

**Act Implementing Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>1</sup> and the Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal<sup>2</sup>**

**(Waste Shipment Act – *Abfallverbringungsgesetz – AbfVerbrG*)<sup>3, 4</sup>**

**Section 1 Scope**

This Act shall apply to:

1. the shipment of waste to, from or through Germany,
2. the shipment of waste between places in Germany involving transit through other countries,
3. the shipment of waste with regard to the notification of which a German competent authority in accordance with Article 15 (f) (ii) of Regulation (EC) No 1013/2006 is to be involved as the initial competent authority in the initial country of dispatch, as well as
4. recovery or disposal related to the shipment.

**Section 2 The principle of self-sufficiency**

(1) With regard to waste which is to be shipped from Germany and is intended to be disposed of, disposal in Germany shall take precedence over disposal abroad. Insofar as disposal of waste abroad is permissible in accordance with the first sentence and with the provisions contained in Regulation (EC) No 1013/2006, disposal in a Member State of the European Union shall take precedence over disposal in another country.

(2) Subsection (1) shall apply *mutatis mutandis*, in transposition of Article 3 (5) of Regulation (EC) No 1013/2006, to mixed municipal waste (waste entry 20 03 01) collected from private households, including where such collection also covers such waste from other producers.

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<sup>1</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ EU No. L 190, p. 1) in the currently valid version.

<sup>2</sup> Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Federal Law Gazette 1994 II, p. 2703), amended by resolutions of 22 September 1995 and 27 February 1998 (Federal Law Gazette 2002 II, p. 89), of 9 to 13 December 2003 (Federal Law Gazette 2003 II, p. 1626), and of 25 to 29 October 2004 (Federal Law Gazette 2005 II, p. 1122), each in the currently valid version.

<sup>3</sup> Non-binding translation for information purposes only. In case of discrepancies, the German text shall prevail. The German version is available at [http://www.gesetze-im-internet.de/abfverbrg\\_2007/index.html](http://www.gesetze-im-internet.de/abfverbrg_2007/index.html).

<sup>4</sup> Promulgated as article 1 of law of 19 July 2007 (Federal Law Gazette I S. 1462); last amended through article 1 of law of 1 November 2016 (Federal Law Gazette I S. 2452).

### **Section 3 Provisions in the procedure of prior written notification and consent concerning the authorities**

(1) The competent authority may permit financial guarantees or equivalent insurance to be presented in accordance with Article 4 (2) point 5 and Article 6 of Regulation (EC) No 1013/2006 or, insofar as is permitted by the competent authority, proof of such financial guarantees or equivalent insurance, at the latest together with the prior information regarding the actual start of shipment in accordance with Article 16 (b) of Regulation (EC) No 1013/2006.

(2) Insofar as, in the case of shipment through Germany which at the same time constitutes transit through the Community, the competent authority of dispatch or of destination

1. was not presented with any financial guarantees or equivalent insurance, the Federal Environment Agency (*Umweltbundesamt*) shall establish the financial guarantees or equivalent insurance in accordance with Article 6 of Regulation (EC) No 1013/2006, including their form, wording and amount of the cover,
2. has established financial guarantees or equivalent insurance, the Federal Environment Agency may verify the amount of cover and establish additional financial guarantees or equivalent insurance in accordance with Article 6 of Regulation (EC) No 1013/2006 where necessary.

(3) The competent authorities may, in accordance with Article 4 (2) point 3 in conjunction with Annex II Part 3 point 14 of Regulation (EC) No 1013/2006, require additional information as pertinent and necessary to evaluate a notification.

(4) The competent authority may no longer refuse shipment in accordance with Article 11 (1) (c) or Article 12 (1) (d) of Regulation (EC) No 1013/2006 for reasons emerging from a final judgment if, at the time of the official decision,

1. in the case of a conviction in respect of a criminal offence, the period for the deletion of the corresponding entry from the Federal Central Register (*Bundeszentralregister*) has elapsed,
2. in other cases, more than five years have passed since the judgment became final.

### **Section 4 Duties incumbent on the other parties concerned in the procedure of prior written notification and consent**

(1) The notifier shall satisfy the conditions that have been established concerning him or her in accordance with Article 10 (1) or (2), in each case also in conjunction with Article 35 (1), Article 37 (2) sub-para. 2, Article 37 (5), Article 38 (1), Article 40 (3), Article 42 (1), Article 44 (1), Article 45, Article 46 (1), Article 47 or Article 48 of Regulation (EC)

No 1013/2006, and shall ensure that the consignee and operator of the facility meet the conditions concerning them, and that the carrier satisfies the conditions governing the transport of the waste.

(2) In the case of shipments which are covered by Articles 4 to 17, also in conjunction with Article 35 (1), Article 37 (2) sub-para. 2, Article 37 (5), Article 38(1), Article 40 (3), Article 42(1), Article 44 (1), Article 45, Article 46 (1), Article 47 or Article 48 of Regulation (EC) No 1013/2006,

1. the notifier shall complete and sign the movement document in the relevant places in accordance with Annex IC of Regulation (EC) No 1013/2006, and shall ensure that the movement document, which has been completed and signed by him or her as far as possible in the relevant places in accordance with Article 16, first sentence, and second sentence 2 (a), of Regulation (EC) No 1013/2006, as well as copies of the notification document containing the written consents issued by the authorities concerned as well as the corresponding conditions, are carried,
2. the carrier shall complete the movement document in the relevant places in accordance with Annex IC of Regulation (EC) No 1013/2006, shall sign it on acceptance of the waste in question, shall submit it where applicable to another carrier or to the consignee on delivery of the waste, and shall retain a copy thereof himself or herself; the obligation to carry and submit this documentation shall also apply to the person who directly carries out the transport, and
3. the consignee who receives the waste, insofar as he or she is not the operator of the facility, shall complete the movement document in the relevant places, shall sign it on acceptance of the waste in question, shall submit it to the operator of the facility receiving the waste on delivery of the waste, and shall retain a copy thereof himself or herself.

Article 26 (2) (c), sub-paras. 3 and 4 of Regulation (EC) No 1013/2006 shall apply *mutatis mutandis* to the carrying, transmission, completion and signing of electronic records.

(3) The carrier shall present the customs office of export in accordance with Article 35 (3) (c), also in conjunction with Article 37 (2) sub-para. 2 and Article 37 (5) and Article 38 (3) (b) of Regulation (EC) No 1013/2006, with a copy of the movement document at the time of submitting the customs declaration. The carrier shall present the customs office of exit in accordance with Article 35 (3) (c), also in conjunction with Article 37(2) sub-para. 2 and Article 37 (5) and Article 38 (3) (b), Article 47 and Article 48, and the customs office of entry in accordance with Article 42 (3) (c), also in conjunction with Article 44 (3) and Article 45, as well as with Article 47 and Article 48 of Regulation (EC) No 1013/2006, with a copy of the movement document when the waste is presented to the customs office.

(4) The operator of a facility which receives the waste shall inspect the waste and the movement document without undue delay. Should such inspection reveal that the waste is inconsistent with the movement document or with the contract in accordance with Article 5 of Regulation (EC) No 1013/2006, the operator shall inform the competent authority in accordance with Article 14 (1), first sentence, thereof without undue delay.

(5) The operator of the facility shall complete the recovery or disposal of waste in accordance with Article 9 (7), also in conjunction with Article 40 (3), Article 42 (1), Article 44(1), Article 45 and Article 46 (1) of Regulation (EC) No 1013/2006, within the time limit prescribed therein.

(6) If the competent authority has made its consent to the use of a general notification in accordance with Article 13 (3), also in conjunction with Article 35 (1), Article 37 (2), sub-para. 2, Article 37 (5), Article 38 (1), Article 40 (3), Article 42 (1), Article 44 (1), Article 45, Article 46 (1), Article 47 or Article 48 of Regulation (EC) No 1013/2006, contingent on the subsequent submission of additional information and documentation in accordance with Article 4 (2) points 2 and 3 of Regulation (EC) No 1013/2006, the notifier shall submit such information and documentation at the times specified by said authority.

#### **Section 5 Duties within the framework of the general information requirements**

(1) In the case of shipments which are covered by Article 18, also in conjunction with Article 37 (3), Article 38 (1), Article 40 (3), Article 42 (1), Article 44 (1), Article 45, Article 46 (1), Article 47 or Article 48 of Regulation (EC) No 1013/2006,

1. the person who arranges the shipment shall ensure that the document contained in Annex VII of Regulation (EC) No 1013/2006, which has been completed and signed by him or her as far as possible in the relevant places, is carried,
2. the carrier shall complete the document contained in Annex VII of Regulation (EC) No 1013/2006 in the relevant places, shall sign it on acceptance of the waste in question, shall carry it with the waste and, where applicable, shall submit it to another carrier or to the consignee on delivery of the waste; the duty to carry and submit shall also apply to the person who directly carries out the transport,
3. the consignee, insofar as he or she is not the operator of the recovery facility or of the laboratory, shall submit the document contained in Annex VII of Regulation (EC) No 1013/2006, after signing it in accordance with Article 18 (1) (b) of Regulation (EC) No 1013/2006, to the operator of the recovery facility or to the laboratory on delivery of the waste, and
4. the person who arranges the shipment and the consignee shall enter into a contract in accordance with Article 18 (2) sub-para. 1 of Regulation (EC) No 1013/2006 prior to commencing shipment, and shall retain same for at least three years from the date when

shipment began; waste in accordance with Article 3 (4) of Regulation (EC) No 1013/2006 shall be exempt therefrom.

(2) The operator of a facility which receives the waste shall verify the waste and the document carried without undue delay which is contained in Annex VII of Regulation (EC) No 1013/2006. Should this verification reveal that the waste does not correspond to the document carried or to the contract in accordance with Article 18 (2) sub-para. 1 of Regulation (EC) No 1013/2006, the operator shall inform the competent authority in accordance with section 14 subsection (1), first sentence, without undue delay.

(3) The operator of a laboratory which receives the waste shall verify the waste and the document carried without undue delay which is contained in Annex VII of Regulation (EC) No 1013/2006. Should this verification reveal that the waste does not correspond to the document carried, or that it exceeds the quantity of the waste that is permitted in accordance with Article 3 (4) of Regulation (EC) No 1013/2006, the operator shall inform the competent authority in accordance with section 14 subsection (1), first sentence, without undue delay.

(4) Article 26 (3) of Regulation (EC) No 1013/2006 with regard to para. 1 points 1, 2 and 3 shall apply *mutatis mutandis* to electronic carrying, completion and signing.

#### **Section 6 Empowerments to issue ordinances**

(1) The Federal Government is herewith empowered to issue a statutory ordinance,

1. with the consent of the Bundesrat, laying down provisions regarding fundamental agreements on the implementation of Regulation (EC) No 1013/2006 that were reached at meetings of the correspondents in accordance with Article 57 of Regulation (EC) No 1013/2006,
2. with the consent of the Bundesrat, to enact agreements in accordance with Article 30 of Regulation (EC) No 1013/2006 which correspond to the objectives of this Regulation, and
3. without the consent of the Bundesrat, after consulting the groups concerned, in accordance with Article 36 (3) of Regulation (EC) No 1013/2006 to issue provisions concerning the exceptions to the export ban with regard to specific types of waste designated in Annex V.

#### **Section 7 Fees and expenses**

(1) The competent authorities may levy fees and expenses for the following individually-attributable public services in order to cover the administrative effort:

1. implementation of the notification and supervision procedures in accordance with Article 29 of Regulation (EC) No 1013/2006,

2. implementation of analyses and inspections in accordance with Article 29 of Regulation (EC) No 1013/2006, including the taking and examination of samples, and
3. orders in accordance with section 13.

(2) The person who owes the fees and expenses shall be

1. with regard to the taking and inspection of samples, in addition to the notifier, the carrier or the person who arranges the shipment of waste that is subject to the general information obligations in accordance with Article 18 of Regulation (EC) No 1013/2006, and
2. for orders in accordance with section 13, the person obliged.

(3) The Federal Government is herewith empowered to issue a statutory ordinance, without the consent of the Bundesrat, for individually-attributable public services in accordance with subsection (1) of the list of actions that incur fees, establishing the detailed fee rates and the reimbursement of expenses in relation to the Federal authorities designated in section 11 subsection (2), second sentence, and to section 14 subsection (4). When establishing the fees, the administrative effort shall be considered which the service involves, which shall depend in particular on the quantity and hazardousness of the waste that is to be shipped. The fee shall be at least 50 Euro; it may not exceed 6,000 Euro in any individual case.

(4) Via a special fee code of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in accordance with section 22 subsection (4) of the Federal Fees Act (*Bundesgebührengesetz*), different arrangements as to fees owed may be made for the area of the Federal administration, in derogation from the provisions contained in the Federal Fees Act.

### **Section 8 Supplementary provisions on the take-back obligations**

(1) Insofar as a take-back obligation in accordance with Article 22 (2) sub-para. 1 or (3) sub-para. 1, or Article 24 (2) (c), (d) or (e), of Regulation (EC) No 1013/2006 applies to a competent authority in Germany, the fulfilment of the obligation shall be incumbent on the *Land* in which the shipment started. Insofar as authorities of several *Länder* would be competent, the *Länder* in question shall appoint a competent authority. Insofar as no competent authority can be appointed, or if it cannot be appointed in good time for the take-back obligation to be complied with within the period set, the obligation shall be incumbent on the *Land* which is competent next in line in the successive attribution of these cases to the alphabetic list of the names of the *Länder*. The *Länder* may transfer compliance with the obligation to a joint institution.

(2) Insofar as an obligation to assume costs for take-back in accordance with Article 23 or 25 of Regulation (EC) No 1013/2006 exists for waste that is intended to be or is shipped from

Germany, this obligation shall also be incumbent on the person who arranges a shipment, who mediated therein or who implemented same, or was otherwise involved therein, as well as on the producer of the waste. In derogation from the first sentence, such obligation shall not be incumbent on

1. the producer of the waste if he or she is able to prove that he or she acted properly in passing the waste to a third party in Germany and was not involved in the shipment, and
2. institutions or exchanges of self-regulatory commercial bodies (*Selbstverwaltungskörperschaften*) or of business associations which acted as mediators in respect of the waste for recovery, insofar as this is restricted to the exchange of addresses of public services and of enquiries.

Those parties who are obliged to assume costs for take-back shall be obliged to effect compensation inter se in accordance with the principles of a joint and several obligation.

(3) The costs incurred by the competent authorities in connection with take-back and recovery or disposal, or with recovery or disposal by other means, shall be met by the person obliged to meet the costs in accordance with Article 23 or 25 of Regulation (EC)

No 1013/2006 in conjunction with subsection (2). It may be provided that the person obliged to meet the costs is to pay the costs in advance that are likely to be incurred in connection with take-back or with recovery or disposal in an alternative way.

(4) Insofar as a person who is obliged to meet the costs in accordance with Article 23 or 25 of Regulation (EC) No 1013/2006, in conjunction with subsection (2), cannot be claimed against, the *Land* in which the authority competent in accordance with subsection (1), first to third sentences, is located shall meet the costs for take-back or for recovery or disposal in an alternative way, minus the costs refunded by the causer and by other third parties obliged to refund costs vis-à-vis the competent authority in accordance with subsection (1). The *Länder* may agree a cost distribution for cases of meeting the take-back obligation through a joint institution in accordance with subsection (1), fourth sentence.

(5) Objections to and court actions against decisions regarding the return of waste or the establishment of costs in accordance with subsection 3 shall not have any delaying effect.

#### **Section 9 Collection and use of data**

(1) Personal data may be collected for the following tasks:

1. inspection of shipments of waste and of the related recovery or disposal,
2. combating illegal shipments,
3. meeting information obligations vis-à-vis the competent authorities of other countries, the Secretariat of the Basel Convention, and the Commission,

4. implementation of waste management planning, insofar as shipments from or to Germany are included therein.

The following authorities may collect the name and the address, place and date of birth, telephone and telefax numbers, e-mail addresses and the area of the insurances regarding the shipment of waste by persons who are involved in the shipment of waste and in the related recovery or disposal, and their enterprises active in the above area, including the producers and operators of facilities, insofar as this is necessary for the performance of the tasks designated in the first sentence:

1. the correspondent in accordance with section 15, the authorities competent for waste management in accordance with Federal or *Land* law, the institutions tasked with public-law waste management tasks via a statutory ordinance, the highest *Land* environmental authorities, the joint institution in accordance with section 8 subsection (1), fourth sentence,
2. the authorities of the customs administration,
3. the competent police authorities, including the Federal Criminal Police Office and the *Länder* Criminal Police Offices,
4. the Federal Office for Goods Transport, the Federal Office for Economic Affairs and Export Control (BAFA), the Federal Office of Consumer Protection and Food Safety, the Federal Office for Agriculture and Food and the Federal Foreign Office.

(2) Unless this Act and the Waste Acts of the Federation and the *Länder* provide otherwise, personal data may only be collected from the persons concerned. They may only be collected without their involvement if this is necessary for the performance of the tasks designated in subsection (1), first sentence, and the conditions in accordance with section 4 subsection (2), second sentence, of the Federal Data Protection Act (*Bundesdatenschutzgesetz*), or corresponding conditions in accordance with the Data Protection Acts of the *Länder*, are adhered to.

(3) The agencies designated in subsection (1), second sentence, may forward the data collected to the other agencies designated in subsection (1), second sentence, as well as to the Federal Ministries of Finance, of the Interior, for Economic Affairs and Energy, of Transport and Digital Infrastructure, for Food and Agriculture, for the Environment, Nature Conservation and Nuclear Safety, and to the Federal Environment Agency, insofar as this is necessary for the performance of the tasks designated in subsection (1), first sentence.

Personal data which have been forwarded by the foreign agencies designated in subsection (4), or by other foreign agencies, may be forwarded to the agencies designated in the first sentence insofar as this is necessary for the performance of the tasks designated in



subsection (1), first sentence. The data collected in accordance with subsection (1), second sentence, and personal data which have been forwarded by the foreign agencies designated in subsection (4), or by other foreign agencies, may be forwarded to courts and criminal prosecution authorities without the latter having so requested in writing, insofar as factual indications exist in the view of the submitting agency that knowledge of the data is necessary for the prosecution of criminal or regulatory offences.

(4) Where the correspondents and the agencies of other states that are competent for waste management, the Secretariat of the Basel Convention, as well as the Commission, have asked in written or electronic form for the data collected in accordance with subsection (1), second sentence, and have given reasons as to the purpose for which they need them, the data may be communicated to them insofar as the knowledge of the data is necessary for the performance of the tasks in accordance with subsection (1), first sentence, points 1 to 3.

(5) The third party to whom the data have been communicated in accordance with subsections (3) and (4) may only use the data for the task for which they have been communicated to it. Their use over and above this shall only be permissible insofar as is necessary in order to avert considerable disadvantages for the common good, or of any other potential danger to public safety, or in order to prosecute criminal and regulatory offences. The submitting agency shall inform the third party in cases falling under subsection (4).

### **Section 10 Marking of vehicles**

(1) Carriers and persons who directly carries out the transport shall mark vehicles with which they transport waste on public roads prior to commencing the journey with two rectangular, reflecting, white warning panels at least 40 centimetres wide and at least 30 centimetres high. The warning panels must be marked with a black letter "A" (font height 20 centimetres, font thickness 2 centimetres). The warning panels shall be clearly-visibly affixed to the outside of the vehicle during transport, both at the front and at the rear. In the case of tractor-trailer combinations, the rear panel shall be affixed to the rear side of the trailer.

(2) Subsection (1) shall not apply to vehicles with which waste is transported as part of commercial enterprises, that is on the occasion of other commercial or economic activity not intended to transport waste.

(3) The Federal Government is herewith empowered to issue a statutory ordinance in accordance with section 53 subsection (6) or section 54 subsection (7) of the Circular Economy Act (*Kreislaufwirtschaftsgesetz – KrWG*) permitting exceptions to the marking obligation in accordance with subsection (1).

## Section 11 Inspections

(1) In accordance with Article 34 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312 of 22 November 2008, p. 3, L 127 of 26 May 2009, p. 24), most recently amended by Directive (EU) 2015/1127 (OJ L 184 of 11 July 2015, p. 13), the competent *Länder* authorities shall carry out inspections of establishments, undertakings, brokers and dealers in accordance with Article 50 (2) of Regulation (EC) No 1013/2006, and on the basis of inspection plans drawn up in accordance with section 11a.

(2) The authorities competent in accordance with section 14 subsections (1) and (2), first sentence, shall inspect the shipment of waste and related recovery or disposal in accordance with Article 50 (2) and (3) to (4d) of Regulation (EC) No 1013/2006, and on the basis of inspection plans drawn up in accordance with section 11a. The customs authorities appointed by the Federal Ministry of Finance as well as the Federal Office for Goods Transport shall contribute to the inspection of shipments of waste in the context of their existing tasks. The customs authorities and the Federal Office for Goods Transport shall cooperate with the competent *Länder* authorities as far as they are able.

(3) Should there be suspicion of a violation of provisions of Regulation (EC) No 1013/2006 or of this Act, in particular suspicion of an illegal shipment, the authorities designated in subsections (1) and (2) shall inform the *Land* authority which is competent for the area in which the inspection was carried out, as well as,

1. in the case of shipment to Germany, the competent authority of destination in accordance with section 14 subsection (1), first sentence,
2. in the case of shipment from Germany, the competent authority of dispatch in accordance with section 14 subsection (1), second sentence, or
3. in the case of shipment through Germany, the competent authority of transit in accordance with section 14 subsection (4)

without undue delay, in writing or by electronic means, of the suspicion and of the reasons therefor. This shall not apply if the Federal Office for Goods Transport only has suspicion of a violation of the marking obligation in accordance with section 10 subsection (1), first sentence, and is either competent to prosecute it in accordance with section 18 subsection (5), or gives up the procedure to the competent authority of the *Land* in question.

(4) After the *Land* authority which is competent for the area in which the inspection was carried out has been informed in accordance with subsection (3), and considers the suspicion and the reasons therefor to be cogent, it shall ensure, at the expense and risk of the authorised person, that precautions have been taken for safe storage, until

1. the competent authority of dispatch in cases falling under Article 24 (2) sub-para. 1 of Regulation (EC) No 1013/2006,
2. the competent authority of destination in cases falling under Article 24 (3) sub-para. 1 of Regulation (EC) No 1013/2006, or
3. the authorities referred to in points 1 and 2 together in cases falling under Article 24 (5) of Regulation (EC) No 1013/2006

has or have decided differently, and has or have informed it of their decision in writing or by electronic means.

(5) In cases falling under subsection (3), and in the event of a discovery in accordance with Article 22 (9), Article 24 (7), Article 35 (6), also in conjunction with Article 37 (2) sub-para. 2 and Article 37 (5), Article 38 (7), Article 42 (5), also in conjunction with Article 45, Article 47 and Article 48 (1), as well as with Article 44 (5), also in conjunction with Article 48 (2), of Regulation (EC) No 1013/2006, the authorities referred to in subsections (1) and (2) may ensure detention of the waste, as well as its means of transport and packaging, at the expense and risk of the authorised person until such time as the defects that have been discovered are remedied, or until it is safely stored.

(6) Subsections (3) and (4) shall not affect Article 22 (9), Article 24 (2) sub-para. 2, para. 3 sub-para. 2 and (7), Article 35 (6), also in conjunction with Article 37 (2) sub-para. 2 and Article 37 (5), Article 38 (7), Article 42 (5), also in conjunction with Article 45, Article 47 and Article 48 (1), as well as Article 44 para. 5, also in conjunction with Article 48 para. 2, of Regulation (EC) No 1013/2006.

(7) Objections to and rescissory actions against decisions regarding the safe storage of waste or detention in accordance with subsection (4) or subsection (5) shall not have any delaying effect.

### **Section 11a Inspection plans**

(1) The *Länder* shall draw up for their area by 1 January 2017 inspection plans in accordance with Article 50 (2a), first to fourth sentences, of Regulation (EC) No 1013/2006 for inspections in accordance with section 11 subsections (1) and (2). They shall verify these plans at least every three years, and shall update same where appropriate in accordance with Article 50 (2a), fifth and sixth sentences, of Regulation (EC) No 1013/2006.

(2) When drawing up and updating the inspection plans

1. the *Länder* shall involve one another insofar as the contents of the inspection plans affect other *Länder*, and

2. the *Länder* shall acquire the agreement of the competent customs authorities and of the Federal Office for Goods Transport with regard to the contents of the inspection plans insofar as they affect the customs authorities and the Federal Office for Goods Transport; the Central Customs Authority and the Federal Office for Goods Transport shall inform the *Länder* of the respective contacts therefor.

## **Section 12 Measures for monitoring**

(1) In particular the competent authorities in accordance with section 14 subsections (1), (2) and (4) shall cooperate with one another in order to prevent and detect illegal shipments, as well as bilaterally and multilaterally with the competent authorities of other States in accordance with Article 50 (5) of Regulation (EC) No 1013/2006.

(2) In particular the competent *Länder* authorities and the Federal authorities referred to in section 11 subsection (2), second sentence, shall be competent for taking enforcement action at the request of another Member State in accordance with Article 50 (7) of Regulation (EC) No 1013/2006.

(3) Section 47 of the Circular Economy Act shall be applied. In particular, the competent authority may also take and inspect samples of the transported waste, and may inspect the following documents

1. the movement document, as well as copies of the notification document containing the written consent issued by the authorities concerned and the corresponding conditions, and
2. the document contained in Annex VII of Regulation (EC) No 1013/2006.

(4) The following shall be presented to the authorities competent for the inspection on request:

1. by the notifier, the documents designated in subsection (3), second sentence, point 1,
2. by the person who arranges the shipment, the documents designated in subsection (3), second sentence, point 2, and
3. by the carrier, the person who directly carries out the transport, the consignee and the operator of the facility receiving the waste, the documents designated in subsection (3), second sentence, points 1 and 2.

(5) For the purpose of inspection and enforcement, the competent authorities may request the information referred to in Article 18 (1) of Regulation (EC) No 1013/2006 regarding shipments which are covered by Article 18, also in conjunction with Article 37 (3), Article 38 (1), Article 40 (3), Article 42 (1), Article 44 (1), Article 45 or Article 46 (1), of Regulation (EC) No 1013/2006. The person who arranges the shipment, the consignee, and

the operator of the facility which receives the waste, shall submit the information referred to in the first sentence to the competent authority, on request and at times set by the authority.

### **Section 13 Specific orders in individual cases**

In individual cases, the competent authority may issue specific orders necessary to enforce Regulation (EC) No 1013/2006, other directly -applicable provisions of European Community law pertaining to the shipment of waste, this Act, and statutory ordinances issued on the basis of this Act. In particular, it may issue specific orders governing compliance with the take-back obligation in accordance with Articles 22 or 24, in each case also in conjunction with Article 35 (1), Article 37 (2) sub-para. 2, Article 37 (3), Article 37 (5), Article 38 (1), Article 40 (3), Article 42 (1), Article 44 (1), Article 45 or Article 46 (1) of Regulation (EC) No 1013/2006 and regarding impoundment in accordance with Article 22 (9), Article 24 (7), Article 35 (6), also in conjunction with Article 37 (2) sub-para. 2 and Article 37 (5), Article 38 (7), Article 42 (5), also in conjunction with Article 45, Article 47 and Article 48 (1), as well as with Article 44 (5), also in conjunction with Article 48 (2) of Regulation (EC) No 1013/2006, and in accordance with section 11 subsection (5) of this Act.

### **Section 14 Competent authorities**

(1) For measures in connection with the shipment of waste to Germany and the related recovery or disposal, including the duties applying to the competent authority of destination in accordance with Regulation (EC) No 1013/2006, the authority of the *Land* shall be competent in which the waste was intended to be or is recovered or disposed of for the first time. For measures in connection with the shipment of waste from Germany and the related recovery or disposal, including the duties that apply to the competent authority of dispatch in accordance with Regulation (EC) No 1013/2006, the authority of the *Land* shall be competent in which the shipment of the waste is to start or starts.

(2) In addition to subsection (1), the authorities of the *Land* in whose area the waste is located shall be authorised to inspect shipments of waste to, from or through Germany. The Federal authorities designated in section 11 subsection (2), second sentence, shall also be authorised accordingly.

(3) The authority with jurisdiction for the area in question in accordance with Article 22 (9) of Regulation (EC) No 1013/2006 shall be the *Land* authority which is competent for the area in which the shipment was discovered which cannot be completed. The authority with jurisdiction for the area in question in accordance with Article 24 (7) of Regulation (EC) No 1013/2006, and the competent authority in the State of the customs office in accordance with Article 35 (6), also in conjunction with Article 37 (2) sub-para. 2 and Article 37 (5), Article 38 (7), Article 42 (5), also in conjunction with Article 45, Article 47 and Article 48 (1),

as well as with Article 44 (5), also in conjunction with Article 48 (2), of Regulation (EC) No 1013/2006, shall be the *Land* authority which is competent for the area in which the illegal shipment was discovered.

(4) The Federal Environment Agency shall be competent for the decision on the shipment of waste which is intended to take place, or which takes place, through Germany, and the related recovery or disposal, which is subject to the procedure of prior written notification and consent. The Federal Environment Agency shall also be competent for other obligations applicable to the authorities which are competent authorities of transit in accordance with Regulation (EC) No 1013/2006.

### **Section 15 Correspondent**

(1) The Federal Environment Agency shall be the correspondent within the meaning of Article 5 point 1 of the Basel Convention and within the meaning of Article 54 of Regulation (EC) No 1013/2006.

(2) The authorities of the Federation and of the *Länder* referred to in this Act shall exchange information, in compliance with section 9, with the correspondent regarding illegal shipments and shipments that cannot be completed as intended, as well as regarding pending investigations and criminal proceedings. The correspondent shall receive enquiries relating to other countries, and shall forward them to the competent agencies.

(3) The correspondent shall post information that is relevant for the shipment of waste on its website. The fact that the competent authorities of dispatch or destination in accordance with Article 21 of Regulation (EC) No 1013/2006 may make publicly available information regarding the notifications of shipments to which they have consented shall remain unaffected thereby.

(4) The correspondent shall inform the Commission of the appointments and of the information thereon in accordance with Article 50 (6) and Article 56 (1) (a) and (b) in conjunction with (2) to (4) of Regulation (EC) No 1013/2006.

### **Section 16 Reports and the submission of information**

(1) The Federal Environment Agency shall be competent for submitting information in accordance with Article 13 of the Basel Convention to the Secretariat of the Basel Convention. The *Länder* shall submit the information that is necessary in accordance with Article 13 of the Basel Convention to the Federal Environment Agency on request, in good time, and by electronic means. This shall include in particular the information on drawing up the report in accordance with Article 13 (3) of the Basel Convention, in particular the information in the notification document. The Federal Environment Agency shall submit a

copy of this report to the Commission in accordance with Article 51 (1) of Regulation (EC) No 1013/2006.

(2) The Federal Environment Agency shall be competent for drawing up the report in accordance with Article 51 (2), first sentence, of Regulation (EC) No 1013/2006, and for submission to the Commission. The *Länder*, the Central Customs Authority and the Federal Office for Goods Transport shall submit to the Federal Environment Agency on request, in good time, and by electronic means, the information that is necessary to draw up this report in accordance with Annex IX of Regulation (EC) No 1013/2006. The Federal Environment Agency shall publish the section of this report designated in Article 51 (2), second sentence, of Regulation (EC) No 1013/2006, together with expedient information thereon, on its website within one month of the submission of this report to the Commission.

### **Section 17 Customs offices**

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, in agreement with the Central Customs Authority and in accordance with Article 55 of Regulation (EC) No 1013/2006, shall announce the customs offices for the Federal Republic of Germany via which waste may be shipped when entering or leaving the European Community.

### **Section 18 Provisions governing regulatory fines**

(1) A regulatory offence shall be deemed to have been committed by whomsoever, wilfully or negligently,

1. in contravention of section 4 subsection (1), fails to fulfil an enforceable condition, or to do so correctly, completely or on time, or to ensure that a person referred to therein fulfils such a condition,
2. in contravention of section 4 subsection (2), first sentence, point 1, fails to ensure that a document referred to therein is carried,
3. in contravention of section 4 subsection (2), first, second or third sentence, fails to submit the movement document, or fails to do so correctly, completely or on time,
4. in contravention of section 4 subsection (3), fails to present a document or to do so on time,
5. in contravention of section 4 subsection (4), second sentence, or section 5 subsection (2), second sentence, or subsection (3), second sentence, fails to inform the competent authority, or fails to do so on time,
6. in contravention of section 4 subsection (5), fails to complete a recovery or disposal operation, or to do so on time,

7. in contravention of section 4 subsection (6), fails to submit a piece of information or a document, or to do so correctly, or completely, or on time,
- 7a. in contravention of section 5 subsection (1) point 1, fails to ensure that a document referred to therein is carried,
8. in contravention of section 5 subsection (1) point 2 or 3, fails to carry the document specified therein, fails to carry the correct or complete document, or fails to submit said document, or to submit it on time,
9. in contravention of section 5 subsection (1) point 4, fails to enter into a contract, or to do so correctly or on time,
10. contravenes a statutory ordinance in accordance with section 6 point 1 or 2 insofar as reference is made therein to this provision on regulatory fines with regard to specific cases,
11. in contravention of section 10 subsection (1), first sentence, fails to attach warning panels to a vehicle, or to do so correctly, or completely, or on time,
12. in contravention of section 12 subsection (3), first sentence, in conjunction with section 47 subsection (3), first sentence, of the Circular Economy Act, fails to give information, or to do so correctly, or completely, or on time,
13. in contravention of section 12 subsection (3), first sentence, in conjunction with section 47 subsection (3), second or third sentence, of the Circular Economy Act, refuses permission to enter a property or residential, commercial or business premises, or refuses permission to inspect documents or to perform technical inspections or tests,
14. in contravention of section 12 subsection (3), first sentence, in conjunction with section 47 subsection (4) of the Circular Economy Act, fails to make the required manpower, tools or documents available,
15. in contravention of section 12 subsection (4), fails to deliver a document or to do so on time,
16. in contravention of section 12 subsection (5), second sentence, fails to submit information, or to do so correctly, or completely, or on time,
17. acts in contravention of an enforceable specific order in accordance with section 13, second sentence, or
18. acts in contravention of a directly-applicable provision in legal acts of the European Community or of the European Union regarding waste shipments which
  - a) provides that shipment may only occur for as long as the consents of all competent authorities are valid, or that the export or import of waste is prohibited,



- b) provides that waste may not be mixed with other waste during shipment, or
- c) is equivalent in content to one of the cases designated in points 2 to 5, 7 to 10, 16 or 17,

insofar as a statutory ordinance in accordance with subsection (6) refers to these provisions governing regulatory fines with regard to a specific offence.

(2) A regulatory offence shall be deemed to have been committed by whomsoever wilfully or negligently carries out an illegal shipment within the meaning of Article 2 point 35 (d), (e) or (g) (iii) of Regulation (EC) No 1013/2006

- 1. of hazardous waste within the meaning of Article 3 point 2 of Directive 2008/98/EC, or
- 2. of waste within the meaning of Article 3 point 1 of Directive 2008/98/EC which does not constitute hazardous waste within the meaning of Article 3 point 2 of Directive 2008/98/EC.

(3) An attempted regulatory offence in accordance with subsection (1) point 18 (a) may be sanctioned.

(4) In cases falling under subsection (1) points 1, 6, 10, 17 and 18 (a) and (b), as well as under subsection (2) point 1, the regulatory offence shall be punishable by a regulatory fine of up to fifty thousand Euro, in cases falling under subsection (1), points 5, 9, 12, 13 and 14, as well as subsection (2) point 2, by a regulatory fine of up to twenty thousand Euro, and in other cases by a fine of up to ten thousand Euro.

(5) The administrative authority within the meaning of section 36 subsection (1) point 1 of the Regulatory Offences Act shall be the Federal Office for Goods Transport in the case of the shipment of waste by road, insofar as the contravention is committed in a company which does not have either its headquarters or a branch office in Germany, and insofar as the affected individual is not resident in Germany.

(6) Where necessary in order to enforce the legal acts of the European Community or of the European Union, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is herewith empowered, by way of a statutory ordinance without the consent of the Bundesrat, to define cases that are punishable as regulatory offences in accordance with subsection (1) point 18.

### **Section 18a Criminal offences in the event of illegal shipments of hazardous waste**

(1) Up to five years' imprisonment or a fine shall be imposed on whomsoever carries out an illegal shipment within the meaning of Article 2 point 35

- 1. (a), (b), (c) or (g) (i) or (ii) of Regulation (EC) No 1013/2006, or

2. (f) in conjunction with

- a) Article 34 (1) or (3), Article 39, Article 40 (1), Article 41 (1), first sub-clause, or Article 43 (1) of Regulation (EC) No 1013/2006, or
- b) Article 36 (1), also in conjunction with Article 40 (2), of Regulation (EC) No 1013/2006,

of hazardous waste within the meaning of Article 3 point 2 of Directive 2008/98/EC.

(2) Punishment shall also be imposed on whomsoever endangers the life or health of another, of animals or of plants, water bodies, the air or the soil or third-party goods of considerable value through a wilful act designated in section 18 subsection (2) point 1.

(3) Between six months' and five years' imprisonment shall be imposed on whomsoever

- 1. persistently repeats an act designated in subsection (1), or
- 2. acts in the pursuit of financial gain in cases falling under subsection (1).

(4) Between one year's and ten years' imprisonment shall be imposed on whomsoever, in cases falling under subsection (1), places another person at risk of death or of serious damage to health, or places a large number of persons at risk of damage to health.

(5) In less serious cases falling under section (4), the punishment shall be between six months' and five years' imprisonment.

(6) Not less than three years' imprisonment shall be imposed on whomsoever causes the death of another person in cases falling under subsection (1).

(7) In less serious cases falling under section (6), the punishment shall be between one year's and ten years' imprisonment.

(8) If the offender acts negligently in cases falling under subsection (1) or (2), the punishment shall be up to three years' imprisonment or a fine.

(9) The court may reduce the sentence in cases falling under subsections (1), (2) and (8) in accordance with section 49 subsection (2) of the Criminal Code (*Strafgesetzbuch*), or may waive punishment, if the offender voluntarily averts the danger or remedies the condition that he or she brought about, before considerable damage is caused. If the danger is averted without action on the part of the offender, or the unlawfully-caused condition is remedied, voluntary, serious efforts to achieve this objective shall suffice.

(10) The offence shall not be punishable in accordance with subsections (1) to (8) if the act relates to an inconsiderable quantity of hazardous waste.

### **Section 18b Criminal offences in the case of illegal shipments not of hazardous waste**

(1) Up to two years' imprisonment or a fine shall be imposed on whomsoever carries out an

illegal shipment within the meaning of Article 2 point 35

1. (a), (b), (c) or (g) (i) or (ii) of Regulation (EC) No 1013/2006, or
2. (f) in conjunction with
  - a) Article 34 (1) or (3), Article 39, Article 40 (1), Article 41 (1), first sub-clause, or Article 43 (1) of Regulation (EC) No 1013/2006, or
  - b) Article 36 (1) (b), (f) or (g), in each case also in conjunction with Article 40 (2), of Regulation (EC) No 1013/2006

of waste within the meaning of Article 3 point 1 of Directive 2008/98/EC which does not constitute hazardous waste within the meaning of Article 3 point 2 of Directive 2008/98/EC.

(2) Punishment shall also be imposed on whomsoever endangers the life or health of another, of animals or of plants, water bodies, the air or the soil or third-party goods of considerable value through a wilful act designated in section 18 subsection (2) point 2.

(3) Up to five years' imprisonment or a fine shall be imposed on whomsoever

1. persistently repeats an act designated in subsection (1), or
2. acts in the pursuit of financial gain in cases falling under subsection (1).

(4) Between one year's and ten years' imprisonment shall be imposed on whomsoever, in cases falling under subsection (1), places another person at risk of death or of serious damage to health, or places a large number of persons at risk of damage to health.

(5) In less serious cases falling under section (4), the punishment shall be from six months' to five years' imprisonment.

(6) Not less than three years' imprisonment shall be imposed on whomsoever causes the death of another person in cases falling under subsection (1).

(7) In less serious cases falling under subsection (6), the punishment shall be from one year's to ten years' imprisonment.

(8) If the offender acts negligently in cases falling under subsection (1) or (2), the punishment shall be up to one year's imprisonment or a fine.

(9) The court may reduce the sentence in cases falling under subsections (1), (2) and (8) in accordance with section 49 subsection (2) of the Criminal Code, or may waive punishment, if the offender voluntarily averts the danger, or remedies the condition that he or she brought about, before considerable damage is caused. If the danger is averted without action on the part of the offender, or the unlawfully-caused condition is remedied, voluntary, serious efforts to achieve this objective shall suffice.

(10) The offence shall not be punishable in accordance with subsections (1) to (8) if the act relates to an inconsiderable quantity of hazardous waste.

### **Section 18c References to provisions of the law of the European Community or of the European Union**

(1) References contained in section 18 subsection (2), section 18a subsection (1) and section 18b subsection (1) of this Act to provisions of the European Community or of the European Union shall be deemed to refer to the versions stated in the Annex to this provision.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is herewith empowered to issue a statutory ordinance, without the consent of the Bundesrat, amending the list of sources contained in the Annex to this provision.

### **Section 19 Confiscation**

If a criminal offence in accordance with section 18a or section 18b or a regulatory offence in accordance with section 18 subsection (1) or subsection (2) has been committed,

1. objects obtained through the criminal or regulatory offence or which have been used or were intended to be used for its commission, and
2. objects to which the criminal or regulatory offence refers

may be confiscated. Section 74a of the Criminal Code and section 23 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) shall be applied.

### **Section 20 Provisions on the administrative procedure**

The provisions on the administrative procedure enacted by this Act and on the basis of this Act may not be derogated from by *Land* law.

### **Annex (re section 18c)**

#### **List of sources of the provisions of the law of the European Community or of the European Union**

1. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006, p. 1, L 318 of 28 November 2008, p. 15, L 334 of 13 December 2013, p. 46, L 277 of 22 October 2015, p. 61), most recently amended by Regulation (EU) 2015/2002 (OJ L 294 of 11 November 2015, p. 1),
2. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312 of 22 November 2008, p. 3, L 127 of 26 May 2009, p. 24), most recently amended by Directive (EU) 2015/1127 (OJ L 184 of 11 July 2015, p. 13).