shall be finally recovered or disposed of,
- to agree about the division of costs between notifier and consignee or competent authority of dispatch and competent authority of destination,
- to make possible a prosecution as a criminal act.

To reach these aims, continual exchange of information in acceptable language 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 Article 24(2), (3) and (5) WSR should be more easily realised in cases where a notification procedure has been carried out and where a financial guarantee exists that can be called up.

Cooperation and agreements between competent authorities have priority in relation to an agreement between a competent authority and a company involved which has no binding effect for the account of another competent authority concerned.

3.3 Meeting in the country where the waste was detected

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 where the waste is stored, 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 Article 24(2), (3) or (5) WSR and the further treatment of the waste in question as well as a schedule,
- division of costs.

All participants of such meetings should try hard 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, the application of Article 24(2), (3) or (5) WSR and the division of costs. The investigations may be closed, and the competent authority of the country where the waste was detected summarises the results of the investigations using the format laid down in **Annex B2 – Final investigation form** – and informs the other competent authorities via fax or email.
- The competent authorities involved are not able to find a common solution. In this case they have to report to their supervising authorities and negotiations must be conducted on

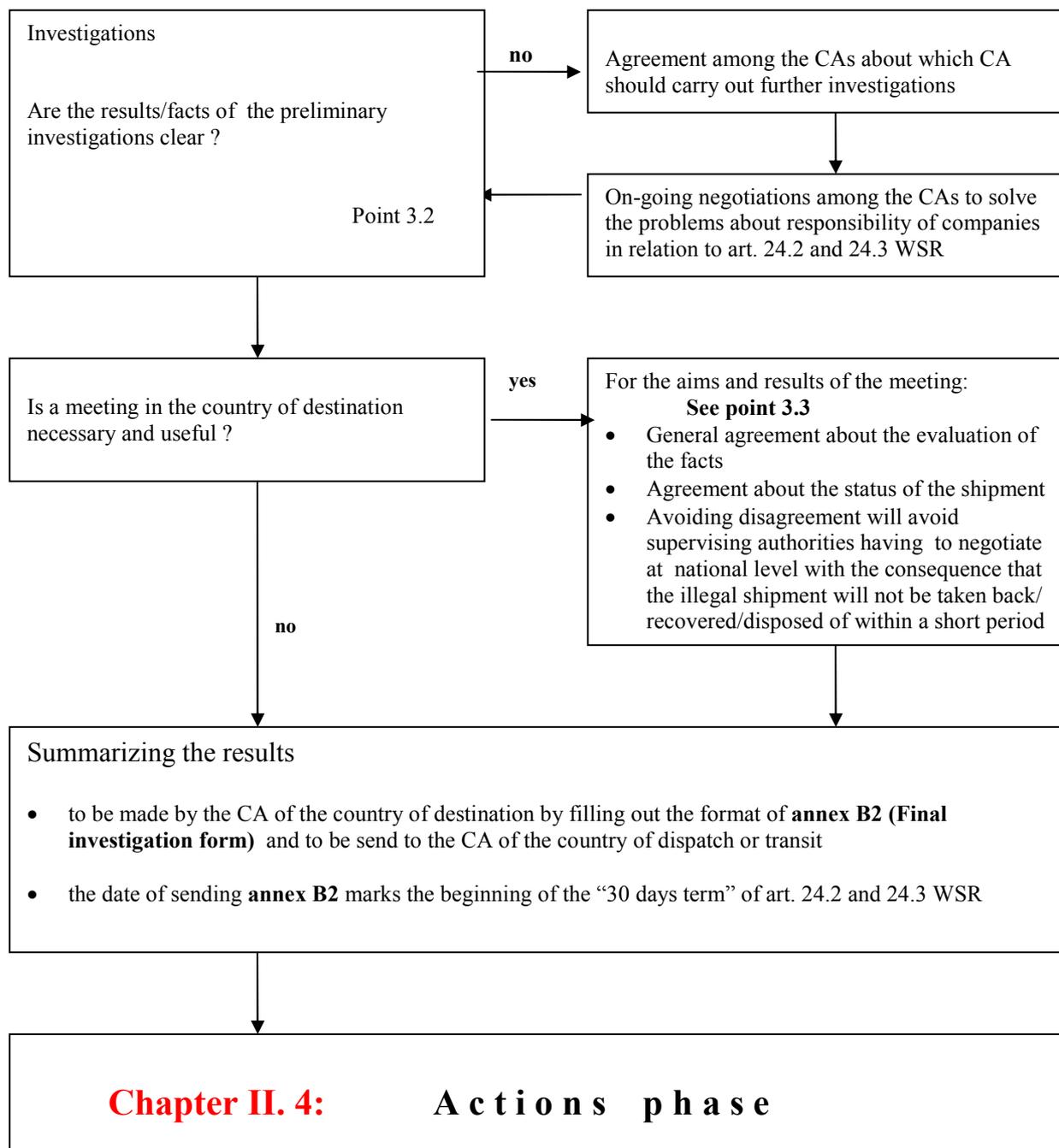
national level between the countries concerned. The consequence of the disagreement will be that the illegally shipped waste will not be taken back, recovered or disposed of within a short period. The competent authorities should engage themselves earnestly to avoid this negative and unsatisfactory result.

The following flowchart presents a summary of the steps to be carried out by the competent authorities involved.

Chapter II. 3: Further Investigation phase

The aims of the further investigation phase are:

- to verify if an illegal shipment has taken place
- to verify who is responsible for the shipment
- to come to an agreement among the CAs about the application of art.24.2, 24.3 or 24.5 WSR
- to come to an agreement in which country the waste shall be recovered or disposed of
- to make possible a prosecution as a criminal act



4. Actions phase – application of Article 24(2), (3) and (5) WSR

4.1 General remarks

Article 24 WSR specifies an obligation of the competent authority concerned of a Member State to ensure that the natural or legal person responsible for the illegal shipment takes back the waste and/or recovers or disposes of the waste in question in an environmentally sound manner. If the responsible person/company does not fulfil the obligation the competent authority itself takes over the responsibility and carries out the necessary measures. Under this arrangement it is guaranteed that negative results of the illegal shipment for the environment will be avoided.

Article 24 (2), (3) and (5) WSR determine the intended measures according to the responsibility of the persons/companies involved. Therefore the assignment of responsibility is of decisive importance for the further procedure to resolve a case of illegal shipment. These assignments have to be made by the competent authorities involved.

Generally the competent authorities shall examine in detail if and to what extent the notifier and/or the consignee have contributed to the illegal shipment in question. In cases of a shipment without notification (where the notification should have been carried out) the notifier de jure is responsible. Different opinions exist when illegal shipments effected without notification have been shipped to non-licensed and inappropriate premises in the country of destination, as a result of collaboration between notifier and consignee.

- Some Member States have expressed the view that it is necessary to refer to the definition of 'illegal shipment' in Article 2 (35) WSR in order to assign the responsibility. Under this interpretation, the responsibility for illegal shipment should be assessed taking into consideration which person had violated the obligations clearly assigned in the WSR. According to the definition of 'illegal shipment', the notifier de jure is exclusively responsible when a necessary notification has not been carried out (case (a)), the notifier de facto when a necessary consent of a competent authority is missing (case (b)) and the person who arranges the shipment of waste according to Article 3 (2) and (4) WSR (case (g)). By prior written notification of planned shipment, the notifier gives the competent authority of destination the chance to verify whether the facility of the consignee is duly licensed and appropriate. In case the facility is non-licensed and/or inappropriate, competent authority of destination raises objection to the shipment. All adverse effects of illegal shipment as defined in Article 2(35)(a) and (b) WSR stem from the lack of legal notification by the notifier. Therefore the notifier de jure/de facto is exclusively

responsible for illegal shipment defined in Article 2(35)(a) and (b) WSR as they should not start the shipment without notification and consent. In addition, this interpretation means that the WSR does not envisage the option of a mutual responsibility between the notifier and the consignee in such cases.

- Other Member States maintain that Article 2 (35) WSR does not determine the responsibility of the notifier or the consignee and that this is exclusively regulated by Article 24 (2), (3) and (5) WSR. Under this interpretation it is the task of all competent authorities concerned to investigate each case of illegal shipment and to examine the persons and companies having contributed to the illegal situation. The definition in Article 2 (35) WSR can be used as an indicator for the assignment of responsibility. However, the view under this interpretation is that in most cases of a missing notification, Article 2 (35) (a) and (g) (i) WSR, it is the illegal collaboration between notifier and consignee which has caused the illegality. In these cases the Member States holding this interpretation propose the application of Article 24 (5) WSR. The wording of Article 24 (5) “In particular in cases...” –indicates that the scope of application of this provision is not restricted to the case of responsibility not being imputed to either the notifier or the consignee. Furthermore in Article 25 (3) (a) WSR -which refers to Article 24 (5) WSR- the notifier and/or the consignee are charged with the costs of illegal shipment. This provision only makes sense if Article 24 (5) WSR is also applicable in a case of mutual responsibility of the notifier and the consignee.

IMPEL-TFS has addressed the question of interpretation to the Commission via the Correspondents' Meeting. At the meeting on 10./11.04.2008 in Brussels the representative of the Commission, for the first time, has expressed the Commission's view about the assignment of responsibility regarding the cases of Article 2 point 35 (a) – (g) WSR. According to the Commission only the notifier shall be responsible in the cases of Article 2 point 35 (a) – (c) WSR, while in the cases of Article 2 point 35 (d) – (f) WSR the responsibility can be assigned to the notifier and/or the consignee. With regard to Article 2 point 35 (g) WSR, the Commission tends to assign the responsibility exclusively to the person who has arranged the shipment.

When the Commission has presented a written statement these different interpretations should be fully discussed - at the Correspondents' Meeting between the Member States and - with the Commission with a view to achieving a common interpretation. Until a common interpretation is reached, the competent authorities of dispatch and destination have to find an agreement about the assignment of responsibility; if this is not possible they must look for a compromise and a solution on a case by case basis in order to prevent damages to the environment.

Generally the competent authority is obliged to apply Article 24 WSR. If 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 (e. g. Article 2(35)(d), (g) iii) WSR), an obligation for the notifier to take back the waste could be deemed to be excessive. The interpretation of Article 17 WSR shows that insignificant changes of the modalities of shipment do not necessarily lead to an obligation to submit a new notification, if the competent authorities concerned agree. Therefore, it is possible for the competent authority to examine, if Article 24 WSR, with the take-back obligations has to be respected in all cases of illegal shipments, even if only minor violations without harm for the environment are detected. In exceptional cases, this provision should not be applied if an order to the notifier to take back the waste would lead to unjustifiable and disproportionate results. This way can be an option if the illegal shipment consists of a single waste transport and if the recovery or disposal facility is able to accept the waste. Furthermore unintentional violations against the WSR could be subject of such an exception, for instance, incorrect details in the notification document. Finally the following cases could be taken in consideration:

- the amount of waste notified is exceeded (maximum of about 10 %),
- the shipment period is exceeded (maximum of about 2 weeks),
- the transport packaging does not meet the requirements of health and safety regulations,
- the notification or movement document does not accompany the transport, but they exist,
- the waste in question is not accompanied by the Annex VII document, but in fact the waste is green listed.

In these cases all competent authorities concerned must agree that the transport and the following recovery or disposal can be carried out as intended. This solution shall have no effect on the application of provisions which sanction the infringement of the WSR or national law.

Article 24(9) WSR states that in the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.

4.2 Article 24(2) WSR – responsibility of the notifier

The following matters are regulated by this provision:

- description of the measure to be carried out by the notifier or the competent authority of dispatch,
- completion of these measures within 30 days from the time when the competent authority of dispatch was informed of the illegal traffic,
- notification procedure with financial guarantee or equivalent insurance (or without financial guarantee if notification is submitted by initial competent authority of dispatch),
- duly reasoned request.

These matters have to be discussed during the investigation phase and the competent authorities concerned should find an agreement how to resolve the case of an illegal shipment. The right of the competent authority of destination to send a duly motivated request to the competent authority of dispatch for taking back the waste, as laid down in Article 26 (2) of the former WSR, has not been included in new WSR.

4.2.1 Necessary measures

Article 24(2) WSR is applicable if the notifier is responsible for the illegal shipment. The competent authority shall ensure with priority that the waste in question is taken back by the notifier. If a notification exists and therefore the notifier is known, he is responsible to fulfil the take-back obligations, Article 24(2)(a) WSR. In the case of a necessary notification which is missing, the notifier 'de jure', the natural or legal person who should have submitted a notification according to Article 2(15)(a) WSR, is considered as the responsible notifier. The last two sentences of Article 2 (15) (a) WSR should be taken into consideration, if a dealer or a broker is involved in the illegal shipment.

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 C**) 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. According to the national legislation the order should contain a short term for the responsible person to fulfil his obligation and should inform him that in case

of non-compliance the competent authority will commission 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 D**). If the responsible person/company does not comply with the order the competent authority itself, or a person on its behalf, 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.

If the investigations come to the result that it will not be practicable to oblige the notifier to take back the waste because of insolvency, dissolution of the company or foreign residence, the competent authority of dispatch itself must carry out the arrangements for taking back the waste. On national level the competent authority of dispatch must involve the licensing/supervising authorities competent for the recovery or disposal facilities in order to clarify in which facility the waste should be recovered or disposed of. These arrangements have to be done before the end of the investigation phase.

In the case of take-back of the waste by the notifier or the competent authority of dispatch being impracticable, the authority or a natural or legal person on its behalf shall ensure, pursuant to Article 24(2)(d) WSR, that the waste is alternatively recovered or disposed of in the country of destination or dispatch. If the above is impractical, and the waste has to be recovered or disposed of in a country of transit or another country according to Article 24(2)(e) WSR, then all competent authorities concerned must agree to this solution. Therefore, the competent authorities should find a common solution during the investigation phase. It is the task of the competent authority of dispatch to present a proposal to the other competent authorities and to explain why the waste cannot be recovered or disposed of in the country of dispatch.

An alternative solution in the country of destination or in another country can be accepted, if an adequate facility does not exist in the country of dispatch. 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.

The return of the waste and 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.

4.2.2 Term of 30 days

Waste shipped illegally must be taken back or recovered or disposed of in an environmentally sound manner within 30 days, after the competent authority of dispatch becomes aware of or has been advised in writing by the competent authorities of destination or transit of the illegal shipment and informed of the reasons. This provision contains as prerequisite that an illegal shipment does really exist. Considering the fact that the term of 30 days is very short the information must be so complete and clear that the competent authority of dispatch is in the position to proceed onto the action phase. This moment has come when the investigations of all competent authorities concerned have been completed and its results are accepted and agreed by all authorities. To show clearly the beginning of the term the competent authority of the country, where the illegal shipment was detected, shall summarize the results after the conclusion of the investigation phase in a specific format laid down in **Annex B2 – final investigation form**, and send it via e-mail or fax to the other competent authorities concerned. The day the information is sent marks the beginning of the 30 days term.

The short deadline is likely to be met if 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 adhere to the specified time-limit. In this case the competent authority of dispatch informs the other competent authorities concerned about the reasons for the non-observance of the time-limit and proposes to extend the term for a certain period. The other competent authorities should agree to its extension if the request is reasonable.

4.2.3 Notification procedure

Before the waste is taken back according to Article 24(2)(a)-(c) WSR, a notification procedure must be principally carried out by the notifier 'de facto' or 'de jure' according to Article 2(15)(a) WSR. If this is impracticable the competent authority of dispatch itself submits the notification or causes a natural or legal person to carry out the notification.

In the cases of Article 24(2)(d) and (e) WSR the competent authority of dispatch or a person on its behalf are obliged to notify the transport of the wastes for recovery or disposal. An obligation for the notifier does not exist.

The notification with all documents is sent by the initial competent authority of dispatch or a natural or legal person on its behalf to the competent authority of the country where the illegal shipment has been detected, the country of destination and a country of transit.

Together with the notification documents the notifier must establish a financial guarantee or an equivalent insurance to cover the risks of the taking-back of the waste and its recovery or

disposal. Only the competent authority of dispatch itself is released from this obligation if it acts as a notifier signing the notification document. The original notifier, any other notifier according to Article 2(15)(a) WSR and the person who acts on behalf of the competent authority are obliged to present a financial guarantee.

Even if the illegal shipment was covered by a financial guarantee or an equivalent insurance which could be used to meet the expenses, a new financial guarantee must be established for the return of the waste or the alternative arrangements. In this case the competent authority of dispatch has the power to reduce the amount of the new financial guarantee, as appropriate, if the authority is able to make use of the funding of the first financial guarantee.

Pursuant to Article 24(2) WSR no competent authority is allowed to oppose or object to the return of the waste of an illegal shipment. That means that all competent authorities concerned did agree about the modalities during the investigation phase. The competent authority of dispatch which has to arrange the measures, has presented to the other competent authorities a proposal which described the modalities of the return of the shipment and the facility for the recovery or disposal of the waste, and an agreement was reached. Independent from this, the competent authorities can establish conditions together with the consent of the notification.

4.2.4 Duly reasoned request – Annex E

The submission of a notification is not necessary pursuant to Article 24(2) WSR, if the competent authorities concerned agree that a duly reasoned request by the initial competent authority of dispatch is sufficient. The written request by the competent authority of dispatch is addressed to the competent authorities of destination and transit and must at least show the following contents:

- request to receive a consent by the other competent authorities in order to carry out the return of the shipment or the alternative arrangements in a particular country,
- presentation of the reasons for the illegality of the shipment,
- description of the modalities of the planned measures mentioning the procedure and the facility for the recovery or disposal of the waste.

Corresponding documents should be enclosed with the request. After the competent authority of dispatch has received all agreements the measures can be carried out. The competent authority of dispatch sends to the notifier, if existing, and to the carrier a copy of the duly reasoned request and of the decisions of consent which shall accompany the transport and the following recovery or disposal.

The procedure of the duly reasoned request is not as complex as the formal notification procedure and can be carried out in a shorter time. It is recommended to make use of this procedure if wastes according to Article 3(2) and (4) WSR are concerned which are not subject to an obligation to notify (provided that the waste meet the conditions of green list). Furthermore in cases of single transports, this procedure is suitable to solve a problem with a illegal shipment within a short time. The competent authorities must take into consideration that the transport is not covered by a financial guarantee or an equivalent insurance.

Pursuant to Article 24(4) WSR a new movement document shall be completed in accordance with Article 15 or 16 WSR by the person responsible for take-back or, if impracticable, by the initial competent authority of dispatch.

4.3 Article 24 (3) WSR – responsibility of the consignee

Article 24(3) WSR is applicable if the consignee is responsible for the illegal shipment. This case does occur if the consignee carries out the recovery or disposal in such a way that does not correspond with the data laid down in the notification document. The competent authority of destination shall ensure that the waste in question is recovered or disposed of in an environmentally sound manner by the consignee or, if impracticable, by the competent authority itself or by a natural or legal person on its behalf. Generally the recovery or the disposal will take place in a facility within the country of destination. Therefore a notification procedure is not realised. If a suitable facility is not available in the country of destination the recovery or disposal can be carried out in the country of dispatch or transit with the consequence that a notification must be submitted by the consignee to the competent authority of destination. Also a duly reasoned request can be submitted by the competent authority of destination to the other competent authorities concerned. These problems should be discussed among the competent authorities and resolved before the investigations are concluded. If the recovery or disposal is carried out in another country a notification procedure is always necessary.

With reference to the 30 days term, the notification and the duly reasoned request the respective statements to Article 24(2) WSR can be taken as basis.

Articles 22(8) and 24(6) WSR establish the application of Article 24(3) WSR if a facility issues a certificate of recovery or disposal in such a way as to result in an illegal shipment, with the consequence that the financial guarantee is released.

4.4 Article 24(5) WSR - no responsibility for the notifier or the consignee

Where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee, the competent authorities shall cooperate to ensure that the waste in question is

recovered or disposed of. This situation most likely occurs if the investigations and assessments are extremely difficult to conduct and if it is not possible to collect evidence to attribute the responsibility to the notifier or the consignee.

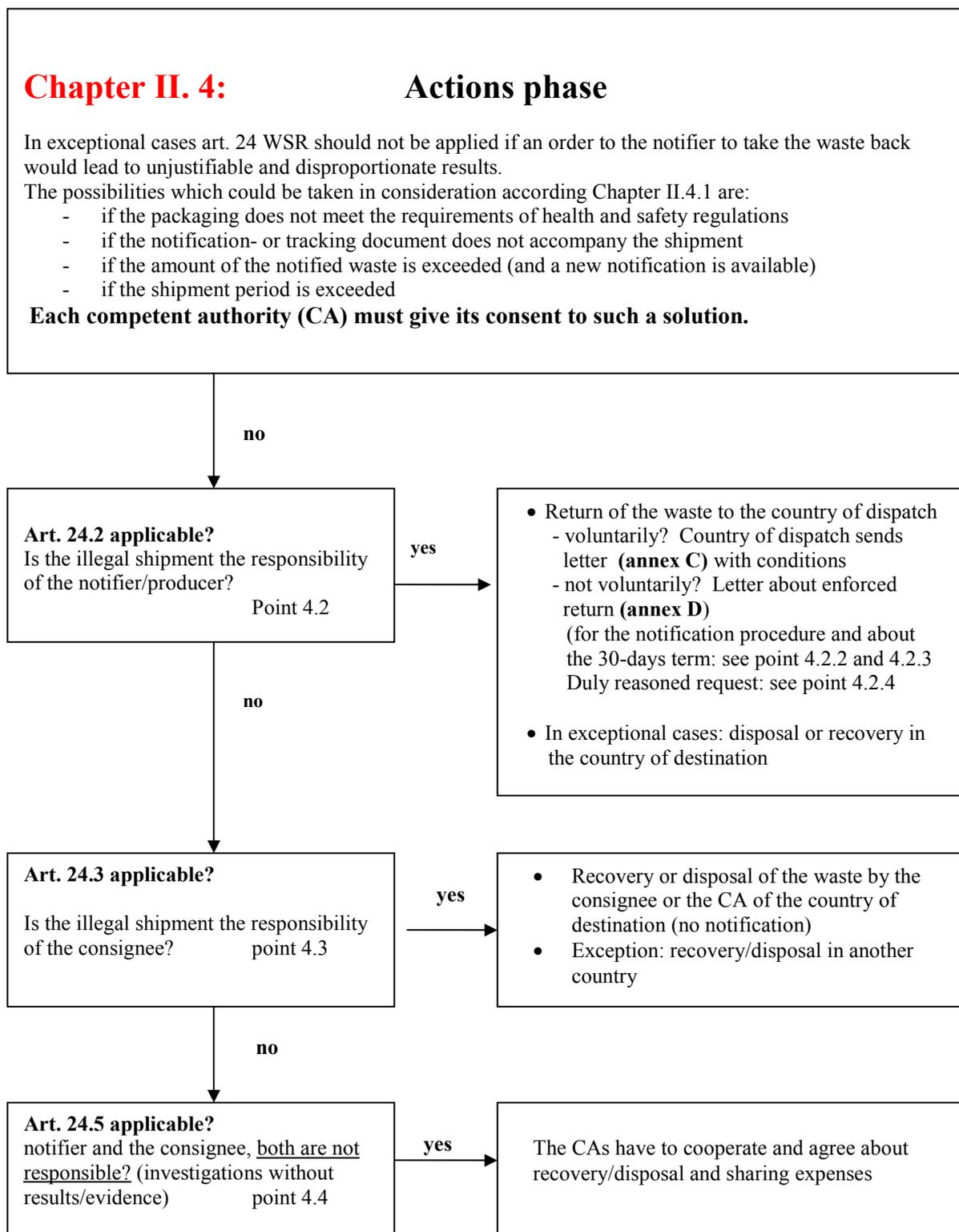
The consequence is that the competent authorities have to bear the expenses of the effects of the illegal shipment, Article 25(3)(c) WSR. Therefore, they must cooperate to come to an agreement to guarantee a recovery/disposal of the waste in an environmentally sound manner reducing the expenses to an adequate limit. The agreement that should be concluded during the investigation phase 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 comes to the attention of one of the competent authorities. If later an attribution of the responsibility becomes possible the responsible party should be charged with the expenses borne by the competent authorities.

The principles regulated in Article 24(2) and (3) WSR can be applied depending on the actions that the competent authorities have agreed on.

4.5 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 F**). 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.



4.6 Completion of the return of the shipment :

- the CAs inform each other about the recovery/ final disposal
- which CA will take care of prosecution of the suspect and the ECO-message to Interpol

III Official measures on illegal shipments during transport

1. General remarks

The principles of chapter II are applicable to the investigations and to the measures to be carried out on illegal shipments during transport too. In this chapter some peculiarities and specialities are shown which have to be respected in these cases.

Illegal shipments can be detected:

- during a transport control in a country of transit or in the country of destination,
- at the frontier by the customs offices of exit from the Community or entry into the Community, Articles 35(6), 38(7), 42(5), 44(5), 45, 47, and 48 WSR.

During transport inspections authorised officers can stop and check vehicles/ships and can take samples. 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. It is also recommended that inspecting officers use the “Transport Inspection Report Form” (see **Annex G1**) 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 responsible 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

- Document contained in Annex VII of the WSR
 - 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 and the protection of 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 / waste dispatcher
- 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 cannot 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 H**.

3. Arrangement of a safe storage of the waste

If the shipment is considered to be illegal, it may require securing.

The following situations are examples where the shipment may need to be secured pursuant to Article 24(7) WSR:

- 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 form as shown in **Annex G2** (for transport situations).

This is essential to ensure that the illegal shipment can be returned to the country of dispatch as soon as possible. The form, completed as far as possible, should then be sent by fax or e-mail. This involves the competent authority that discovered the illegal shipment to present a proposal to solve the problem by completing the corresponding section on the form.

4. Results of the investigations and action phase

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

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 G2**. This report requires signing by all the competent authorities involved before release of the shipment or a voluntary return.

4.1 Shipment is illegal and discovered by the country of transit

The competent authority of transit contacts the competent authority of destination and dispatch, informing them of the shipment and its status by sending to them the filled in format in **Annex G2**. In this form, the sending authority presents a proposal how to resolve the illegal situation. The competent authorities should come to an agreement about the procedures to be followed: return of the transport after having carried out a notification procedure, return of the transport without notification, with/without duly reasoned request or in exceptional cases the transport is allowed to go to its destination (**see chapter II 4**). In cases of direct risk of damage to the environment the transport has to be kept in a safe place in the country of transit.

4.2 Shipment is illegal, but the situation does not require the return of waste in accordance with Article 24 WSR

In exceptional cases this provision should not be applied if an order to the notifier to take back the waste would lead to unjustifiable and disproportionate results. This way can be an option if the illegal shipment consists of a single waste transport and if the recovery or disposal facility is properly licensed and is able to accept the waste. Furthermore, unintentional violations against the WSR could be the subject of such an exception, for instance incorrect details in the movement document or the document for green listed wastes according to annex VII of the WSR or the absence of this document. For further information and possible cases see **chapter II 4.1**.

The competent authority in the country of destination/transit that discovered the shipment should complete the form in **Annex G2** 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 G2** 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 G2** and request the competent authority of dispatch to agree to the proposal made on the form. If the competent authority of dispatch presents a duly reasoned request and the other competent authorities agree to it, the transport can be sent back, without following a notification procedure. For further information see **chapter II 4.2.4 and Annex E**. In case of a missing agreement about the duly reasoned request the notification procedure has to be followed.

4.4 Shipment is illegal. The company responsible is unknown or is unwilling to return the waste voluntarily

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 4** apply. Principally a notification procedure is necessary.

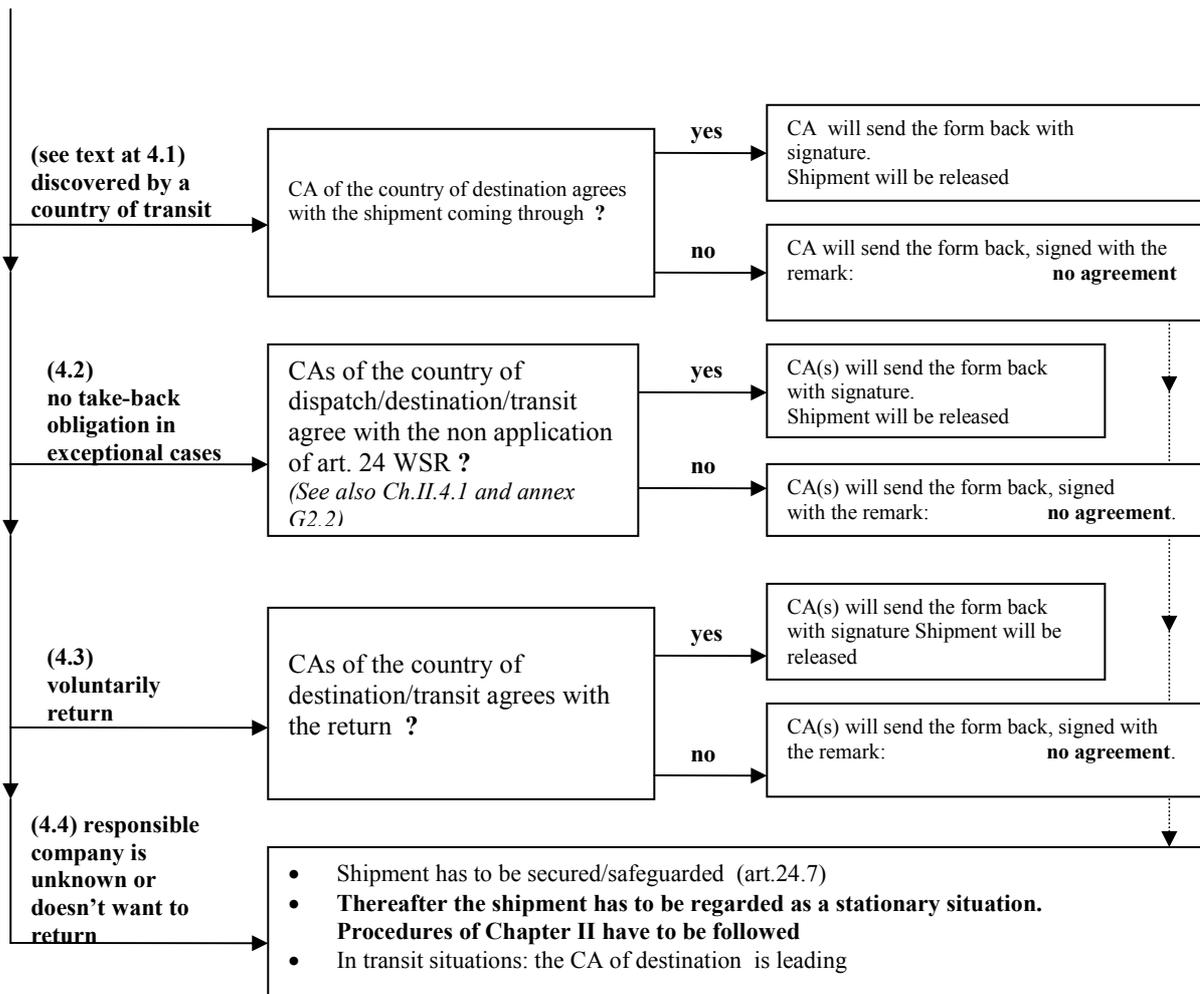
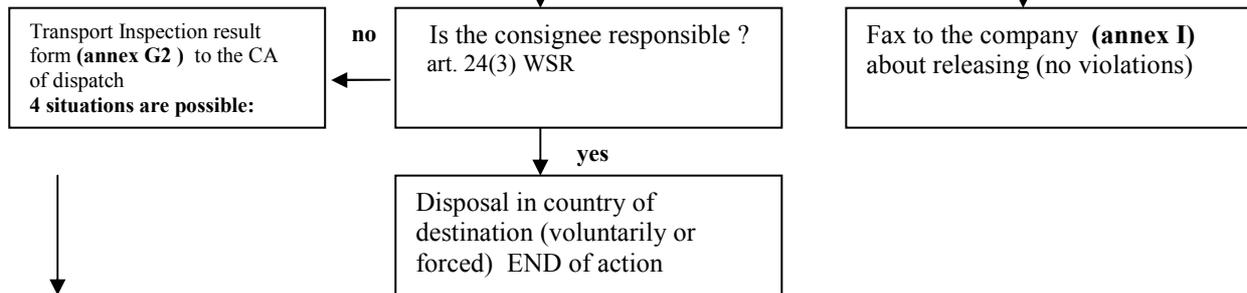
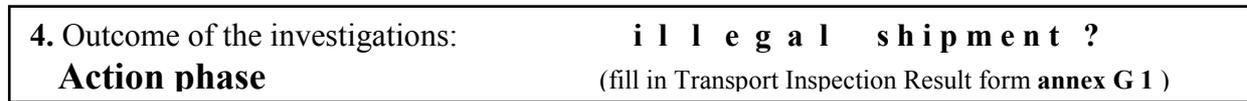
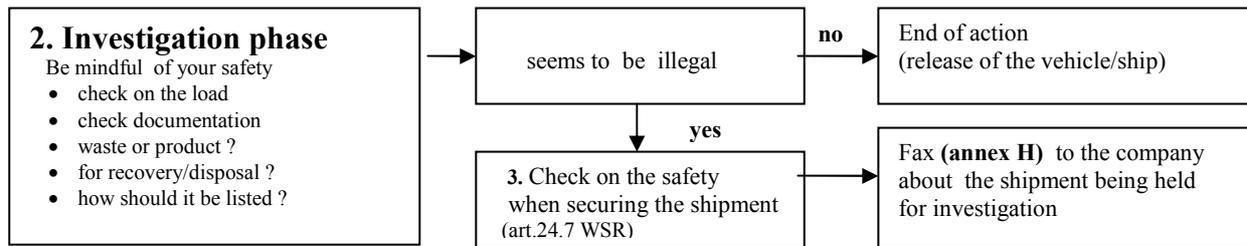
5. Completion of the return of the shipment (action phase)

The competent authority in the country of destination/transit can supervise the shipment until arrival at the border of the initial country of dispatch. The competent authority in the initial 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 initial 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 **chapter II. 4.6.**

Chapter III Suspicious shipments during transport Flowchart 4



5. Completion of the return of the shipment

- the CAs inform each other about the recovery / final disposal
- and which CA will take care of prosecution of the suspect and sending in the ECO-message to Interpol.

Annexes

Article 2 – Definitions (excerpt)

14. 'consignee' means the person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal;
15. 'notifier' means:
- (a) in the case of shipment originating from a Member State, any natural or legal person under the jurisdiction of that Member State who intends to carry out a shipment of waste or intends to have a shipment of waste carried out and to whom the duty to notify is assigned. The notifier is one of the persons or bodies listed below, selected in accordance with the ranking established in this listing:
 - (i) the original producer, or
 - (ii) the licensed new producer who carries out operations prior to shipment, or
 - (iii) a licensed collector who, from various small quantities of the same type of a waste collected from a variety of sources, has assembled the shipment which is to start from a single notified location, or
 - (iv) a registered dealer who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier;
 - (v) a registered broker who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier,
 - (vi) where all of the persons specified in (i), (ii), (iii), (iv) and (v) if applicable, are unknown or insolvent, the holder.

Should a notifier specified in (iv) or (v) fail to fulfil any of the take-back obligations set out in Articles 22 to 25, the original producer, new producer or licensed collector specified in (i), (ii) or (iii) respectively who authorised that dealer or broker to act on his/her behalf shall be deemed to be the notifier for the purposes of the said take-back obligations. In circumstances if illegal shipment notified by a dealer or broker specified in (iv) or (v), the person specified in (i), (ii) or (iii) who authorised that dealer or broker to act on his/her behalf shall be deemed to be the notifier for the purposes of this Regulation;

- (b) in the case of import into, or transit through, the Community of waste that does not originate in a Member State, any of the following natural or legal persons under the jurisdiction of the country of dispatch who intends to carry out a shipment of waste or intends to have, or who has had, a shipment of waste carried out, being either:
 - (i) the person designated by the law of the country of dispatch; or, in the absence of any such designation,
 - (ii) the holder at the time the export took place;

35. 'Illegal shipment' means any shipment of waste effected:

- (a) without notification to all competent authorities concerned pursuant to this Regulation; or
- (b) without the consent of the competent authorities concerned pursuant to this Regulation; or
- (c) with consent obtained by the competent authorities concerned through falsification, misrepresentation or fraud; or
- (d) in a way which is not specified materially in the notification or movement documents; or
- (e) in a way which results in recovery or disposal in contravention of Community or international rules; or
- (f) contrary to Articles 34, 36, 39, 40, 41 and 43; or
- (g) which, in relation to shipments of waste as referred to in Article 3(2) and (4), has resulted from:
 - (i) the waste being discovered not to be listed in Annexes III, IIIA or IIIB, or
 - (ii) non-compliance with Article 3(4),
 - (iii) the shipment being effected in a way which is not specified materially in the document set out in Annex VII.

Article 24 – Take-back when a shipment is illegal

1. Where a competent authority discovers a shipment that it considers to be an illegal shipment, it shall immediately inform the other competent authorities concerned.

2. If an illegal shipment is the responsibility of the notifier, the competent authority of dispatch shall ensure that the waste in question is:

- (a) taken back by the notifier de facto; or, if no notification has been submitted;
- (b) taken back by the notifier de jure; or, if impracticable;
- (c) taken back by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (d) alternatively recovered or disposed of in the country of destination or dispatch by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (e) alternatively recovered or disposed of in another country by the competent authority of dispatch itself or by a natural or legal person on its behalf if all the competent authorities concerned agree.

This take-back, recovery or disposal shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of dispatch becomes aware of or has been advised in writing by the competent authorities of destination or transit of the illegal shipment and informed of the reason(s) therefore. Such advice may result from information submitted to the competent authorities of destination or transit, inter alia, by other competent authorities.

In cases of take-back as referred to in (a), (b) and (c), a new notification shall be submitted, unless the competent authorities concerned agree that a duly reasoned request by the initial competent authority of dispatch is sufficient.

The new notification shall be submitted by the person or authority listed in (a), (b) or (c) and in accordance with that order.

No competent authority shall oppose or object to the return of waste of an illegal shipment. In the case of alternative arrangements as referred to in (d) and (e) by the competent authority of dispatch, a new notification shall be submitted by the initial competent authority of dispatch or by a natural or legal person on its behalf unless the competent authorities concerned agree that a duly reasoned request by that authority is sufficient.

3. If an illegal shipment is the responsibility of the consignee the competent authority of destination shall ensure that the waste in question is recovered or disposed of in an environmentally sound manner:

- (a)** by the consignee; or, if impracticable,
- (b)** by the competent authority itself or by a natural or legal person on its behalf.

This recovery or disposal shall take place within 30 days, or such other period as may be agreed between the competent authorities concerned after the competent authority of destination becomes aware of or has been advised in writing by the competent authorities of dispatch or transit of the illegal shipment and informed of the reason(s) therefore. Such advice may result from information submitted to the competent authorities of dispatch and transit, inter alia, by other competent authorities.

To this end, the competent authorities concerned shall cooperate, as necessary, in the recovery or disposal of the waste.

4. If no notification is to be submitted, a new movement document shall be completed in accordance with Article 15 or 16 by the person responsible for take-back or, if impracticable, by the initial competent authority of dispatch.

If a new notification is submitted by the initial competent authority of dispatch, a new financial guarantee or equivalent insurance shall not be required.

5. In particular in cases where responsibility for the illegal shipment cannot be imputed to either the notifier or the consignee, the competent authorities concerned shall cooperate to ensure that the waste in question is recovered or disposed of.

6. In the cases of interim recovery or disposal referred to in Article 6(6) where an illegal shipment is discovered after completion of the interim recovery or disposal operation, the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the facility has issued the certificate referred to in Article 15(d).

If a facility issues a certificate of recovery or disposal in such a way as to result in an illegal shipment, with the consequence that the financial guarantee is released, paragraph 3 and Article 25(2) shall apply.

7. Where the waste of an illegal shipment is discovered within a Member State, the competent authority with jurisdiction over the area where the waste was discovered shall be responsible for ensuring that arrangements are made for the safe storage of the waste pending its return or non-interim recovery or disposal in an alternative way.

8. Articles 34 and 36 shall not apply in cases where illegal shipments are returned to the country of dispatch and that country of dispatch is a country covered by the prohibitions set out in those Articles.

9. In the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.

10. This Article shall be without prejudice to Community and national provisions concerning liability.

Article 25 – Costs for take-back when a shipment is illegal

1. Costs arising from the take-back of waste of an illegal shipment, including costs of its transport, recovery or disposal pursuant to Article 24(2) and, from the date on which the competent authority of dispatch becomes aware that a shipment is illegal, storage costs pursuant to Article 24(7), shall be charged to:

- (a)** the notifier de facto, as identified in accordance with the ranking established in point 15 of Article 2; or, if no notification has been submitted;
- (b)** the notifier de jure or other natural or legal persons as appropriate; or, if impracticable;
- (c)** the competent authority of dispatch.

2. Costs arising from recovery or disposal pursuant to Article 24(3), including possible transport and storage costs pursuant to Article 24(7), shall be charged to:

- (a)** the consignee; or, if impracticable;
- (b)** the competent authority of destination.

3. Costs arising from recovery or disposal pursuant to Article 24(5), including possible transport and storage costs pursuant to Article 24(7), shall be charged to:

- (a)** the notifier, as identified in accordance with the ranking established in point 15 of Article 2, and/or the consignee, depending upon the decision by the competent authorities involved; or, if impracticable;
- (b)** other natural or legal persons as appropriate; or, if impracticable,
- (c)** the competent authorities of dispatch and destination.

4. In the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.

5. This article shall be without prejudice to Community and national provisions concerning liability.

Company inspection result form

Annex B1

To be filled in by inspectors

Form should be filled in digitally

1 Reference number:	
----------------------------	--

2 General information

Country:	
Authority:	
Contact person:	
Email:	
Fax:	
Phone:	
Other involved institutes and contacts	

3.1 Description of waste				EWC-code: _____
3.2 Declared by notifier as: (add code)	<input type="checkbox"/> Green, _____ <input type="checkbox"/> unlisted, _____	<input type="checkbox"/> Amber, _____ <input type="checkbox"/> Not declared as waste		
3.3 Physical state	<input type="checkbox"/> Liquid <input type="checkbox"/> Sludge	<input type="checkbox"/> Powder <input type="checkbox"/> Solid		

4 Company information

4.1. Company name	Name			
	Address			
	Telephone			
4.2 Reason for inspection company	<input type="checkbox"/> Verification request → <input type="checkbox"/> Result administrative inspection <input type="checkbox"/> Other	please specify verification: <input type="checkbox"/> company of dispatch <input type="checkbox"/> company of destination		
4.3 Date and time of inspection:				

5 Company details

5.1 Kind of company (please mark one of the possibilities)	<input type="checkbox"/> Producer <input type="checkbox"/> Trader <input type="checkbox"/> Energy recovering site <input type="checkbox"/> Recovering site <input type="checkbox"/> Disposing site <input type="checkbox"/> Storage <input type="checkbox"/> Other, namely			
5.2 Is the company sending or receiving waste	<input type="checkbox"/> sending waste	<input type="checkbox"/> receiving waste, continue with 5.5		
5.3 Is this company producing/trading the waste as specified under 3.1? (Skip 5.4 to 5.6)	<input type="checkbox"/> Yes			
	<input type="checkbox"/> No			

5.4 Is this company allowed to receive and treat the waste specified in 3.1 as presented according to the environmental permit?	<input type="checkbox"/>	Yes	Please explain your answer:
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	
5.5 Describe short a visual impression of the actual way of waste processing of the company			
5.6 Is the actual treatment considered as a recovery or disposal operation?	<input type="checkbox"/>	Disposal, D...	
	<input type="checkbox"/>	Recovery, R.....	
5.7 What is the next step of the waste after treatment at this company (attention for export out of the EU).	<input type="checkbox"/>	Sorting	
	<input type="checkbox"/>	Further recovery at (company name and address)	
	<input type="checkbox"/>	Disposal	
	<input type="checkbox"/>	Other: Please explain your answer (add R, D codes):	
5.8 Look for other foreign companies in the administration of this company which export also waste to this company and make a list of them (name and address)			

6 Company inspection (based on road inspection/ or specific transport)			
6.1 Is a specific shipment verified	<input type="checkbox"/>	Yes, please specify..... (continue with 6.2)	
	<input type="checkbox"/>	No. go to 7	
6.2 Did the specific shipment originate from this company / did the specific shipment arrive at this company?	<input type="checkbox"/>	Yes, continue with question 6.3	
	<input type="checkbox"/>	No, describe why not. Remarks: ... In case the shipment did not arrive, continue with question 6.6.	
6.3 If yes, list down the license plate numbers or container numbers		Numbers:	
6.4 Take pictures of the waste Are pictures taken ?	<input type="checkbox"/>	Yes	
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	
6.5 Verify the analyses of producer, receiving company and transport inspection; do quality and quantity compare	<input type="checkbox"/>	Not applicable	Please explain your answer:
	<input type="checkbox"/>	Yes	
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	
6.6 Is this waste shipment notified?	<input type="checkbox"/>	Yes	If not, please contact the relevant authority as soon as possible
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	
6.7 Are there discrepancies between the TFS documents, contract, weighing slips and the invoices/receipts.	<input type="checkbox"/>	Yes	Please explain your answer:
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	
6.8 Will the waste be disposed or recycled in accordance with the notification.	<input type="checkbox"/>	Yes	Please explain your answer
	<input type="checkbox"/>	No	
	<input type="checkbox"/>	Unknown	

7 After care and follow up actions		
7.1 Has additional information been asked to the company after the inspection	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
7.2 In case samples have been taken: was	<input type="checkbox"/>	Yes

the analyses in conformity with the administration and the permit	<input type="checkbox"/>	No
7.3 Have irregularities been detected?:	<input type="checkbox"/>	Yes: No obligate three-day prior notification No environment permit for company Non compliance to the permit The processing is not permitted The acceptance of the waste substance is not permitted by this company Green listed waste for disposal Other namely,
	<input type="checkbox"/>	No
7.4 Have sanctions been taken?	<input type="checkbox"/>	Yes; warning letter administrative sanction, namely legal report penalty other, namely
	<input type="checkbox"/>	No; (explain why no sanctions have been taken)
7.5 Has the country of dispatch been warned and asked to take further action?	<input type="checkbox"/>	Yes (please make a short statement of the answer) Date: Name and organisation:
	<input type="checkbox"/>	No

8 Additional information (optional) please enclose	
(digital) pictures taken	<input type="checkbox"/>
Waybill	<input type="checkbox"/>
Weighing slips	<input type="checkbox"/>
Analysis reports	<input type="checkbox"/>
List of other foreign companies	<input type="checkbox"/>
Relevant invoices	<input type="checkbox"/>

9 Additional comments

Illegal shipment detected at storage facility

operator/company:

address:

contact person:

country:

phone number:

fax number:

adequate environmental licence for storage

yes / no*

(local) authority responsible for licensing of the facility:

CA of the state of inspection:

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 18 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:**

[company name]
[address]
[city]

[date]
[reference nr.]

**COUNCIL REGULATION (EC) No 1013/2006
CONFIRMATION OF THE 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 shipment of waste are included in EC Regulation 1013/2006 on the supervision and control of the shipment of waste 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 shipment of waste intended for recovery is subject to the following rules:

Appendices III, IIIA, IIIB, IV and IVA of the Regulation contain lists of waste materials .

Art.3

Transfrontier shipment within the Community of waste materials intended for recovery is not allowed without the consent of the competent authorities in the country of origin, the country of destination and any countries through which the materials are to pass and shall be subjected to the procedure of prior written notification and consent, if these wastes are:

- listed in Annex IV, which include wastes listed in Annexes II and VIII to the Basel convention;
- listed in Annex IVA;
- not classified under one single entry in either Annex III, IIIB, IV or IVA;
- mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IV A unless listed in Annex IIIA.

Art. 38 WSR:

Transfrontier shipment from the Community to third countries of waste materials intended for recovery 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 and shall be subjected to the procedure of prior written notification and consent, if these wastes are:

- listed in Annexes III, IIIA, IIIB, IV and IVA
- not classified under one single entry in either Annex III, IV or IVA;
- mixtures of wastes not classified under one single entry in either Annex III, IV or IVA.

Transfrontier shipment from the Community to third countries of waste intended for recovery or disposal conflicting with article 37 is not allowed.

Regarding the transfrontier shipment of wastes destined for disposal operations, Article 3(1)(a) WSR states that these shipments are always subject to the procedure of prior written notification and consent as laid down in Title II of the WSR.

If no notification is made of the transfrontier shipment of waste, this is classed as illegal traffic as defined in Article 2, clause 35, 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 **[Annex] [code]**.

Return shipment of waste

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 I will, by the authority vested in me, 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, please 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 (EC) No 1013/2006 of 14 June 2006 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 EC Regulation N° 1013/2006
3. The return must be effected without delay, and in any case no later than [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 carry out 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 2 Section 35, paragraph [] of Regulation N° 1013/2006.

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

Right of appeal:

(name of the competent authority of dispatch)

Address: name of the competent
authority of transit and destination

REGISTERED MAIL

Handled by:
Extension no.:

ref.nr. (date)

Duly reasoned request by my authority on the return of waste materials, contravention of Council Regulation (EC) on the supervision and control of shipments of waste within, into and out of the European Community (Regulation 1013/2006).

Dear Sir / Madam,

I have been informed by staff members of the competent authority of transit/destination that on **[date]** a consignment of waste ((in (number)...containers (nrs...)) was delivered to the company/storage facility of **[company name]** in **(city) (country)**.

More details regarding this shipment are summarized in the annexed form.

[Annex A or G]

This consignment has to be considered as a (hazardous) waste ((**[destined for disposal]** **[destined for recovery]**)

- The waste does not meet the criteria for green listed waste because...

-This waste is [not] mentioned in Annex [III, IIIA, IIIB, IV of IVA] of EC regulation 1013/2006/EC [under code..]

-in case of third countries article 37 (recovery)] *In case of the transfrontier shipment of waste mentioned in Annex III (green list) or IIIA to [mention state] notification by procedure article 35 (disposal)] is necessary because of EC regulation No. 1418/2007.*

However a notification was not made for this shipment. Therefore 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 1013/2006), hereafter called the Waste Shipment Regulation (WSR).

According to our information and with regard to the transport of such waste materials, **[company name, address, state]** is to be considered as the notifier, as referred to in article 2 point 15(a) WSR

.Request for your agreement

With reference to article 24 (2) of EC Regulation 1013/2006/EC, I request your agreement that the waste materials can be returned to **[country name....]** as soon as possible without carrying out a notification procedure. A simplified procedure can be accepted because.(**see the reasons laid down in chapter II 4.2.4**). According art.24 (2) of the WSR the return of the waste will not be covered by a financial guarantee.

After its return, the waste will be **[recovered]** **[disposed]** by **[type]** at the facility of **[company name and address]**.

Please indicate your agreement. Yes/No

Further information

For further information regarding the contents of this letter, please contact **[name...tel. nr.]**, member of my staff.

Could you please inform me of your point of view as soon as possible and keep me informed of any progress.

Thank you in advance for your cooperation in this matter.

Yours sincerely,

INTERPOL ECO MESSAGEWASTE 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 result form

Only to be filled in for Transfrontier shipments of waste. Form can be filled in by hand, during or after the inspection (if local forms are used during the inspection)

1.1 Reference number:	(By country coordinator only)	
1.2 Form send to country of destination / dispatch?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(By country coordinator only)

2.1 Date and time	-	-200	:	hr.
2.2 Location (country, exact spot)				
2.3 Inspector (name + organisation)				
2.4 Scan (X-ray)	<input type="checkbox"/> Yes <input type="checkbox"/> No			

3 Involved companies	Producer <input type="checkbox"/> / Sender <input type="checkbox"/>	Transporter
Name:		
Address:		
City and Country		
Tel:		
Fax:		
	Receiver	Other (producer/trader/shipping agent etc.)
Name:		
Address:		
City and Country		
Tel:		
Fax:		
	Driver/captain (only if necessary)	
Name:		
Address:		
City and Country		
Place/date of birth		
Nationality		

4 Type of vehicle inspected	<input type="checkbox"/> Truck	<input type="checkbox"/> Train	<input type="checkbox"/> Ship	<input type="checkbox"/> Other
5 Type of transport	<input type="checkbox"/> Closed container <input type="checkbox"/> Open top container <input type="checkbox"/> Stored waste <input type="checkbox"/> Tanker	<input type="checkbox"/> Tanker <input type="checkbox"/> Closed trailer <input type="checkbox"/> Curtain trailer	<input type="checkbox"/> Tankcontainer <input type="checkbox"/> Bulk truck <input type="checkbox"/> Other, namely	
6 Vehicle registration (country of registration)	Truck:	Trailer:		
	Ship:	Container nr.		

7 Packing of the waste (incl. amounts!)	<input type="checkbox"/> Drum (number)	<input type="checkbox"/> Bag (number)	<input type="checkbox"/> Bulk (number)
	<input type="checkbox"/> Box	<input type="checkbox"/> Pallet	<input type="checkbox"/> Other, namely

8 TFS- documents			
Notification :	Nr.: All annex present: yes <input type="checkbox"/> / no <input type="checkbox"/>	Tracking form no:	3-day prior: yes <input type="checkbox"/> / no <input type="checkbox"/>
Annex VII information	Form used: yes <input type="checkbox"/> / no <input type="checkbox"/> Information complete: yes <input type="checkbox"/> / no <input type="checkbox"/>		
9 Other documents			
Type of documents	<input type="checkbox"/>	Digital pictures	<input type="checkbox"/> Cognosement
	<input type="checkbox"/>	Waybill	<input type="checkbox"/> Customs documents
	<input type="checkbox"/>	Weighing slips	<input type="checkbox"/> (pro forma) invoice
	<input type="checkbox"/>	Analysing reports	<input type="checkbox"/> Safety data sheets
	<input type="checkbox"/>	List of other foreign companies	<input type="checkbox"/> Other:
	<input type="checkbox"/>	CMR / terms of delivery	
10 Description of waste			
(made by the inspector)	Waste		EWC-code:
Declared by notifier or owner as: (add code)	<input type="checkbox"/> Annex III Green, <input type="checkbox"/> Mixture unlisted,	<input type="checkbox"/> Annex IV Amber, <input type="checkbox"/> Not declared as waste	<input type="checkbox"/> No single entry in Annex III or IV,
Quantity	<input type="checkbox"/> Tons / <input type="checkbox"/> kg / <input type="checkbox"/> Units/m ³		
	Transport is part of : (number) other transports.		
Physical state	<input type="checkbox"/> Liquid <input type="checkbox"/> Solid <input type="checkbox"/> Gaseous	<input type="checkbox"/> Powder <input type="checkbox"/> Solid <input type="checkbox"/> Sludge	<input type="checkbox"/> Dangerous goods (yes/no) <input type="checkbox"/> Samples taken (yes/no) <input type="checkbox"/> Samples analyzed (yes/no) <input type="checkbox"/> Digital pictures
Treatment code	Recovery R		Disposal D
11 Description of violations			
Administrative	<input type="checkbox"/>	Annex VII (explain, see box 8)	
	<input type="checkbox"/>	To notification, (explain, see box 8)	
	<input type="checkbox"/>	Other	
Illegal shipment (add art. WSR 1013/2006)	<input type="checkbox"/>	Yes, (explain, see Annex 7 Guideline)	
Responsible company	<input type="checkbox"/> Producer <input type="checkbox"/> Sender <input type="checkbox"/> Holder	<input type="checkbox"/> Carrier/transporters <input type="checkbox"/> Trader/Broker	<input type="checkbox"/> Driver <input type="checkbox"/> Disposer <input type="checkbox"/> Recipient
12 Verification information			
	A. Verification executed? <input type="checkbox"/> Yes, how? <input type="checkbox"/> by telephone <input type="checkbox"/> by fax/email <input type="checkbox"/> otherwise (explain) <input type="checkbox"/> No, why not? (explain)		B. Verification request necessary? <input type="checkbox"/> Yes* <input type="checkbox"/> what? Company of dispatch, destination, or other (explain) <input type="checkbox"/> how? Administrative or physical (explain) <input type="checkbox"/> No, why not? (explain)
13 Intended actions taken			
	(i.e., prosecution, fine, return shipment, block)		
14 Additional information			

* Please send photo's, forms to competent authorities that will execute the verification

Possibilities according to the manual about managing illegal shipments of waste

1. Discovered by the country of transit (Chapter III. 4.1)			
CA of destination agrees with release of shipment:	<input type="checkbox"/>	Name:	Signature:
CA of destination doesn't 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:	<input type="checkbox"/>	Name:	Signature:

2. Illegal situation is reparable (Chapter III. 4.2)			
I agree with reparation:	<input type="checkbox"/> Country of dispatch <input type="checkbox"/> Country of transit <input type="checkbox"/> Country of destination	Name:	Signature:
I do not agree with reparation:	<input type="checkbox"/> Country of dispatch <input type="checkbox"/> Country of transit <input type="checkbox"/> Country of destination	Name:	Signature:

3. Responsible company is willing to return shipment voluntarily (Chapter III. 4.3)			
3.1. Country of dispatch:			
Agrees with the return:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with simplified notification procedure: (no formal decision nor financial guarantee)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with full notification procedure:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
	Name:	Signature:	
3.2. Country of transit:			
Agrees with the return:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with simplified notification procedure: (no formal decision nor financial guarantee)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with full notification procedure:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
	Name:	Signature:	
3.3. Country of destination:			
Agrees with the return:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with simplified notification procedure: (no formal decision nor financial guarantee)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Agrees with full notification procedure:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
	Name:	Signature:	
4. Initial competent authority of dispatch will act as a notifier			
According art.24.2 I have annexed a duly reasoned request and as the initial CA of dispatch I will make the notification. This notification will be made without establishing a financial guarantee.	Name:	Signature:	

[company name]

[Address]

[city]

[date]

[reference.]

Re: Investigation into compliance with EC Regulation 1013/2006

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 1013/2006 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 shipment 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. 1013/2006 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 shipment (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,



European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL-TFS

A practical guidance for

Managing illegal shipments of waste

December 2008