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**GlobalDenmark Translations, April 2014**

**Statutory Order on shipments of waste and shipments of used electrical and electronic equipment<sup>1)</sup>**

The following shall be laid down pursuant to sections 44(1), 46a(2), section 67, section 80(1) and (2), section 89a(1)-(3), and section 110(3) of the Environmental Protection Act, cf. Consolidation Act no. 879 of 26 June 2010, as amended by Act no. 484 of 11 May 2010, Act no. 446 of 23 May 2012, Act no. 1149 of 11 December 2012 and Act no. 87 of 28 January 2014:

*Definitions*

1. For the purpose of this Statutory Order:

- 1) "Waste" shall mean waste as defined in the Statutory Order on Waste.
- 2) "Waste electrical and electronic equipment" shall mean waste electrical and electronic equipment as defined in the Statutory Order on placing on the market of electrical and electronic equipment and management of waste electrical and electronic equipment.
- 3) "Waste producer" shall mean waste producer as defined in the Statutory Order on Waste.
- 4) "Disposal" shall mean the forms and methods which are set out in Annex 5A to the Statutory Order on Waste.
- 5) "Disposal facilities" shall mean facilities that carry out the disposal of waste.
- 6) "Electrical and electronic equipment" shall mean electrical and electronic equipment as defined in the Statutory Order on placing on the market of electrical and electronic equipment and management of waste electrical and electronic equipment.
- 7) "Electrical and electronic equipment for professional use" shall mean electrical and electronic equipment for professional use as defined in the Statutory Order on placing on the market of electrical and electronic equipment and management of waste electrical and electronic equipment.
- 8) "The Regulation" shall mean Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
- 9) "Re-use" shall mean re-use as defined in the Statutory Order on Waste.
- 10) "Recovery" shall mean the forms and methods which are set out in Annex 5B to the Statutory Order on Waste.
- 11) "Decision of the OECD Council" shall mean Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations.
- 12) "Shipment" shall mean shipment as defined in Article 2, no. 34 of the Regulation and similar transboundary shipment of used electrical and electronic equipment.

13) "Producer" shall mean producer as defined in the Statutory Order on placing on the market of electrical and electronic equipment and management of waste electrical and electronic equipment.

#### *Competent authority in Denmark under the Regulation*

**2.** When Denmark is the country of dispatch, the Danish Environmental Protection Agency (Danish EPA) shall be notified of any shipment of waste for which notification is required under the Regulation.

#### *Information and documentation in connection with notification of shipments of waste where Denmark is the country of dispatch*

**3.-(1)** When sending the notification of shipment of waste where Denmark is the country of dispatch, the notifier shall, in addition to the information and the documentation which according to Article 4, no. 2 of the Regulation are compulsory, also enclose a copy of the contracts, cf. Annex II, Part 1, nos. 22 and 23.

**(2)** When sending the notification of shipments of waste where Denmark is the country of dispatch, the notification shall be accompanied by confirmation from the local council for the municipality in which the waste producer is located that the waste corresponds to the description in boxes 12, 13 and 14 of the notification document, cf. Annex IA to the Regulation.

**(3)** If the confirmation from the local council referred to in subsection (2) is not submitted, the notifier shall instead submit a chemical analysis of the composition of the waste in addition to a description of the production process from which the waste is generated.

#### *Language*

**4.** Notification, information, documentation or other communication shall be submitted in Danish, Swedish, Norwegian or English.

#### *Fees*

**5.-(1)** The notifier shall pay a fee to cover all costs for processing the notification of shipments of waste, regardless of whether Denmark is the country of dispatch or the country of destination. For notifications received after the entry into force of this Statutory Order, the fee shall amount to DKK 13,400 per notification. The fee shall be adjusted annually on 1 January using the latest published price and wages index in the Ministry of Finance's Economic Administrative Guidelines. The current fees shall be published on the website of the Danish EPA, [www.mst.dk](http://www.mst.dk).

**(2)** The fee shall be collected by the Danish EPA when the Agency initiates the processing of the notification, and shall be paid according to the instructions given on the notice of fee collection. No fee shall be due if the notifier withdraws the notification before the notice of fee collection has been issued.

**(3)** If the fee is not be paid on time, penalty interest shall be charged on the fee at an annual rate of interest corresponding to the official discount rate in force at any time plus five percent.

#### *Financial guarantee*

**6.-(1)** When Denmark is the country of dispatch for shipments of waste for which notification is required under the Regulation, the notifier or another natural or legal person on his behalf shall provide a guarantee of DKK 3,000 per tonne of waste to be shipped in accordance with the notification.

**(2)** If the Danish EPA deems that the expected costs of transport, disposal, recovery and storage will deviate materially from the amount specified in subsection (1), the Agency may decide that the guarantee shall constitute a larger or smaller amount than that specified in subsection (1).

**7.-(1)** The following shall be accepted as a financial guarantee:

- 1) Bank guarantee issued by a bank;
- 2) Guarantee issued by a guarantor company;
- 3) Cash deposit in a blocked bank account.

**(2)** The Danish EPA may approve another type of guarantee.

**8.-(1)** A guarantee under the Regulation shall quote the serial number of the notification and shall be provided with a clause to the effect that it cannot be released until the Danish EPA has received the certificate referred to in Article 6(5) or Article 6(8) of the Regulation.

**(2)** For shipments of waste destined for interim recovery or disposal, where further recovery or disposal takes place in the country of destination, the guarantee may, however, be provided with a clause so that it can be released when the waste leaves the facility carrying out the interim operation and the Danish EPA has received the certificate referred to Article 6(6) of the Regulation.

**(3)** The guarantee shall also set out clearly that it must be paid to the Danish EPA in the event that the Agency deems that the Danish state or other authorities concerned have to meet the obligations arising under Articles 23 and 25 of the Regulation.

**(4)** The guarantee shall be issued to the Danish state, c/o Environmental Protection Agency, Strandgade 29, DK-1401 Copenhagen K.

**(5)** The guarantee shall be valid at the time of notification. A separate guarantee shall be issued for each notification.

#### *Obligations of enterprises in connection with shipments of waste*

**9.-(1)** Enterprises may only receive waste shipped to Denmark as the country of destination when the waste is shipped in compliance with the provisions of the Regulation.

**(2)** Dealers and brokers which arrange shipments of waste shall ensure that the waste is shipped in compliance with the provisions of the Regulation.

**10.-(1)** The shipping of waste for disposal in Denmark shall be prohibited. However, the prohibition shall not apply in the following circumstances:

- 1) If there are no suitable disposal opportunities in the country of dispatch and the waste is produced in such limited amounts that establishment of new, specialised disposal facilities in that country would be uneconomical.
- 2) For shipments of hazardous waste destined for incineration on land from EU and EFTA countries which are parties to the Basel Convention<sup>2)</sup> to Denmark as the country of destination, cf. point D10 in Annex 5A to the Statutory Order on Waste.

**(2)** When Denmark is the country of dispatch, the shipping of waste for disposal in EU and EFTA countries which are parties to the Basel Convention shall be prohibited. However, the prohibition shall not apply in the following circumstances:

1) If there are no suitable disposal facilities in Denmark and the waste is produced in Denmark in such limited amounts that establishment of new, specialised disposal facilities in Denmark would be uneconomical.

2) For shipments of hazardous waste destined for incineration on land from Denmark as the country of dispatch, cf. point D 10 in Annex 5A to the Statutory Order on Waste.

**(3)** Furthermore, it shall be prohibited to arrange shipments of waste in contravention of the prohibition in subsections (1) and (2).

**(4)** The Danish EPA may grant derogations from the prohibition in subsections (2) and (3), cf. subsection (2).

#### *Shipment of used electrical and electronic equipment*

**11.-(1)** For shipment of used electrical and electronic equipment, each consignment shall be accompanied by

1) a relevant transport document, e.g. CMR or waybill; and

2) a declaration from the person liable for the shipment on its responsibility.

**(2)** For shipment of used electrical and electronic equipment, the equipment shall have appropriate protection against damage during transport, loading and unloading, in particular through sufficient packaging and appropriate stacking of the consignment.

**12.-(1)** If a shipment of alleged used electrical and electronic equipment is suspected of being a shipment of waste electrical and electronic equipment due to e.g. the condition, age or packaging of the equipment, in addition to the documents referred to in section 11, the consignment shall be accompanied by:

1) a copy of the invoice and contract relating to the sale or transfer of ownership of the used electrical and electronic equipment, stating that the equipment is destined for direct re-use and that it is fully functional.

2) evidence of evaluation and testing pursuant to subsection (2) in the form of a copy of the records (certificate of testing, proof of functionality) on every item within the consignment and a protocol containing all record information according to subsections (2) and (3).

3) a declaration from the person liable for the shipment of used electrical and electronic equipment that none of the material or equipment within the consignment is waste.

**(2)** In order to demonstrate that the items being shipped constitute used electrical and electronic equipment rather than waste electrical and electronic equipment, the functionality shall be tested and the presence of hazardous substances shall be evaluated. Results of said evaluation and testing shall be recorded.

**(3)** The record mentioned in subsection (2) shall be fixed securely but not permanently on either the used electrical and electronic equipment itself (if not packed) or on the packaging so it can be read without unpacking the equipment. The record shall contain the following information:

- 1) name of item, including the name of the equipment if listed in Annex 1 or Annex 2 of the Statutory Order on placing on the market of electrical and electronic equipment and management of waste electrical and electronic equipment,
- 2) identification number of the item (type no.) where possible,
- 3) year of production where possible,
- 4) name and address of the company responsible for evidence of functionality,
- 5) result of tests, cf. subsection (2), including date of the functionality test, and
- 6) kind of test performed.

**(4)** Section 12(1), nos. 1 and 2, subsection (2) and subsection (3) shall not apply where it is clearly documented that the shipment is taking place within the framework of a business-to-business transfer agreement, and that:

- 1) the used electrical and electronic equipment is being sent back to the producer or a third party acting on his behalf as defective for repair under warranty with the intention of re-use;
- 2) the used electrical and electronic equipment for professional use is being sent to the producer or a third party acting on his behalf or a third-party facility in countries to which the Decision of the OECD Council applies, for refurbishment or repair under a valid contract with the intention of re-use; or
- 3) the defective used electrical and electronic equipment for professional use, such as medical devices or their parts, is being sent to the producer or a third party acting on his behalf for root cause analysis under a valid contract, in cases where such an analysis can only be conducted by the producer or third parties acting on his behalf.

**13.-(1)** In the event that a consignment of used electrical and electronic equipment is not accompanied by the documents required pursuant to section 11(1), or in the event that a consignment of used electrical and electronic equipment suspected of being waste electrical and electronic equipment is not accompanied by documentation pursuant to section 12(1), including documentation for each item demonstrating its functionality, the equipment in the consignment shall be classified as waste pursuant to the Statutory Order on Waste, and a shipment of such waste shall constitute an illegal shipment of waste pursuant to the Regulation.

**(2)** If, in connection with shipment of used electrical and electronic equipment, the equipment does not have appropriate protection against damage during transport, loading and unloading, in particular through sufficient packaging and appropriate stacking of the consignment, cf. section 11(2), the equipment in the consignment shall be classified as waste pursuant to the Statutory Order on Waste, and the shipment shall constitute an illegal shipment of waste pursuant to the Regulation.

**(3)** If used electrical and electronic equipment is suspected of being waste electrical and electronic equipment, the local council may, pursuant to the Statutory Order on Waste, when a decision is made on its classification prior to the actual start of the shipment, request documentation in accordance with section 12(1), including documentation that the equipment is functional, cf. however, section 12(4). If this documentation is not presented, the used electrical and electronic equipment shall be classified as waste.

*Supervision*

**14.-(1)** The municipal administration shall monitor compliance with the provisions of the Regulation and of this Statutory Order, cf. however, subsections (2) and (3).

**(2)** The Danish EPA shall monitor compliance with the provisions of the Regulation and this Statutory Order on waste shipped to Denmark as the country of destination, by enterprises where the power to grant authorisation under the rules on the approval of listed activities is delegated to the Agency.

**(3)** The Danish EPA shall also monitor compliance with the provisions of the Regulation with regard to the transport of waste shipped to Denmark as the country of destination and waste destined for shipment where Denmark is the country of dispatch as well as with regard to the transit of waste.

**15.-(1)** The Danish EPA shall decide whether waste under Articles 22 and 24 of the Regulation shall be returned to the country of dispatch or disposed of or recovered in some other way than that specified in the notification.

**(2)** If the local council deems that under Articles 22 and 24 of the Regulation there are grounds for the notifier or the competent authority of dispatch to arrange for waste to be returned to the country of dispatch or otherwise be disposed of or recovered in another way than that specified in the notification, the local council shall inform the Danish EPA of this.

#### *Administrative provisions*

**16.** Decisions made pursuant to the Regulation and this Statutory Order cannot be brought before any other administrative authority.

#### *Penalties*

**17.-(1)** Unless a more severe penalty is due under other legislation, fines shall be imposed on any person who:

1) fails to provide a guarantee, cf. section 6;

2) receives waste shipped to Denmark as the country of destination that is not shipped in compliance with the provisions of the Regulation, cf. section 9(1);

3) arranges shipments of waste in contravention of section 9(2); or

4) infringes the prohibition in section 10(1)-(3).

**(2)** The penalty may increase to imprisonment of up to two years, if the violation is committed intentionally or by gross negligence and if through this violation

1) the environment is adversely affected or exposed to danger; or

2) a financial advantage is achieved or strived towards by the person concerned or others, including reductions in expenses.

**(3)** Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

#### *Entry into force and transitional provisions*

**18.-(1)** This Statutory Order shall enter into force on 14 February 2014.

**(2)** Statutory Order no. 421 of 8 May 2012 on shipments of waste shall be repealed.

*The Danish Ministry of the Environment, 6 February 2014*

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/ Claus Torp

**Official notes**

<sup>1)</sup> This Statutory Order supplements the provisions in Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (Official Journal 2006 no. L 190, p. 1). According to Article 288 of the EC Treaty, a Regulation applies immediately in each Member State. This Statutory Order also contains provisions implementing parts of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (Official Journal 2012 no. L 197, p. 38).

<sup>2)</sup> Switzerland, Norway, Iceland and Liechtenstein are EFTA countries and parties to the Basel Convention.