

The EU AND ITS MEMBER STATES COMMENTS

On the implementation of the Hong Kong and Basel Conventions with respect to the transboundary movement of ships intended for recycling

In respect to decision BC-17/23, the EU and its Member States would like to share the following comments on the provisional guidance approved by the Marine Environment Protection Committee of the International Maritime Organization at its eighty-second session (MEPC82) as well as broader views on the implementation of the Hong Kong and Basel Conventions with respect to the transboundary movement of ships intended for recycling.

1. Comments on the IMO provisional guidance

The EU and its Member States welcome the opportunity to comment on the provisional guidance adopted by IMO and recall the importance of the collaboration process to improve the provisional guidance as it requires an interpretation of both the Basel Convention and the Hong Kong Convention to clarify their interplay.

The EU and its Member States welcome the entry into force of **the Hong Kong Convention as an important first step towards promoting the safe and environmentally sound management of ship recycling at global level**, and remain committed to its implementation. This instrument has been designed to capture the characteristic of the global shipping and ship recycling industry, as shown inter alia by the criteria for its entry into force.

The EU and its Member States support the objective of the guidance to provide clarity and certainty regarding the interplay between the two Conventions. They support the starting point of the provisional guidance which is to clarify the interplay depending on whether a state is a Party to one or to both Conventions.

- “.1 States that are Parties to the Hong Kong Convention but are not Parties to the Basel Convention should apply the requirements of the Hong Kong Convention;*
- .2 States that are Parties to the Basel Convention but are not Parties to the Hong Kong Convention should apply the requirements of the Basel Convention, including its Ban Amendment, if they have expressed their consent to be bound by it; and”*

The EU and its Member States support these two first paragraphs of the provisional guidance. The States that are Parties to only one of the two Conventions should apply the requirement of that Convention to the transboundary movement of ships intended for recycling.

However, paragraph 3 raises some concerns.

- “.3 States that are Parties to both the Hong Kong Convention and the Basel Convention, including Parties that have expressed their consent to be bound by the Ban Amendment, with an understanding that the provisions of the Basel Convention should not affect the transboundary movements that take*

place pursuant to the Hong Kong Convention, should consider notifying the Secretariat of the Basel Convention as follows:

"In accordance with Article 11 of the Basel Convention, the Basel Convention Secretariat is hereby notified that [name of the State that is a Party to both the Hong Kong Convention and the Basel Convention] is a Party to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong Convention) and will apply the Hong Kong Convention's requirements in respect of transboundary movements of ships¹ intended to be recycled at a ship recycling facility that has been authorized in accordance with the Hong Kong Convention and is situated under the jurisdiction of a Party to the Hong Kong Convention. Relevant arrangements have been made to ensure environmentally sound management of hazardous wastes and other wastes (arising from ship recycling) as required by the Basel Convention. Consequently, the provisions of the Basel Convention shall not affect transboundary movements which take place pursuant to the Hong Kong Convention."

First, this paragraph implies that the Basel Convention should not apply to ships falling under the Hong Kong Convention (“*and are of the view that the provisions of the Basel Convention should not affect the transboundary movements that take place pursuant to the Hong Kong Convention*”) and that Parties should notify the Hong Kong Convention as an agreement falling under article 11 of the Basel Convention. However, this recommendation for individual Parties remains unclear considering that Article 11 agreements must stipulate provisions which are not less environmentally sound than those provided by the Basel Convention. The penultimate sentence “*Relevant arrangements have been made to ensure environmentally sound management of hazardous wastes and other wastes (arising from ship recycling) as required by the Basel Convention*” does not specify what “arrangements” are referred to and who made those arrangements. Further information in this regard would be needed to better assess the meaning and relevance of this paragraph. It is also important to recall that at this stage the experience with implementation of the Hong Kong Convention is limited and that the 83rd meeting of the MEPC² agreed to set up a new output on the assessment of the implementation of the Hong Kong Convention through an experience-building phase and development of amendments and clarifications as appropriate. This is an essential process to assess if and how this Convention may be improved, taking into account that more than 15 years separated the adoption of the Convention and its entry into force. Pending the result of this work under the IMO, the EU and its Member States consider it would be premature to **conclude that the Hong Kong Convention may qualify as an Article 11 under the Basel Convention.**

Furthermore, the EU and its Member States consider that a guidance on the interplay between the two Conventions should not be limited to the consideration linked to Article 11 of the Basel Convention when States are Parties to both conventions. Any **guidance should also clarify to which extent the two Conventions supplement each other and how they may be implemented in a coherent way by Parties to both Conventions.**

¹ Ships that fall within the scope of Article 3 (Application) of the Hong Kong Convention.

² <https://www.imo.org/en/mediacentre/meetingsummaries/pages/mepc-83rd-session.aspx>

While the scopes of the Conventions overlap, as ships destined for recycling falling under the Hong Kong Convention are also considered waste under the Basel Convention, the two Conventions do not completely regulate the same situations. For example, only the Basel Convention covers the Environmentally Sound Management of waste by facilities receiving waste from the recycling yards and only the Hong Kong Convention provides for requirement that will apply before the ship becomes a waste. In addition, there are no conflicting provisions between the two Conventions, and, legally, the implementation of one of the Conventions does not impede the parallel implementation of the other. It should be noted that the Hong Kong Convention clearly stipulates that '*Nothing in this Convention shall prejudice the rights and obligations of Parties under other relevant and applicable international agreements.*'

Against this background, the EU and its Member States consider that the two conventions **can be implemented** in a coherent manner. This is the **approach developed and followed in the EU**, where the two Conventions are articulated in EU law through the Ship Recycling Regulation and the Waste Shipment Regulation respectively.

2. Implementation of Hong Kong and Basel Conventions in EU law with respect to end-of-life vessels

A detailed presentation of the EU framework implementing the two Conventions illustrated with examples is annexed to this document.

The approach adopted at EU level is built on the following core elements:

For all non-EU flagged ships and all EU-flagged ships not falling under the scope of the Hong Kong Convention, that become waste in the EU:

- application of the PIC procedure
- application of the Basel ban amendment

For EU-flagged ships falling under the scope of the Hong Kong Convention destined for recycling

- Need for a Ready for Recycling Certificate (Hong Kong Convention's requirements + additional EU requirements)
- Recycling exclusively in an installation approved by the EU that has been inspected to ensure the ESM
- For ships that become waste in the EU: application of the Basel ban amendment

With this approach, the EU is ensuring that the objectives of both regulations and both Conventions are achieved for all ships becoming waste in the EU and for all EU-flagged ships that fall under the scope of the Hong Kong Convention becoming waste outside of the EU.

3. Further comments on the approach to be considered for clarifying the interplay between the Hong Kong and Basel Conventions:

Discussions at Basel COP17 showed that certain Parties and stakeholders consider that **some administrative proceedings related to the transboundary movement may be redundant**

and create unnecessary difficulties for operators when both Conventions apply to a ship destined for recycling. Some considered especially that the prior informed notification procedure is not well suited for the case of ships and not necessary when relevant obligations under the Hong Kong Convention are fulfilled.

Under the EU framework, the exemption from the prior notification and consent procedure for EU-flagged vessels is accompanied by various procedures required prior to recycling based on the Hong Kong Convention as well as by requirements under the EU legislation (i.e. obligation to recycle these vessels exclusively in installations that are included in the European list of ship recycling facilities, encompassing compliance with the safety and environmental requirements set by the Ship Recycling Regulation).

Until further regulatory developments strengthening the Hong Kong Convention, an exemption from the Basel Convention's prior informed notification and consent procedure for vessels that comply with the Hong Kong Convention may not offer the same level of guarantees as the EU framework and may not be sufficient to meet the ESM objectives of the Basel convention. Such considerations are important in guiding the experience building phase set under the IMO to assess the implementation of the Hong Kong Convention.

Once this is achieved, to decrease possible unnecessary administrative burden and address challenges for operators to implement both conventions in parallel, the EU and its Member consider that it will be relevant to further explore possible redundancies and what solutions could be designed to limit these redundancies.

Annex - Implementation of Basel and Hong Kong Conventions in EU law with respect to end-of-life vessels

I. Overview of the implementation of the Basel and Hong Kong conventions in the EU legal framework

At the EU level, the shipments of hazardous waste are regulated through [the Waste Shipment Regulation](#)³(WSR), which **implements the Basel Convention** while adding more stringent provisions. The WSR has been recently reviewed, and the new regulation entered into force in May 2024. Regarding exports of waste from the EU, the regulation establishes the following key principles:

- Ban on the export of hazardous waste from the EU to countries outside the OECD (implementing ‘the Basel Ban Amendment’);
- Export of non-hazardous waste to non-OECD countries, limited only to countries that applied for receiving waste and demonstrated their capacity to ensure their Environmentally Sound Management;
- Prior informed consent for exports of hazardous waste to OECD countries.

The **implementation** in the EU legal framework of **the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships** adopted in 2009 under the auspices of the International Maritime Organisation is ensured by the [Ship Recycling Regulation](#)⁴ (SRR) **adopted in 2013 and in full application since 2019.**

II/ The Ship Recycling Regulation

A. Scope

As far as end-of-life vessels are concerned⁵, the scope of the SRR only includes EU-flagged vessels and otherwise mirrors the scope of the HKC. It means that it excludes from its scope i) warships, naval auxiliary, or other ships owned or operated by a state and used, for the time being, only on government non-commercial service; ii) ships of less than 500 gross tonnage (GT) and iii) ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying.

³ Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006. Text with EEA relevance

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 Text with EEA relevance

⁵ The present note does address the scope with respect to SRR measures which concern the operational life of the vessel (as those concerning the inventory certificate).

B. Main requirements

The SRR contains provisions which implement the Hong Kong Convention and makes several references to the latter. Yet, as allowed by the Hong Kong Convention, in its Article 1(2), the SRR has adopted more stringent environment and safety requirements, and a different control system. The SRR has been recently amended by the new WSR specific provisions designed to ensure the implementation of the Basel Ban amendment to end-of-life vessels.

End-of-life vessels falling under the scope of the SRR are subject to the following main obligations:

- Can be sent for recycling only to facilities included in the European List of ship recycling facilities approved at EU level on the basis of standards ensuring the environmental sound management of waste, set out in the SRR. In addition, in the case of end-of-life vessels located in an area under the national jurisdiction of a Member State, they can be recycled only in facilities located in OECD countries.
- Prior to any recycling, hold a ready for recycling certificate issued by the flag state administration. This certificate is supplemented by the inventory of hazardous materials and a ship specific recycling plan (prepared by the ship recycling facility and approved by the competent authority of the recycling state)

III/ Articulation of the WSR and the SRR

A. Scopes of the Regulations

As clarified above, the SRR includes in its scope EU-flagged with some specific exemptions aligned with the Hong Kong Convention's scope.

The WSR applies to all waste with the exceptions defined in its article 2. Regarding ships article 2(2)(i) of the WSR specifies that the regulation doesn't apply to:

“ships flying the flag of a Member State falling within the scope of Regulation (EU) No 1257/2013, with the exception of ships:

- (i) which are considered as hazardous waste, that are located in an area under the national jurisdiction of a Member State and that are exported from the Union for recovery, to which only Articles 39, 48, 49 and Title VII of this Regulation shall apply; or*
- (ii) which are considered as waste, that are located in an area under the national jurisdiction of a Member State and that are destined for disposal.”*

To summarize:

- Ships excluded from the SRR scope, located in an area under the national jurisdiction of a Member State and exported from the Union for recovery or disposal fall within the scope of the WSR.
- A contrario, ships falling within the scope of the SRR are excluded from the WSR (with the exception of the implementation and enforcement of the export ban for hazardous waste to non-OECD countries).

B. Practical implications

Note: As referred to under EU legislation, end-of-life vessels destined for recycling or disposal are generally considered as hazardous waste. To ensure clarity this note build on that assumption without developing the theoretical cases of non-hazardous end-of-life vessels.

As a result, the EU rules applicable to the transboundary movements of an end-of-life vessel depend in practice on its type, flag and location at the time it becomes a waste.

- Any end-of-life vessel that becomes a waste in an area under the national jurisdiction of a Member State can't be exported from the Union to non-OECD countries (under both WSR and SRR, both implementing Article 4A of the Basel Convention (“ban amendment”))
- In addition, vessels flying the flag of a Member State can only be recycled in facilities included in the European List of ship recycling facilities (in line with the SRR).
- If a vessel flying the flag of a Member State becomes waste outside the EU, then it is subject to the SRR and the ban on export from the Union to non-OECD countries does not apply. However, it must be recycled in a facility included in the European List established under the SRR.
- The Prior Informed Consent (PIC) procedure is not required by EU law for vessels falling within the scope of the SRR, when exported from/imported/transiting to the Union for recycling. However, the PIC procedure is required under WSR for export/import/transit of vessels not in the scope of the SRR.

Summary of provisions applying and practical implications from the EU regulation standpoint:

		SRR	WSR	Practical implications
EU flagged end-of-life vessel under SRR scope and that became waste in an area under the national jurisdiction of a MS	exported from the EU for recovery	YES	Only the provision implementing the Basel ban amendment applies	<u>Recycling:</u> in facilities on the European List and located in OECD countries <u>Basel PIC:</u> NO
EU flagged end-of-life vessel under SRR scope and that did not become waste in an area under the national jurisdiction of a MS		YES	NO	<u>Recycling:</u> in facilities listed on the European List <u>Basel PIC:</u> NO
Non-EU flagged end-of-life vessels that became waste		NO	YES	<u>Recycling/disposal:</u> Only in OECD countries

in an area under the national jurisdiction of a MS				Basel PIC: YES
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Examples of implementation of EU legislation applicable to end-of-life vessels

The table below illustrates practical situations for commercial end-of-life vessels > 500GT and indicates the general obligation for the choice of recycling facilities and main documents for recycling depending on the flag of the vessel and its location.

Note that the information highlighted in grey is not under the scope of the EU legislation and therefore not required by EU legislation. This may be required by the Parties when implementing the conventions.

Flag state	Location when decision to recycle is taken	General obligation for ship recycling facilities for recycling those vessels	Documents required in those cases
EU SRR HKC	EU Member State WSR/SRR	EU-listed facility [with a HKC DASR**] located in OECD country	(International)RfRC PIC (if required by destination country+ transit third countries)
	non-EU State, Party to the Basel ban amendment Basel, Basel Ban	EU-listed facility [with a HKC DASR and located in OECD country]	(International) RfRC PIC if required by countries involved in the shipment + transit third countries)
	non-EU State, not Party to the Basel ban amendment) Basel	EU listed facility [with a HKC DASR]	International) RfRC PIC (if required by countries involved in the shipment + transit third countries)
Non-EU flagged ships	EU Member State WSR	Facility compliant with ESM (e.g. EU listed facilities) [with a HKC DASR] located in OECD country	(International RfRC) (issued by non-EU flag state) PIC
	Outside EU	Basel parties: Facility compliant with ESM (in OECD or not depending on the export country) HKC parties: facilities with a HKC DASR	(International RfRC if HKC party flag) PIC (under WSR if import or transit in EU)

*Ready for Recycling Certificate

** Document of Authorization to conduct Ship Recycling