



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate B - Circular Economy & Green Growth
ENV.B.3 - Waste Management & Secondary Materials

Note for the attention of the Ship Recycling Regulation Committee

Subject: Implications of the entry into force of the Basel Ban Amendment on Regulation 1257/2013 on Ship Recycling and proposed way forward

At the last meeting of the Experts' Group on ship recycling, held on 13 February 2020, the Commission presented its preliminary findings on the implications of the recent international entry into force of the so-called Basel Ban Amendment on Regulation 1257/2013 on ship recycling¹ (the "Ship Recycling Regulation"). Several Member States commented on this matter during and after that meeting.

You will find attached a note aimed at clarifying the legal situation and outlining the proposed way forward, including also concerning the future review of the Ship Recycling Regulation.

We would welcome your views on the issues addressed in this note, and look forward to discussing further these matters with you at the next meeting of the Ship Recycling Regulation Committee in November. We would also invite you to share this note with experts in charge of the implementation of the Basel Convention in your Member States.

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¹ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC; *OJ L 330, 10.12.2013, p. 1.*

ANNEX

I. RELEVANT FACTS AND CIRCUMSTANCES

1. End-of-life ships qualify as hazardous waste, which falls under the scope of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal² (the “Basel Convention”). The EU and all of its Member States are Parties to the Basel Convention.
2. The so-called Basel Ban Amendment was adopted in 1995 and entered into force on 5 December 2019. The Basel Ban Amendment prohibits exports of all hazardous wastes covered by the Basel Convention (which includes end-of-life ships) that are intended for final disposal, reuse, recycling and recovery from Parties and other States which are members of the OECD and the EU and from Liechtenstein to all other countries. The EU and all of its Member States have ratified the Basel Ban Amendment.
3. Regulation 1013/2006 on shipments of waste³ (the “Waste Shipment Regulation”), which implements the rules of the Basel Convention into EU law, includes a similar ban on the export of hazardous waste to countries outside the OECD in its Article 36. Nevertheless, end-of-life ships are excluded from the scope of application of the Waste Shipment Regulation under its Article 1(3)(i) in so far as they are covered by the Ship Recycling Regulation (which applies to large commercial seagoing vessels (above 500 gross tonnage) flying the flag of Member States of the European Union).
4. The Ship Recycling Regulation⁴ is to a large extent based on the Hong Kong Convention on the Safe and Environmentally Sound Recycling of Ships⁵ (the “Hong Kong Convention”), which was signed in 2009 but did not yet enter into force. Article 1 of the Ship Recycling Regulation expressly provides that the Regulation aims to facilitate the ratification of the Hong Kong Convention. The EU is however not a party to the Hong Kong Convention (as it falls under the International Maritime Organisation), and only eight of the Member States have ratified the Hong Kong Convention. Seven non-EU countries have ratified the Convention, including India (on 28 November 2019). On a number of issues, the Ship Recycling Regulation imposes stricter environmental and safety requirements than the Hong Kong Convention.
5. The Ship Recycling Regulation was adopted in 2013 and most of its provisions have been applicable since 31 December 2018⁶. The Ship Recycling Regulation does not impose an export ban on end-of-life ships, but rather contains a system according to which EU-flagged ships may be recycled only in safe and environmentally sound facilities included in the European list of ship recycling facilities (the “EU list”). One important reason for the adoption of the Ship Recycling Regulation was the recognition that an export prohibition on end-of-life ships from the EU to non-OECD countries would be nearly impossible to enforce.

² 22 March 1989, 1673 UNTS. 125, to be found at:
<http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

³ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, *OJ L 190*, 12.7.2006, p. 1.

⁴ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC; *OJ L 330*, 10.12.2013, p. 1.

⁵ <http://www.basel.int/Portals/4/Basel%20Convention/docs/ships/HongKongConvention.pdf>

⁶ Per Article 32(1)(b) of the Regulation

Data confirmed that the rules of the Waste Shipment Regulation were circumvented on a large scale when it came to end-of-life ships. Therefore, it was deemed appropriate for the EU to subject end-of-life ships to a regime of controlled export for recycling, rather than to an export ban.

6. Facilities are included on the EU list through Commission Implementing Decisions when they comply with strict criteria⁷. Whereas the EU list currently only includes facilities in the OECD, it is open to any facility meeting the relevant criteria, regardless of where it is located. At present, there are a number of facilities in India which have applied for inclusion on the EU list and some of them have made important progress towards achieving compliance with the strict EU requirements.
7. In this context, it should be further noted that at the last EU-India summit, held on 15 July 2020, EU-India leaders adopted a joint declaration on resource efficiency and circular economy⁸ (“the Joint Declaration”). The Joint Declaration envisages strengthened cooperation on ship recycling under the framework of the newly established India-EU Resource Efficiency and Circular Economy Partnership.
8. Finally, it must be recalled that Article 30(3) of the Ship Recycling Regulation provides that “[t]he Commission shall keep this Regulation under review and, if appropriate, make timely proposals to address developments relating to international Conventions, including the Basel Convention, should it prove necessary“. The recent entry into force of the Basel Ban Amendment can be considered as a development falling under the scope of this specific provision.

II. INTERPLAY BETWEEN THE SHIP RECYCLING REGULATION AND THE BASEL BAN AMENDMENT

9. Following the entry into force of the Basel Ban Amendment, the Basel Convention prohibits the export of end-of-life ships to countries outside the OECD. The Ship Recycling Regulation theoretically allows for export of end-of-life ships to countries outside the OECD, as long as such transport takes place to facilities included on the EU list. Nevertheless, since no facilities from non-OECD countries are included on the current EU list, it is at present impossible to export EU-flagged end-of-life ships to non-OECD countries in conformity with the Ship Recycling Regulation.
10. On that basis, it is considered that there are currently no inconsistencies between the regime of the Basel Convention and that of the Ship Recycling Regulation, as neither allows the export of end-of-life ships to non-OECD countries.
11. However, the inclusion of a facility located in a non-OECD country on the EU list would allow the export of EU-flagged end-of-life ships to that non-OECD country. In so far as that situation is not covered by an agreement or arrangement meeting the conditions of Article 11 of the Basel Convention, this inclusion under the Ship Recycling Regulation would be incompatible with the obligations of the Basel Convention, as amended.
12. Indeed, after the inclusion of the non-OECD facility on the EU list, the regime of the Ship Recycling Regulation would allow exports of end-of-life ships to a non-OECD country, whereas the Basel Ban Amendment prohibits such exports, thus leading to incompatible legal

⁷ The substantive requirements necessary for ship recycling facilities to be included in the EU list are set out in Article 13 of the Ship Recycling Regulation. The procedure for inclusion of facilities on the EU list is regulated under Article 16 in conjunction with Articles 14 and 15 of the Regulation.

⁸ <https://www.consilium.europa.eu/media/45027/joint-declaration-with-india-on-resource-efficiency-and-circular-economy.pdf>

regimes as such. As Parties to the Basel Convention, both the EU and its Member States have to comply with their obligations flowing from international law.

13. In that respect, Article 11 of the Basel Convention foresees the possibility for Parties to enter into “*bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes*”, as long as these “*do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for in this Convention, in particular taking into account the interests of developing countries [...]*” Article 11 further states that “*The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention*”.
14. In order for the EU and its Member States to pursue the approach set out in the Ship Recycling Regulation and remain in compliance with their obligations under the Basel Convention, the pre-condition for the inclusion of any facility from non-OECD countries on the EU list is that the export of end-of-life ships to the country in question is covered by an agreement or arrangement satisfying the conditions of Article 11 of the Basel Convention.

III. PROPOSED WAY FORWARD

15. The Commission services consider that the current EU policy on ship recycling, based on the Ship Recycling Regulation, is the most effective way for the EU to continue to promote sustainable ship recycling practices worldwide, including in the big ship recycling countries in South Asia, which have been receiving the vast majority of European vessels for dismantling over the past two decades.
16. This EU policy has been delivering important results. Most notably, the opportunities presented by the EU list have already incentivised a number of yards globally, including in non-OECD countries, to bring their operations and infrastructure up to higher standards, to the benefit of the workers and the environment.
17. The Commission services would therefore propose to maintain the current regime of the Ship Recycling Regulation, notably the possibility for yards located in non-OECD countries such as India to join the EU list in the future. At the same time, the Commission services would also propose to start to explore how the current regime of the Ship Recycling Regulation could be further strengthened in the future, with a view to boosting ship recycling in Europe and increasing the supply of important secondary raw materials such as scrap steel for the European steel industry. The main elements of this proposed way forward are presented below.

A. INCLUSION OF INDIAN YARDS ON THE EU LIST

18. It follows from the analysis in the previous section that the inclusion of an Indian facility on the EU list would require the conclusion of a bilateral agreement or arrangement between the EU and India satisfying the conditions of Article 11 of the Basel Convention, which require equivalence in terms of environmentally sound management of waste.
19. In order to meet these conditions, this agreement or arrangement would have to recognise that the regime applying to the export of end-of-life EU-flagged vessels to India for dismantling in EU-listed yards is based on provisions which are not less environmentally sound than those provided for by the Basel Convention.
20. The Commission services believe that, from the EU side, the regime of the Ship Recycling Regulation meets that requirement. Notably the substantive requirements necessary for ship

recycling facilities to be included in the European List under Article 13 of the Ship Recycling Regulation ensure the environmentally sound management of end-of-life ships.

21. It must be also recalled that these EU requirements are largely based on the Hong Kong Convention and take also into account the relevant guidelines of the Basel Convention. Moreover, as far as the Hong Kong Convention is concerned, in April 2010 the EU and its Member States concluded in their assessment submitted to the Basel Convention's Open Ended Working Group-VII/12 that the Hong Kong Convention "*appears to provide a level of control and enforcement at least equivalent to the one provided by the Basel Convention (...)*". Therefore, it is considered that the Ship Recycling Regulation, which gives effect to the Hong Kong Convention at EU level, also satisfies the conditions of Article 11 of the Basel Convention, even more so since the Ship Recycling Regulation contains some more stringent requirements than the Hong Kong Convention⁹. In addition, the Ship Recycling Regulation has introduced additional control measures, including site inspections by the Commission of third country yards prior to or after their inclusion on the European List, contingent on cooperation with the authorities of the said third countries.
22. From the Indian side, the ratification of the Hong Kong Convention on 28 November 2019 was followed by the adoption of the Recycling of Ships Act, 2019¹⁰, which transposes the requirements of the Hong Kong Convention into Indian law and sets out the main provisions governing ship recycling activities in the country. Under this Act, ship recycling facilities are required to be authorized and ships shall be recycled only in such authorized ship recycling facilities. This Act also provides that ships shall be recycled in accordance with a ship-specific recycling plan. Ships to be recycled in India shall be required to obtain a Ready for Recycling Certificate in accordance with the HKC. The Act furthermore imposes a statutory duty on ship recyclers to ensure safe and environmentally sound removal and management of hazardous wastes from ships. Penal provisions have been also introduced in the Act to deter any violation of statutory provisions.
23. Furthermore, it is understood that, based on this new Act, the Indian administration is currently working on the adoption of further specific rules and regulations designed to set out detailed conditions regarding ship recycling activities in India.
24. The fact that India has ratified the Hong Kong Convention and adopted corresponding domestic legislation is a clear indication that India is committed to ensuring an environmentally sound management of end-of-life vessels. However, in order to be able to confirm that the Indian regime satisfies the conditions of Article 11 of the Basel Convention, further information would be necessary on the specific implementing rules for the new Act.
25. On this basis, the Commission services therefore propose to invite India to provide further information on the status and contents of their regime on ship recycling, as well as to offer to start negotiations with the Indian authorities with a view to concluding a bilateral agreement or arrangement. The conclusion of this agreement or arrangement would allow the export of

⁹ The requirements specific to the SRR (not found in the Hong Kong Convention) include the following:

- Article 13(1)(c) 'built structures'
- Article 13(1)(f) 'demonstration of the control of any leakage, in particular in intertidal zones'
- Article 13(1)(g)(i) 'the containment of all hazardous materials present on board during the entire ship recycling process so as to prevent any release of those materials into the environment'
- Article 13(1)(g)(i) 'the handling of hazardous materials, and of waste generated during the ship recycling process, only on impermeable floors with effective drainage systems'
- Article 13(1)(h) 'rapid access for emergency response equipment, such as fire-fighting equipment and vehicles, ambulances and cranes, to the ship and all areas of the ship recycling facility'
- Article 15(5) 'broad equivalence of downstream waste management standards'

¹⁰ <http://egazette.nic.in/WriteReadData/2019/214694.pdf>

EU-flagged end-of-life ships to those Indian facilities which will have demonstrated compliance with the substantive requirements of the Ship Recycling Regulation and which may therefore be included on the EU list in the future. The Commission also believes that the Joint Declaration referred to above provides a good basis for starting negotiations with India on this matter.

B. FUTURE REVIEW OF THE SHIP RECYCLING REGULATION

26. Article 30(2) of the Ship Recycling Regulation contains a specific review clause linked to the Hong Kong Convention. It requires the Commission to “*review this Regulation not later than 18 months prior to the date of entry into force of the Hong Kong Convention and at the same time, submit, if appropriate, legislative proposals to that effect. [...]*”. At present, it is however still not known when the Hong Kong Convention will finally enter into force, although, based on the latest available information, it could happen sometime between 2023 and 2025 at the earliest¹¹.
27. Furthermore, Article 30(4) of the Ship Recycling Regulation requires the Commission to submit a report to the European Parliament and to the Council on the application of this Regulation by five years after the date of application of this Regulation (i.e. by 31 December 2023). This report shall be “*accompanied, if appropriate, by legislative proposals to ensure that its objectives are being met and its impact is ensured and justified.*”
28. In this context, it should be noted that there is at present only limited information available to the Commission services on the application of the Ship Recycling Regulation. This is partly because the recycling related obligations of the Regulation have been applicable for less than two years (since 31 December 2018) while some other key provisions of the Regulation, such as the IHM-related requirements, will become fully applicable only as of 31 December 2020. Secondly, the first implementation reports by the Member States (covering the three-year period starting on the date of application of this Regulation) are only due by 30 September 2022¹².
29. Nevertheless, the latest available data on dismantling trends received from the European Maritime Safety Agency¹³ (EMSA) indicate that the Ship Recycling Regulation has had only limited effects so far. In reality, ship owners can easily find ways to circumvent their legal obligations to get their EU-flagged end-of-life vessels dismantled only in listed yards. The main vehicle of circumvention is “*outflagging*”, i.e. changing from an EU-MS flag to a non-EU-MS flag at the end of the ship’s lifecycle. In fact, according to the latest figures available, EU ships being recycled in listed facilities as EU flags at the end of their ship life were on average becoming smaller in size along the past few years. Conversely, an increasing number of bigger ships have indeed changed their flag to non-EU states before being recycled in non-listed facilities (mostly in South Asia).
30. Therefore, the Commission services consider that it would be necessary to strengthen the regime of the Ship Recycling Regulation by introducing additional measures aimed at

¹¹ The HKC will enter into force 24 months after ratification by 15 States, representing 40 per cent of world merchant shipping by gross tonnage, combined maximum annual ship recycling volume not less than 3 per cent of their combined tonnage. As of today, 15 States have ratified or acceded to the Convention, including 8 EU/EEA countries (Belgium, Denmark, Estonia, France, Germany, the Netherlands, Malta and Norway). This means that the number of States required has now been reached, but further tonnage and recycling volumes are needed before the HKC can enter into force.

¹² Per Article 21(2) of the Ship Recycling Regulation

¹³ See document titled ‘*Statistics of ships changing their EU-MS flag to non-EU flag before recycled (Provisional update until 2019)*’ circulated earlier to the Member States’ experts (by email of 15 May 2020)

improving its effectiveness and thus ensuring that its objectives are fully achieved in practice. To this end, the Commission services will intend to revisit plans to introduce a potential financial incentive, building on the results of the existing study presented to the Member States a few years ago¹⁴.

31. The main purpose of this financial incentive would be to cancel out the profit gap between dismantling in sub-standard yards and dismantling in yards listed on the EU list. It would provide a financial encouragement for ship owners to recycle their vessels in EU-listed yards. In particular, it is expected that this financial incentive could benefit yards located in the EU/EEA whose capacities appear to have been grossly under-utilised up to now. In other words, the proposed financial incentive could create a level playing field that renders it more competitive to recycle sustainably in Europe, thus contributing to the circular economy objectives. Moreover, it would even be an opportunity for Europe to offer proper recovery solutions for ships originated also from non-EU countries, especially from parts of the world with no appropriate waste treatment infrastructures.
32. In addition to the financial incentive, the Commission services will also aim to explore the possible extension of the scope of the Regulation. In particular, it appears that there would be merits to extend the scope of the Regulation to cover all vessels without any size and class limitation and including therefore ships of less than 500 GT (including perhaps also leisure boats) as well as navy vessels. Moreover, it could be appropriate extend the scope of the Regulation to cover ships not flying a flag of a Member State, such as for example abandoned vessels in EU ports with no flag or non-EU flag, or vessels with EU beneficiary ownership which operate under a non-EU flag in European waters, both of which cases currently fall outside the scope of application of the Regulation.
33. In conclusion, the Commission services will aim to focus their future work linked to the revision of the Regulation around these topics. In accordance with Article 30(4), a proposal for a revised Regulation is expected to be put forward by the end of 2023. However, in the unlikely event if the HKC enters into force before that date, the revision of the Regulation might need to be brought forward to an earlier date.

IV. CONCLUSION

On the basis of the foregoing, the following conclusions can be drawn:

- There are currently no incompatibilities between the Basel Ban Amendment and the Ship Recycling Regulation, as neither allow for the export of EU flagged end-of-life ships to non-OECD countries. Therefore, no immediate need exists to review or amend the Ship Recycling Regulation.
- The introduction of facilities located in non-OECD countries on the EU list would entail that such implementation of the Ship Recycling Regulation is in breach of the obligations of the EU under international law to comply with the Basel Ban Amendment, unless the transport of EU-flagged end-of-life ships to the respective non-OECD country is covered

¹⁴ Article 29 of the Ship Recycling Regulation invited the Commission to "*report on the feasibility of a financial instrument that would facilitate safe and sound recycling*" and, "*if appropriate, accompany the report by a legislative proposal*". In August 2017, the Commission published the said report (COM(2017)420 final), based on a 2016 study commissioned from a private consortium (see http://ec.europa.eu/environment/waste/ships/pdf/financial_instrument_ship_recycling.pdf). In its report the Commission acknowledged the merits of a financial incentive (in the form of a so-called Ship Recycling Licence) but concluded that the need for additional measures on financial incentives would be reassessed at a later stage, based on an analysis of the use and effects of the EU list.

by an agreement or arrangement meeting the conditions of Article 11 of the Basel Convention.

- Therefore, for the inclusion of an Indian facility on the EU list, a bilateral agreement or arrangement between the EU and India would be required. The Commission services are therefore proposing to start negotiations with India on this matter.
- Finally, the Commission services will aim to seek to boost the ship recycling industry in Europe by strengthening the current regime of the Ship Recycling Regulation, notably by exploring the possibility of introducing additional measures and tools (including a financial incentive) and, possibly, by extending the scope of application of the Regulation. This will be done in the context of the future review of the Regulation, on which work will commence already in 2021, with a view to put forward a legislative proposal by the end of 2023.