

## OECD Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery

Since March 1992, transboundary movements of wastes destined for recovery operations between members of the Organisation for Economic Co-operation and Development (OECD) have been supervised and controlled under the specific intra-OECD Control System. Established by the *Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations* (OECD/LEGAL/0266), the OECD Control System for waste recovery aims at facilitating trade of recyclables in an environmentally sound and economically efficient manner by using a simplified procedure, as well as a risk-based approach to assess the necessary level of control for materials. It is closely interlinked with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. However, compared to the Basel Convention, the OECD Decision gives a simplified and more explicit means of controlling movements of covered wastes. It also facilitates transboundary movements of recoverable wastes between OECD members in the case where an OECD member is not a party to the Basel Convention. Wastes exported outside the national jurisdiction of any OECD member, whether for recovery or final disposal, do not benefit from this simplified control procedure.

## Background

The control of transboundary movements of waste, in particular that of hazardous wastes, has been a concern to OECD members since the early 1980s. A number of OECD legal instruments relating to transboundary movements of waste were enacted as early as 1984 with the *Decision-Recommendation of the Council on Transfrontier Movements of Hazardous Waste* (OECD/LEGAL/0209).

Since March 1992, transboundary movements of waste destined for recovery operations between OECD members have been supervised and controlled according to the *OECD Council Decision on the Control of Transfrontier Movements of Wastes Destined for Recovery Operations* (C(92)39/FINAL). In June 2001, the Decision was revised and became *Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations* (OECD/LEGAL/0266) (hereafter “the OECD Decision”). The OECD Decision establishes the framework for the specific intra-OECD Control System for transboundary movements of recoverable wastes and establishes rules for trade in waste in an environmentally sound and economically efficient manner.

The OECD Decision is closely interlinked with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention). However, compared to the Basel Convention, it gives a simplified and more explicit means of controlling movements of covered wastes. The OECD Decision also facilitates transboundary movements of recoverable wastes between OECD members in the case where an OECD member is not a party to the Basel Convention. Wastes exported outside the national jurisdiction of any OECD member, whether for recovery or final disposal, do not benefit from this simplified control procedure.

The OECD Decision is a multilateral agreement, which is compatible with the environmentally sound management of hazardous wastes and other wastes pursuant to Article 11(2) of the Basel Convention:

“Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. 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.”

As any OECD decision, OECD/LEGAL/0266 is legally binding upon its adherents and is to be implemented and promulgated through national legislation in each OECD member (currently 38 members). In the case of the European Union and its member states, the OECD Decision is implemented through the waste shipments Regulation (EC) No. 1013/2006.<sup>1</sup>

In Canada, the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*<sup>2</sup> fully implement the requirements of the OECD Decision, the Basel Convention, together with the Canada-US Arrangement on non-hazardous waste and scrap. Other OECD Members have enacted similar national legislation.

## Export controls under the OECD Decision

The OECD Decision applies only to transboundary movements of wastes which are destined for recovery operations within the national jurisdiction of any OECD member. The OECD Decision includes two categories of control procedures for wastes destined for recovery in another OECD member: the Green control procedure and the Amber control procedure (see Figure 1).

### Green control procedure

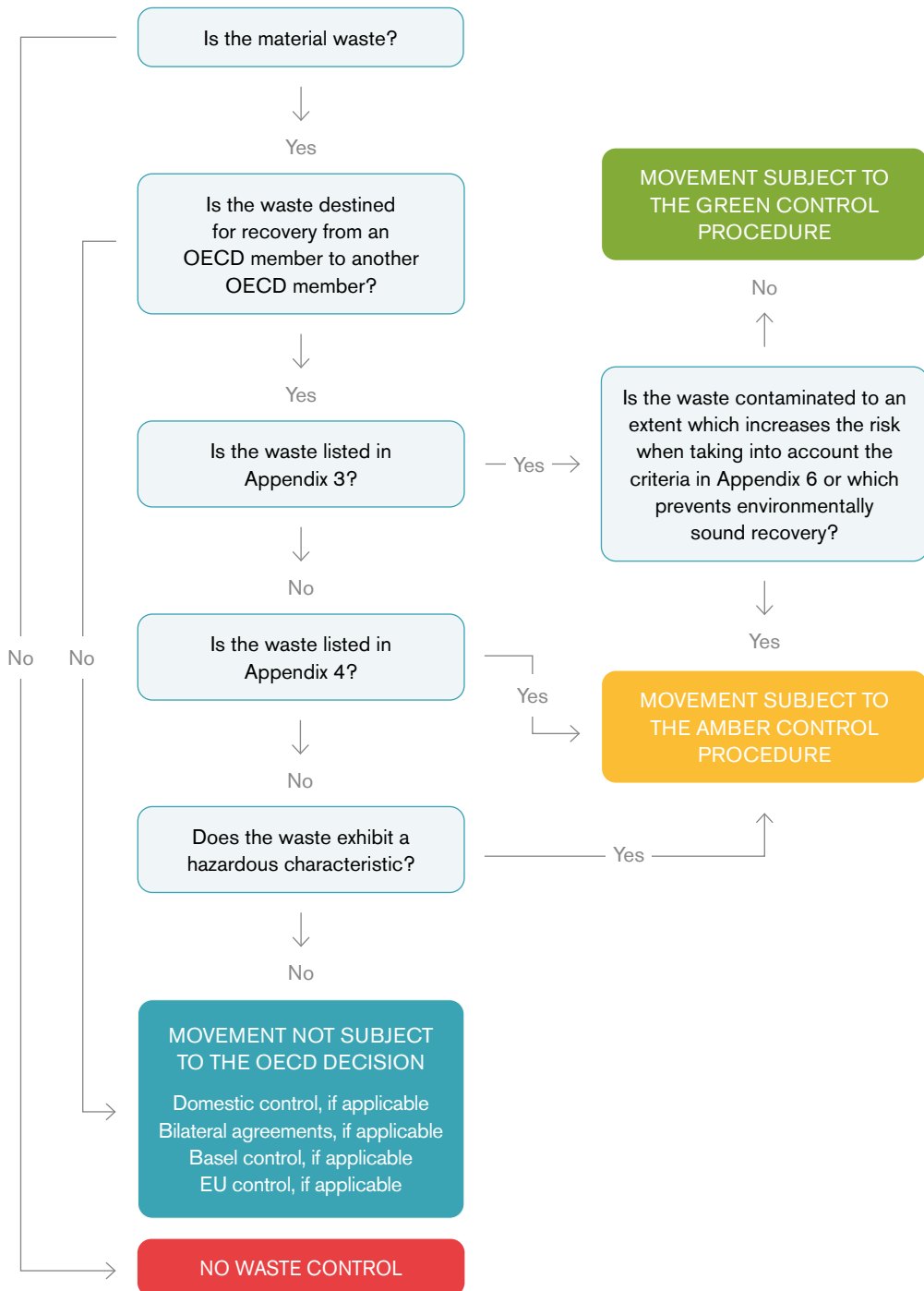
Wastes falling under the Green control procedure are listed in Appendix 3 to the OECD Decision. These wastes do not typically exhibit hazardous characteristics and are deemed to pose negligible risks for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member. Appendix 3 is divided into two parts:

- Part I includes the wastes listed in Annex IX to the Basel Convention (i.e. wastes not characterized as hazardous in accordance with Article 1(1)(a) of the Convention). However, some adjustments have been made in respect of certain entries of Annex IX for the purposes of the OECD Decision.
- Part II contains additional wastes subject to the Green control procedure which, according to a number of risk criteria (see Appendix 6 to the OECD Decision), are assessed as wastes that do not pose any risk for human health and the environment when destined for recovery within the national jurisdiction of any OECD member. These entries are not listed under the Basel Convention.

Since the wastes subject to the Green control procedure are deemed to pose negligible risks for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member, they are not controlled under the OECD Decision. However, the OECD Decision imposes a general requirement that all wastes, including those subject to the Green control procedure, shall be destined for recovery operations within a recovery facility which will recover them in an environmentally sound manner according to national laws, regulations and practices.

It should also be noted that some OECD members may impose specific requirements for the transboundary movements of wastes subject to the Green control procedure by their domestic legislation. For example, the waste shipments Regulation (EC) No. 1013/2006 requires that certain information, signed by the holder of wastes subject to the Green control procedure, accompany each shipment of such waste in order to assist the tracking of these shipments.

**Figure 1: Identification of wastes subject to the OECD Decision**



### *Amber control procedure*

Wastes falling under the Amber control procedure are listed in Appendix 4 to the OECD Decision. These wastes usually, but not always, exhibit one or more hazardous characteristics. Due to their hazardousness or other reason referred to in Appendix 6 to the OECD Decision, they may pose a risk for human health and the environment during their transboundary movement for recovery within the national jurisdiction of any OECD member and are therefore subject to specific control procedures under the OECD Decision. Appendix 4 is divided into two Parts:

- Part I includes the wastes listed in Annex II (wastes requiring special consideration, i.e. wastes collected from households, residues arising from the incineration of household wastes and certain plastic waste) and Annex VIII (wastes characterized as hazardous) to the Basel Convention. Some adjustments have been made in respect to certain entries of Annex VIII for the purposes of the OECD Decision.
- Part II contains additional wastes subject to the Amber control procedure, which, according to a number of risk criteria (see Appendix 6 to the OECD Decision) are assessed to pose a risk for human health and the environment when destined for recovery within the national jurisdiction of any OECD member. These entries are not listed under the Basel Convention.

### *Notification procedure*

Within the national jurisdiction of OECD members, all transboundary movements of waste subject to the Amber control procedure can take place only upon prior written notification to the competent authorities of countries of export, import and transit (if any) and upon tacit or written consent from these authorities to the notified movement of waste.

Once a competent authority of the OECD member of import receives a notification, it shall acknowledge the receipt within three working days. The competent authorities concerned (i.e. of import, export and transit OECD member) then have 30 days, following the issuance of the acknowledgement, to object to the movement or to issue a written consent to it. If no objection by any of the competent authorities concerned is lodged within 30 days, the movement may commence under a tacit consent.

In order to simplify and accelerate the notification procedures, competent authorities of OECD members have the possibility to designate “pre-consented recovery facilities” for which they do not raise objections concerning regular transboundary movements of certain waste types. Transboundary shipments to pre-consented facilities benefit from an accelerated procedure. Normally,<sup>3</sup> only a seven-working day consideration period following the issuance of the acknowledgement is allowed for competent authorities.

Members have the obligation to inform the OECD Secretariat of any pre-consent they grant to their recovery facility. This information is made available updated regularly in the OECD Database on Transboundary Movements of Waste.<sup>4</sup> Currently, the database lists around 460 pre-consented recovery facilities from 23 OECD members.

### *Tracking Procedure*

Once all consents have been obtained from the competent authorities concerned, the shipment of waste may proceed in accordance with the consents and the terms of the contract. Furthermore, each shipment of waste shall be accompanied by a movement document from the point at which the transboundary movement begins to the point of recovery.

The movement document is the core element of the tracking procedure. It provides all the relevant information on a particular consignment of waste and shall accompany the consignment from the time it is no longer in the care of the exporter to the time it arrives at the recovery facility and is recovered. The movement document facilitates the identification of the waste as well as of the responsible parties and competent authorities to be contacted at any time, for example at the border control or other control points along transport routes, or in case of accident or other incident during the transport of the waste. It is also an important tool for competent authorities to follow-up the different stages of the waste shipment and to ensure that it is carried out in accordance with the information given in the notification and possible conditions set out in their consents.

Appendix 8 to the OECD Decision provides a template for the movement document as well as guidance on how to fill the template. The movement document must be completed and signed by the exporter at the start of the shipment, each carrier or carrier's representative when taking possession of the waste as well as the recovery facility upon receipt of the waste and then recovery of the waste concerned. The recovery facility sends completed and signed copies of the movement document to the exporter and the competent authorities concerned, both upon receipt and then recovery of the waste. In addition, if required by domestic legislation, the customs offices of the countries of export, import or transit may use the movement document to certify the passage through the customs offices of entry and exit.

## **Some considerations in relation to WTO agreements**

The OECD Decision is a legally binding international instrument to establish controls for import and export of wastes which may pose a risk or a hazard to human health and the environment.<sup>5</sup> It provides for facilitated trade of waste destined for recovery within the OECD membership. The basic assumption thereby is that environmental standards, as well as capacities among OECD members, are all fulfilling minimum standards and are environmentally sound.

The OECD deems that the Decision is aligned with basic WTO principles as follows:

- **Without discrimination:** Equal controls apply to all trading partners within the OECD membership. Members may control certain wastes differently in conformity with domestic legislation and the rules of international law, in order to protect human health and the environment. However, these “specific national controls” should be on an exceptional basis and temporary in nature.
- **Freer:** The OECD Control System provides for facilitated trade of wastes destined for recovery operations, shortening the consideration period and establishing tacit consent, compared to trade rules established by the Basel Convention.
- **Predictable:** Full transparency of trade rules is enshrined into the OECD Decision. Any specific national controls, as well as any pre-consents to recovery facilities should be reported to the OECD Secretariat. This information is made available on the OECD website.
- **More competitive:** Through the notification procedure, the OECD Decision ensures that transboundary movements of hazardous waste are only taking place with the consent of export, import and, if any, transit countries, discouraging “unfair” practices.
- **More beneficial for less developed countries:** The OECD Decision only applies to OECD members. The specific national control provision allows for less-developed OECD members to apply stricter controls for transboundary movements of wastes if this is deemed necessary. These specific national controls should be on exceptional basis and temporary in nature, whilst the country works towards alignment. For instance, Colombia recently became an OECD member. It became an adherent to the OECD Decision with a specific timeframe for implementation and is currently not participating in the OECD Decision’s control system.

## Recent developments

### *Modification of controls for transboundary movements of plastic waste (since 1 January 2021)*

At the 14<sup>th</sup> meeting of the Conference of the Parties (CoP) to the Basel Convention in May 2019, the CoP adopted amendments to Annex II (wastes requiring special consideration), Annex VIII (wastes characterized as hazardous) and Annex IX (wastes not characterized as hazardous, and hence outside the scope) to the Basel Convention, impacting the transboundary movement of plastic wastes. Normally, amendments to the annexes of the Basel Convention are automatically incorporated into the appendices of the OECD Decision unless an objection is made by an OECD member. On 3 July 2019, the OECD Secretariat received an objection to the automatic incorporation, which led to a series of meetings on how to control the wastes in questions under the OECD Decision.

Since 1 January, hazardous plastic wastes, namely those covered by new Basel entry A3210, are listed under Appendix 4 and subject to the Amber control procedure. For other plastic wastes, namely those covered by new Basel entries B3011 and Y48, each OECD member retains its right to control the plastic waste in question in conformity with its domestic legislation and international law, as no consensus was reached on the controls to be applied within the OECD Control System.<sup>6</sup>

### ***Ongoing negotiations on controls for transboundary movements of e-waste***

The 15<sup>th</sup> meeting of the Basel CoP in June 2022 adopted additional amendments to their waste lists, further restricting transboundary movements of electrical and electronic waste (e-waste). On 16 August 2022, the OECD Secretariat received an objection to the automatic incorporation of these e-waste amendments into the OECD Decision. A process is currently underway to work towards an alternative proposal on how to control transboundary movements of e-waste under the OECD Decision. This process is to be completed before the Basel amendments become effective on 1 January 2025.

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#### **Endnotes**

- 1 Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, 12 July 2006.
- 2 *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2021-25, 26 February 2021.
- 3 This consideration period may be extended to 30 days on request by the competent authority of the OECD member of export.
- 4 See <https://www.oecd.org/environment/waste/theoecdcontrolsystemforwasterecovery.htm>.
- 5 See OECD (2009) for further information.
- 6 For information about these national controls lists, see <https://www.oecd.org/env/waste/22-02-07-Reporting-of-controls.pdf>.