

LEGALITY OF THE EU COMMISSION PROPOSAL ON SHIP RECYCLING

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Environmental Law**

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I. INTRODUCTION

On March 23, 2012, the European Commission adopted a proposal for regulating ship recycling (hereafter, the Proposed Regulation).¹ The objective of the Proposed Regulation is to integrate the provisions of the International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention) into the law of the European Union (the EU).² The Commission's proposal on ship recycling would amend the scope of the EU Regulation on the

¹ Proposal for a Regulation of the European Parliament and of the Council on ship recycling, COM(2012) 118 final (March 23, 2012).

² The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 is not expected to enter into force before 2020 as it is still awaiting ratification by major flag and recycling states. See Rapporteur Carl Schlyter's Committee Draft Report on the proposal for a regulation of the European Parliament and of the Council on ship recycling, 2012/0055(COD), (Nov. 12, 2012) 80.

Shipments of Waste³ that currently implements the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)⁴, including the Ban Amendment. The Basel Ban Amendment prohibits the export of hazardous waste from the EU to countries that are not members of the Organization for Economic Co-operation and Development (OECD). Ships falling under the scope of the Proposed Regulation would be excluded from the existing EU Regulation on the shipment of waste.

The Proposal Regulation raises two central questions about its legality, namely:

1. Does the Commission's proposal breach EU obligations under the Basel Convention?
2. Does the Commission's proposal violate EU law?

The Center for International Environmental Law (CIEL) has examined these legal questions as well as Professor Krämer's opinion on them.⁵

The present legal opinion first introduces the legal framework established by the Basel Convention and the key elements of the Proposed Regulation before analyzing the legality of the Proposed Regulation under the Basel Convention and EU law.

II. CONTEXT

End-of-life ships are wastes that contain hazardous materials. They thus fall under the scope of application of the Basel Convention.⁶ The EU and all of its Member States (MS) are Parties to the Basel Convention.⁷ Both the EU and its MS are therefore bound by the provisions of the Basel Convention.

In 1993, the EU implemented the Basel Convention with a Regulation⁸ that was later replaced by Regulation 1013/2006 on the Shipments of Waste.⁹ This EU Regulation on the Shipments of Waste also includes provisions to implement the Basel Ban Amendment adopted by the Parties to the Basel Convention in 1995, which has also been signed and ratified by the EU and all of its MS.

Under EU Law, both the Basel Convention and the Basel Ban Amendment have become an integral part of Community Law.¹⁰

³ Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on the shipments of waste, OJ 2006 (July 12, 2006) L 190 p.1

⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 28 I.L.M. 657 (1989), Mar. 22, 1989, 1673 U.N.T.S. 125.

⁵ The Commission Proposal for a Regulation on ship recycling, the Basel Convention and the protection of the environment: Legal analysis by Dr Ludwig Krämer (Nov. 4, 2012), available at http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2012/11/Ludwig-Kraemer-Legal-Analysis-EC-Proposal-ship-recycling-regulatio-Nov-2012.pdf (last visited Dec. 5, 2012).

⁶ This was confirmed by the Parties at their Seventh Conference in Decision VII/26 in October, 2004.

⁷ The EU and its MS share the competency to regulate the transboundary shipment of waste under EU treaty law. They have signed and ratified the Basel Convention as a Mixed Agreement.

⁸ Regulation (EEC) No. 259/93, OJ 1993, L 30 p. 1.

⁹ Waste Shipments Regulation, *supra* note 3.

¹⁰ As long as the decisive provision does not fall in the exclusive competence of the Member States, the ECJ also has the power to interpret international agreements, just as in the case of a multilateral agreement concluded by the European Community or EU. See Armin von Bogdany & Maja Smrkolj, *European*

The Proposed Regulation currently under discussion contemplates the export of end-of-life ships for recycling under certain conditions to non-industrialized countries and excludes certain categories of ships from the scope of the EU Regulation on the shipment of waste, which implements the Basel Convention in the EU. The Commission's proposal is thus an attempt by the EU to unilaterally derogate from the binding regime established by the Basel Convention.

III. THE EU AND ITS MEMBER STATES ARE BOUND BY THE BASEL CONVENTION

III.1 The Basel Convention

The Basel Convention¹¹ is the principal international legal instrument governing the control of transboundary movements of hazardous wastes and their disposal. The Convention was adopted in 1989 under the auspices of the UN Environment Programme, and entered into force on May 5, 1992. The Basel Convention aims to protect human health and the environment against the adverse effects that may result from the generation and management of hazardous and other wastes. The Basel Convention especially undertakes to control and limit the export of hazardous waste from developed to less developed countries and to ensure the environmentally sound management of waste.¹² As explained above, the EU and all MS have signed and ratified this treaty.

The Convention does not prohibit the transboundary movement of waste but rather imposes strict controls of such movement by way of a prior informed consent (PIC) procedure. The Basel Convention also establishes an enforcement framework that requires State Parties to criminalize illegal shipments of hazardous waste.¹³

The Basel Conference of the Parties (COP) by Decision VII/26 of October 2004 affirmed, that “a ship may become waste as defined in Article 2 of the Basel Convention and (...) at the same time it may be defined as a ship under other international rules.” The Basel Convention therefore applies to the recycling of end-of-life ships. As a consequence, the Parties have been called to

“fulfill their obligations under the Basel Convention where applicable, in particular their obligations with respect to prior informed consent, minimization of transboundary movement of hazardous wastes and the principles of environmentally sound management.”¹⁴

Community and Union Law and International Law, Max Planck Encyclopedia of Public International Law, paras. 6 and 15 (2012), available at www.mpepil.com (last visited Nov. 27, 2012).

¹¹ Basel Convention, *supra* note 4.

¹² Article 2.8 of the Basel Convention defines “environmentally sound management of hazardous wastes or other wastes” as “taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.”(Article 2(8) Basel Convention.) The Parties to the Basel Convention have considered the issue of what constitutes the environmentally sound management of shipbreaking and have adopted the Technical Guidelines for the environmentally sound management of the full and partial dismantling of ships (Basel Technical Guidelines). See *Basel Convention Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships*, 7, U.N. Doc. UNEP/CHW.6/23 (Aug. 8, 2002).

¹³ Article 4.3 Basel Convention.

¹⁴ UNEP/CHW/COP.7/BC-VII/26 Decision VII/26. Environmentally sound management of ship dismantling (October 2004).

The EU has endorsed the view that end-of-life ships fall under the scope of the Basel Convention, and several MS court decisions have concluded that the Basel Convention and the EU regulations implementing the Basel Convention apply to end-of-life vessels destined for scrapping or recycling.¹⁵ It is clear that the Basel Convention imposes specific obligations on the EU and its MS in connection with the generation and disposal of hazardous waste, including end-of-life vessels.

III.2 The Basel Ban Amendment

At the COP-3 in 1995, parties to the Basel Convention adopted the Basel Ban Amendment, introducing a full ban on all exports of hazardous waste from Annex VII countries (i.e., EU, OECD and Liechtenstein) to non-Annex VII countries. Accordingly, the export of end-of-life vessels from the EU to developing countries is prohibited under the Ban Amendment. Although the Basel Ban Amendment is not yet in force, the EU has ratified it. Therefore the EU is under an obligation under international law¹⁶ to not defeat the object and purpose of the Ban Amendment.

Furthermore, the EU has transposed the Ban Amendment into EU Law through EU Regulation on the shipment of waste, which provides for an absolute ban on the export of hazardous waste from OECD countries to non-OECD countries. Therefore, in accordance with current EU law, the export of end-of-life vessels from the EU to developing countries is prohibited.

III.3 The Indonesian-Swiss Country-led Initiative and the Ban Amendment

The Basel Ban Amendment has not yet entered into force as it has not yet acquired a sufficient number of ratifications. The question of interpretation of Article 17(5) of the Basel Convention, as regards to the necessary number of ratifications, has long been a contentious one.¹⁷ Some states endorsed the “fixed-time” approach. The fixed-time approach requires that three-fourths, or 68 of the 90 countries, that were Parties to the Convention in 1995 ratify the Amendment before it enters into force. Others supported a “current time” interpretation. The current-time approach requires three-fourths of the current 178 Parties to the Convention to ratify the Amendment before it enters into force.

After the President of COP-9 called on the parties to suggest ways to advance entry into force of the Ban Amendment,¹⁸ Indonesia and Switzerland set up a “Country-led Initiative” (CLI)¹⁹ to resolve the Ban entry into force question and to improve the effectiveness of the Basel Convention. The CLI process developed a draft omnibus decision forming the basis of discussions at the tenth meeting of the Conference of the Parties which included a proposal to adopt the fixed time approach. The COP-10 adopted the omnibus decision and thus resolved the question in favor of the fixed-time approach. Under the fixed time approach, an additional 17

¹⁵ The Sandrien Case (2002), Council of State of The Hague, case number: 200105168/2, June 19, 2002; the Clemenceau Case (2005), Conseil d’Etat, contentieux n. 288801, 6eme et 1ere sous-sections reunies, Lecture du 15 Fevrier 2006; the Otopan Case (2007), Council of State of The Hague, case number: 200606331/1, February 21, 2007.

¹⁶ Article 18 of the Vienna Convention on Law of Treaties.

¹⁷ Marcos A. Orellana & Hana Heineken, *Multilateralism Works!* ENVIRONMENTAL POLICY AND LAW, 41/6 (2011) 262.

¹⁸ Annex to decision IX/26; document UNEP/CHW.9/39.

¹⁹ Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention: note for the tenth meeting of the Conference of the Parties on the interpretation of paragraph 5 of Article 17, available at <http://archive.basel.int/meetings/cop/cop10/documents/i13r1e.pdf> (last visited Dec. 5, 2012).

countries which were Parties at the time of COP-3 (1995) are needed to ratify the Ban Amendment. It is thus expected that the Ban Amendment will enter into force in the next two to three years.

IV. THE EU COMMISSION'S PROPOSAL FOR A REGULATION ON SHIP RECYCLING

The EU Regulation on the shipment of waste²⁰ implements the requirements of the Basel Convention, including the provisions of the Basel Ban Amendment prohibiting the export of hazardous waste outside the OECD. End-of-life ships sailing under an EU flag are classified as hazardous waste since they contain hazardous substances.²¹ As hazardous waste, these ships can legally only be dismantled within the OECD.

The EU Commission argues, however, that the Basel Convention and the Ban Amendment's requirements are now almost systematically circumvented due to the mobility of ships and the ease by which they can move from one jurisdiction to another or outside all national jurisdictions (on the high seas).²² The Commission claims that the Proposed Regulation could improve this situation by bringing into force an early implementation of the Hong Kong Convention, and at the same time hastening its entry into force globally.²³

The Proposed Regulation is the Commission's approach to implementing the Hong Kong Convention, to which the EU is not a party as the Hong Kong Convention exclusively admits states as Parties.²⁴ The Proposed Regulation is based on the community competence for legislative actions as regards the "Environment" (Art 192(1) of the Treaty on the Functioning of the European Union (TFEU)).

The Proposed Regulation's purpose is "to prevent, reduce or eliminate adverse effects on human health and the environment caused by the recycling, operation and maintenance of ships flying the flag of a Member State."²⁵

However, Article 29 of the Commission's Proposal exempts vessels from the scope of existing EU Regulation on the shipment of waste. According to the Commission, this exemption is included "in order to avoid confusion, overlaps and administrative burden (...)."²⁶ Article 29 reads as follows:

"In Article 1(3) of Regulation (EC) No 1013/2006, the following point is added: 'i) Ships falling under the scope of Regulation (EU) No XX [insert full title of this Regulation](*) (*) OJ L[...], [...], p.[.]'"

Article 29 thus effectively removes ships from the scope of the EU's Basel Convention implementing legislation, namely the EU regulation on the Shipments of Waste.

²⁰ Waste Shipment Regulation, *supra* note 3.

²¹ See Okechukwu Ibeanu, *Report of the Special Rapporteur on the adverse effects of the Movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, U.N. Doc. A/HRC/12/26, para. 12 (July 15, 2009) at para. 19.

²² Explanatory memorandum point 1.1. of the Proposed Regulation, *supra* note 1.

²³ *Id.* point 1.2.

²⁴ Article 16(1) of the Hong Kong Convention.

²⁵ Article 1 of the Proposed Regulation, *supra* note 1.

²⁶ Explanatory memorandum 3.1. of the Proposed Regulation, *supra* note 1.

The control mechanisms in the Proposed Regulation reflect the approach of the Hong Kong Convention. Specifically, the Proposed Regulation contains provisions on the control of hazardous materials (Articles 4 and 5); on the preparation for the ship's recycling and on the actual recycling of the ship (Articles 6 and 7), including surveys of the ship (Articles 8, 10 and 11); and on the contracts between the owner of the vessel and a ship recycling facility (Article 9). In order for ships covered by the Regulation to be treated in a recycling facility inside or outside of the EU, such facility needs to fulfill the standards as prescribed in the Regulation (Articles 11 to 16).

The Proposed Regulation is based on the Commission's analysis that the Hong Kong Convention provides an equivalent level of control and enforcement to that provided by the Basel Convention.

This question of equivalence between the Basel Convention and the Hong Kong Convention, central to the question of the legality of the Proposed Regulation under the Basel Convention and EU law, is addressed in more detail below.

V. THE PROPOSED REGULATION BREACHES EU OBLIGATIONS UNDER THE BASEL CONVENTION

The Basel Convention is an international treaty that creates obligations for the Parties under public international law. Under the international law of treaties, a Party cannot derogate unilaterally from a treaty or even from a single provision of a treaty unless the treaty in question expressly provides for such derogation.

The Basel Convention does not accept reservations.²⁷ The Basel Convention does provide a process for denunciation by a Party. This process is not applicable to this situation, however, as the EU has not expressed its desire to cease to be a Party to the Convention.

The Basel Convention contemplates in Article 11 the possibility for Parties to enter into separate bilateral, regional or multilateral agreements regarding transboundary movement of hazardous waste, provided that such agreements do not derogate from the environmentally sound management of hazardous wastes required by the Basel Convention. Article 11 further stipulates that "these agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by [the Basel] Convention in particular taking into account the interests of developing countries." For reasons explained below, the Hong Kong Convention and the Proposed Regulation cannot be considered as providing an equivalent level of protection as is provided for by the Basel Convention. Therefore, Article 11 of the Basel Convention cannot justify the EU Commission's Proposed Regulation.

If adopted, the Proposed Regulation would establish secondary legislation directly contradicting the Basel Convention as it would unilaterally exclude a certain category of waste from the international agreement's scope of application and subject it to less stringent requirements.

V.1 The Basel Convention does not admit reservations or exceptions

The Basel Convention does not admit reservations or exceptions. Article 26(1) of the Basel Convention clearly provides that "[n]o reservation or exception may be made to this Convention."

²⁷ Article 26 of the Basel Convention.

Accordingly, the EU cannot unilaterally depart from obligations established under the Basel Convention to which it is a Party.

V.2 Article 11 of the Basel Convention does not justify the EU's Proposed Regulation

Article 11 of the Basel Convention is the only mechanism by which Parties to the Convention may enter into other international agreements with Parties or non-Parties that regulate the transboundary movement of hazardous waste. Article 11 requires that any other agreements entered into on the topic stipulate provisions that are not less environmentally sound than those provided for by the Basel Convention. Therefore, in order to be valid, an Article 11 agreement must establish an equivalent level of protection and control as that established under the Basel Convention. Accordingly, an Article 11 agreement must contain, at a minimum, measures to ensure the environmentally sound management of waste and a strict control system based on prior informed consent in order to be considered equivalent.²⁸ In addition, Article 11 requires that Parties notify the Secretariat of any Article 11 agreements.

V.2.1 The Hong Kong Convention does not establish an equivalent level of protection and control and thus does not qualify as an Article 11 agreement

The Hong Kong Convention deviates from the Basel Convention in scope, standards, and enforcement modalities. In relation to Article 11 of the Basel Convention, a major controversy has arisen regarding the equivalence of the two instruments.

CIEL has published a report analyzing in detail the question of equivalence in the level of protection established by the Hong Kong and Basel Conventions, and has concluded that the Hong Kong Convention cannot be considered an Article 11 agreement because it does not provide for an equivalent level of control as that established in the Basel Convention.²⁹

While the implementation of the Hong Kong Convention – especially some of its measures such as the comprehensive inventory of hazardous materials on board new ships – could contribute to improving the environmental, health, and human rights performance of shipbreaking, on the other hand, the Hong Kong Convention's scope is severely limited. Examples of these limitations include excluding whole categories of ships from the application of the legal regime (e.g., government owned non-commercial ships and warships as well as ships under 500GT) and thus not covering all hazardous waste aboard ships. Furthermore, although the Hong Kong Convention covers recycling of ships, it fails to monitor the hazardous waste processing facilities further downstream.³⁰

In contrast to the Basel Convention which implements a “prior informed consent” mechanism, the Hong Kong Convention allows for the tacit consent by the waste importing country. Overall, the Basel Convention's goal is to reduce transboundary movement of hazardous waste. The Hong Kong Convention, however, does not contemplate that goal.

In addition, the Hong Kong Convention's enforcement mechanisms are much weaker than those of the Basel Convention's. The Hong Kong Convention does not include the actual waste treatment downstream of the dismantling yard, and does not provide for inspections of the recycling yards. Furthermore, in contrast to the Basel Convention, the Hong Kong Convention does not call for ex-ante authorization of recycling yards, and does not impose a duty on states to

²⁸ CIEL, *Shipbreaking and the Basel Convention: Analysis of the Level of Control Established under the Hong Kong Convention* (April 2011) at pp 39.

²⁹ CIEL, *Shipbreaking supra* note 28 at pp 43.

³⁰ *Ibid.* 50.

re-import illegally transferred waste. Equally important, the Hong Kong Convention does not criminalize the act of illegally transferring waste.

In sum, the Hong Kong Convention lacks certain elements of what would constitute an environmentally sound management of waste as envisaged by Article 11 of the Basel Convention.

Similarly, the Proposed Regulation itself cannot be considered an Article 11 agreement as it implements the provisions of the Hong Kong Conventions, which, as explained above, does not provide an equivalent level of control as that established in the Basel Convention.

V.2.2 The EU cannot become a Party to the Hong Kong Convention

The EU is a Party to the Basel Convention. By Contrast, the EU is not and cannot become a Party to the Hong Kong Convention because that instrument only contemplates the ratification or accession by States. Since the EU cannot become a Party to the Hong Kong Convention, it cannot argue that it is a valid Article 11 agreement.

V.2.3 Basel COP declined to endorse equivalence between Basel and the Hong Kong Convention

Basel COP-10 addressed the question of equivalence of the Hong Kong Convention and declined to endorse it, reiterating that Parties should apply the Basel Convention to ships. Decision COP X/17 reads as follows:

“1. Notes that, while some parties believe that the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships provides an equivalent level of control and enforcement to that established under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, some parties do not believe this to be the case;

2. Encourages parties to ratify the Hong Kong Convention to enable its early entry into force;

3. Acknowledges that the Basel Convention should continue to assist countries to apply the Basel Convention as it relates to ships.”

V.2.4 Basel COP affirmed that the Basel Convention continues to apply to end-of-life vessels

In October 2004, the Basel COP affirmed that end-of-life ships may be a waste and thus controlled by the Basel Convention (Decision VII/26). In October 2011, COP-10 decision reaffirmed this view and called on all Parties and all organs of the Basel Convention to continue to assist countries in applying the Basel Convention as it relates to ships (Decision X/17).

V.3 The Proposed Regulation is inconsistent with the Basel Ban Amendment

The EU has signed and ratified the Basel Ban Amendment, which prohibits the export of any waste from OECD countries to non-OECD countries. Conversely, the provisions of the Proposed Regulation allow and facilitate the export of ships considered hazardous waste subject to the Basel Convention (in accordance with the latest Basel COP decision) to non-OECD countries.

As mentioned above, the Basel Ban amendment is not yet in force, but it is expected to enter into force in the next two to three years. Once the Basel Ban amendment has entered into force, the

provisions of the Proposed Regulation will be in direct conflict with the provisions of the Basel Convention.

Furthermore, until the Basel Ban Amendment enters into force, one should refer to customary international law, codified by Article 18 of the Vienna Convention on the Law of Treaties, which reads:

A State is obliged to refrain from acts which could defeat the object and purpose of a treaty when:

(a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

As a result, although the Basel Ban Amendment is not yet in force, the EU is under an obligation to refrain from acts which could defeat the purpose of the Basel Ban Amendment.

As described above, the provisions of the Proposed Regulation are in direct contradictions with those of the Basel Amendment. Its adoption would therefore be a violation of the EU's combined obligations under general international law and the Basel Ban Amendment.

VI. THE PROPOSED REGULATION VIOLATES EU LAW

International agreements signed by the EU become binding on EU institutions and its MS (Article 216(2) TFEU) and rank between primary and secondary Community law.³¹ In the hierarchy of EU law, international agreements qualify as “secondary conventions and agreements.” They are concluded on the basis of primary EU Treaty Law and therefore must comply with the founding Treaties of the EU. However, international agreements rank higher than Regulations, Directives or Decisions, which – as secondary acts – are adopted unilaterally by the European institutions.³²

It follows then that Regulations – such as the one currently proposed by the Commission – may not contradict the regime established by the Basel Convention to which the EU is a party.

Similarly, decisions of treaty organs are ranked in the same hierarchical order in the EU legal order as the international agreements that they are based on. The Basel COP is “*directly linked to the agreement which they implement*” and has been “*entrusted with responsibility for its implementation.*”³³ Thus, since the Basel COP has been established by the Basel Convention, which has been ratified by the EU, its decisions acquire the same rank in EU law as that of the Basel Convention. Accordingly, secondary legal acts enacted unilaterally by the EU, such as the Proposed Regulation, also have to conform to COP Decisions. The Basel COP-10 has called on Parties to continue to apply the Basel Convention as it relates to ships and it thus must be taken into account when interpreting the scope of the Basel Convention.

³¹ See Armin von Bogdany & Maja Smrkolj, *European Community and Union Law and International Law*, *Max Planck Encyclopedia of Public International Law*, para. 6 (2012), available at www.mpepil.com (last visited Nov. 27, 2012), with further references as to relevant case law.

³² See website of the European Union on International Agreements at http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0034_en.htm (last visited Nov. 27, 2012).

³³ See von Bogdany & Smrkolj, *supra* 31 at para. 19.

This brief overview of EU law explains how secondary Community law – such as Regulations – must comply with international treaties and agreements that the EU has signed and ratified. If secondary law is found to be in contradiction with the international agreements that have become an integral part of the EU’s legal order (such Regulations, Directives or Decisions), this secondary law will be subject to annulment by the European Court of Justice (Article 263 TFEU).

VII. CONCLUSIONS

The analysis of the legality of the Proposed Regulation undertaken in this legal opinion supports the following conclusions:

1. End-of-life vessels constitute Basel waste and are thus subject to the mechanisms of control set forth in the Basel Convention and relevant EU law banning exports of hazardous waste to non-OECD countries.
2. The EU cannot legally derogate unilaterally from the Basel Convention obligations and must apply the Basel convention mechanisms of control to Basel covered waste.
3. Until the Basel Ban Amendment enters into force, the EU is under an obligation to refrain from any action that would defeat its object and purpose.
4. The Proposed Regulation’s attempt to unilaterally exempt a certain category of hazardous waste covered by the Basel Convention, namely end-of-life ships, from the control mechanisms of the Convention is illegal under international law and EU law.