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Legal Analysis of Proposed Waste Shipments from Italy to Morocco

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The Case: A media report¹ has referred to shipments of “plastic and pneumatic waste” and “refuse derived fuel” (RDF) being exported from Italy to Morocco for use as an alternative fuel. Based on this information, the Basel Action Network (BAN) can provide the following preliminary legal analysis.

Relevant International Law

- **Basel Convention** on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989, in force 1992)²
- **Basel Ban Amendment** (1995) (not yet in force but implemented in the EU and in Morocco)³
- **European Waste Shipment Regulation** (EC) No 1013/2006 on Shipments of Waste (2006, in force)⁴
- **OECD Decision** of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, - C(2001)107/FINAL as amended (2001, in force)⁵
- **Mediterranean Hazardous Waste Protocol of the Barcelona Convention, (Izmir Protocol)** (1996, in force 2008)⁶

Note: These legal instruments are referred to in **bold text** below. Because Morocco is not a Party to the Bamako Convention for Africa, that instrument is not listed as a relevant instrument.

Status of Country Ratifications & Memberships

Italy is a member state of the European Union and therefore must abide by the **European Waste Shipment Regulation**. In addition, it is a **Basel Convention** Party, and has ratified and implemented the **Basel Ban Amendment**. Italy is an Annex VII country under the **Basel Ban Amendment**. Italy is a signatory but not a Party to the **Izmir Protocol** (this is a lesser-known but binding agreement under the auspices of the Barcelona Convention/Mediterranean

¹ <http://www.ansamed.info/ansamed/en/news/sections/environment/2016/07/05/morocco-mobilises-against-italian->

² <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

³ <http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454069470717&uri=CELEX:02006R1013-20160101>

⁵ <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=221&InstrumentPID=217&Lang=en&Book=False>

⁶ <http://www.unep.ch/regionalseas/main/med/medhaz.html>

Regional Seas Convention). Italy is a member state of the OECD and thus abides by the **OECD Decision**.

Morocco is a Party to the **Basel Convention** and has ratified and implemented the **Basel Ban Amendment**. Morocco is a non-Annex VII country under the **Basel Ban Amendment**. They are a Party to the **Izmir Protocol**. Morocco is not a member state of the OECD nor of the European Union.

Is the material in question a waste?

First, we need to determine if the material is a waste under the **Basel Convention**, the **European Waste Shipment Regulation** and under the **Izmir Protocol**. Under all three instruments, wastes are that which is to be “disposed.” “Disposal” is then defined in each as destinations under Annex IV in the **Basel Convention** (Annex III in **Izmir Protocol**). And in these annexes of disposal destinations we R1 (energy recovery) that would indicate that the material is a waste.

Some might try to argue that RDF and scrap tyres are not waste but this would be a very difficult argument to make as the pre-processing of these is likely to have been minimal and they have not yet been subject to R1 (energy recovery) – a disposal destination by law. Further, both Italy and Morocco would need to concur that this is not a waste, which is unlikely.

Is the material in question a controlled or hazardous waste?

Having established that the material is indeed a waste, we then need to see if it is a hazardous or a controlled waste with respect to its export to Morocco from Italy. The first issue to examine, due to Italy generating the waste, is whether the waste is subject to the Article 36 ban in the **European Waste Shipment Regulation** which is binding on Italy. Banned wastes are listed in the **European Waste Shipment Regulation’s** Annex V. The waste has been characterized in the news report⁷ as “plastic and pneumatic waste, with the acronym RDF (refuse derived fuel).”

- **Pneumatic waste:** One cannot fathom the meaning of “pneumatic” waste unless it means the waste is used “pneumatic tyres” or derived from used pneumatic tyres. “Pneumatic tyres” if directed to an energy recovery facility will not be considered as a controlled hazardous waste under the **European Waste Shipment Regulation**, but will be considered as a “green” listed waste (see below). That is, *unless* they are forbidden from import by national law of the importing country (see **Izmir Protocol** obligations of Morocco below).

Note: In the case where the waste in question is deemed a “green” listed waste (e.g. tyres for energy recovery where the importing country has not banned their import), EU Regulation 1420/1999 requires that the non-OECD country in question still be queried as to whether it wishes to control said waste prior to exportation.

- **Refuse derived fuel:** Most “refuse derived fuel” or RDF comes from “Wastes collected from households” which appears on **Basel Convention’s** Annex II and the **European Waste Shipment Regulation’s** Annex 5 Part 3. RDF, then, if consisting of wastes collected from households, is a controlled waste, subject to a full Article 36 prohibition on export from Italy to Morocco by virtue of the **European Waste Shipment**

Regulation.

- **Mixed wastes** – In the **European Waste Shipment Regulation**, wastes containing a material listed on Annex V (such as waste collected from households) combined with a non-Annex V waste (such as pneumatic tyres) -- will be considered as controlled Annex V waste and therefore prohibited from export by virtue of this precautionary approach to mixed wastes (Article 36, 1, d).

Examination of Legality of Export from Italy

Now that we have determined we are in fact dealing with a hazardous or controlled waste we need to determine the legality of the shipment of these controlled wastes from Italy to Morocco:

1. We now know that as this waste appears to fall into Annex V, by virtue of it being “waste collected from households”, it will be captured by the Article 36 prohibition of controlled wastes destined to countries to which the **OECD Decision** does not apply (e.g. Morocco).
2. Secondly, because the **Basel Convention** (Article 4, 1) and the **European Waste Shipment Regulation** (Article 36, 1, f) both forbid the export of any wastes that are subject to an import ban by the recipient country, is the waste in question subject to a Moroccan import ban? If so, then Italy is forbidden to export this waste to Morocco.

Examination of Legality of Import into Morocco

According to the country fact sheet of Morocco appearing on the **Basel Convention** website,⁸ Morocco has implemented the **Basel Ban Amendment**. This can be interpreted to mean that Morocco has banned the importation of hazardous waste from Annex VII countries (e.g. Italy). The fact sheet also states that the importation of hazardous wastes into Morocco for recovery is banned, and non-hazardous waste is subject to authorization. This means that if the material is considered hazardous waste by Italy or by Morocco, its importation will be prohibited.

Further, with respect to trade taking place within the Mediterranean Sea geographic area defined by Article 1 of the Barcelona Convention, the **Izmir Protocol** in Article 5, paragraph 4 describes a waste trade ban which clearly applies to Morocco as a Party:

4. Subject to the specific provisions relating to the transboundary movement of hazardous wastes through the territorial sea of a State of transit, referred to in Article 6.4 of this Protocol, all Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the export and transit of hazardous wastes to developing countries, and Parties which are not Member States of the European Community* shall prohibit all imports and transit of hazardous wastes.

But the **Izmir Protocol** prohibition would simply be redundant to that of the Basel Ban Amendment or European Waste Shipment Regulation were it not for the fact that the Izmir Protocol has a much more inclusive definition of controlled or hazardous waste. First, it clearly includes “wastes collected from households” So, if the RFD is collected from households then it is considered hazardous waste and must be prohibited from import.

However most critically, the **Izmir Protocol's** additional use of its Annex II (hazardous characteristics) as part of the hazardous waste definition means that *any* waste possessing a

⁸ [http://www.basel.int/Countries/Countryfactsheets/Countryfactsheets\(2008\)/tabid/2572/Default.aspx](http://www.basel.int/Countries/Countryfactsheets/Countryfactsheets(2008)/tabid/2572/Default.aspx) Click on Morocco.

listed hazardous characteristic will also be considered hazardous regardless of whether it is listed on Annex I or not. The Annex II listing H4.1 (Flammable) Solids, would apply to waste plastics, RDF and to waste tyres, and therefore would clearly be prohibited from entry into Morocco by virtue of its flammability.

Conclusion

Under the EU **Waste Shipment Regulation**, no wastes listed in its Annex V can be exported from an EU country to a non-OECD country such as Morocco. This would mean that no “wastes collected from households” can be exported by Italy to Morocco. RDF, if collected from households, would likely fall under this category.

“Green” listed wastes such as used tyres being exported for energy recovery could be exported subject to approval from the Moroccan government, unless they are mixed with controlled wastes such as “wastes collected from households” or are subject to a Moroccan national import ban.

In fact, because Morocco is a Party to the **Izmir Protocol** of the Barcelona Convention, any waste possessing an Annex II hazardous characteristic, such as flammability, which is a characteristic of both RDF and tyres, will be considered as hazardous. Therefore, tyres are illegal for Morocco to import from Italy.

And, as noted above, under the terms of the **European Waste Shipment Regulation** and the **Basel Convention**, all Parties must respect a country’s national import ban. By virtue of the comprehensive definitions of the Izmir Protocol, binding on Morocco, it is clear that Morocco has banned, on a national basis, the importation of this subject waste and thus this ban must be respected by Italy.

In sum, the proposed export of waste as described in the referenced media report, contravenes the international legal obligations of both Italy and Morocco.

END