

Public Consultation on the Functioning of Waste Markets

Public Consultation on the functioning of Waste Markets in the European Union

Part 1 - Identification of stakeholder or expert

Please enter your country of residence/establishment

- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
- LIETUVA
- LUXEMBOURG
- MAGYARORSZÁG
- MALTA
- NEDERLAND
- OTHER COUNTRY (non-EU)
- POLSKA
- PORTUGAL
- ROMÂNIA
- SLOVENIJA
- SLOVENSKO
- SUOMI / FINLAND
- SVERIGE
- UNITED KINGDOM
- ÖSTERREICH
- ČESKÁ REPUBLIKA
- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country of your residence/establishment:

Your name or organisation:

Association of Danish Recycling Industries

Please provide your EU Transparency Register ID number (if you have one)

If your organisation is not registered, you can register now (please see the introduction to this consultation under 'How to submit your contribution').

Can your reply be published? Please tick the box of your choice.

- With your name or that of your organisation
- Anonymously

For information on how your personal data and contribution will be dealt with, please refer to the privacy statement in the introduction to this consultation.

I am replying to this consultation as...

- an individual
- a private enterprise
- a non-governmental organisation (NGO)
- an organisation or association (other than NGO)
- a government or public authority
- a European institution or agency
- an academic/research institute
- other

If you are replying on behalf of a company, please specify in which of the following markets you predominantly operate:

- The whole EU market
- In one or several Member States, please indicate which one in the list below:
- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
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- SUOMI / FINLAND
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- ÖSTERREICH
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- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΥΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country in which you predominantly operate:

If you are replying on behalf of a company, please indicate the number of its employees:

- Between 1 and 49
- Between 50 and 249
- 250 and more

Part 2 - Questions

A. Identification of the main perceived regulatory failures

For the purpose of this consultation, regulatory failures are defined as situations in which the regulatory environment hampers the efficient functioning of the waste markets (i.e. where waste meant to be recycled or recovered can move freely within the EU, without unjustified restrictions) and fails to ensure optimal implementation of the waste hierarchy (according to Article 4(1) of the EU waste framework directive, the following waste hierarchy shall apply as a priority order: prevention; preparing for re-use; recycling; other recovery, e.g. energy recovery; and disposal).

1. Do you think there are any regulatory failures or obstacles currently affecting the functioning of EU waste markets?

- Yes, a large amount
- Yes, but limited
- No (go to Section B)
- Don't know (go to Section B)

2. What do you think is the most important aspect of policy and/or legislation that creates distortions in the waste markets or creates unjustified obstacles to the proper functioning of waste markets in the EU?

1. At the moment there is no clear and consistent definition of waste in the Waste Framework Directive. It is hard to establish when waste ceases to be waste and can then be classified as a resource. Legislation currently covers potentially valuable secondary raw materials. In order for this material to be classified as recycled material, actors often need licenses for activities such as storage and transportation and reporting needs to be secured.

2. Weak enforcement due to a lack of harmonization. Aside from recycling targets, there are a lack of enforcement mechanisms and controls to ensure compliance with the waste hierarchy. This results in an unlevel playing field in terms of enforcement.

3. Limited harmonization and interplay between EU's waste and chemical laws as well as product policies (eco-design requirements).

4. Huge differences in national implementation. There is currently a lack of guidance available in helping to implement the waste hierarchy in member states.

3. Could you provide an example of such a regulatory failure/obstacle? Please describe it briefly.

For example iron and metals are traded with a high value according to the relevant market prices but often classified as waste (if they contain more than 5 percent “waste” due to End of Waste criteria) and thus controlled through strict market processes regarding import and export creating a major barrier for recycling. Despite the fact that recycled steel scrap are to be delivered directly to metal processing plants and smelters as secondary raw materials. Secondary raw materials should be a natural part of the value chain and treated as a resource in order to “close” the circular cycle.

Another example is the fact that recycled materials originating from wastes, which are by nature less homogeneous than virgin materials have to compete with these on quality and price. The recent cumulative cost assessment for the steel industry has clearly demonstrated that, despite huge benefits in terms of energy and CO2 savings and growth potential, the cost of EU regulation is much higher for EAF steelmakers (Electric Arc Furnaces) using recycled steel scrap (17,4€/t) than for BOF steelmakers (Basic oxygen furnace) using primary raw materials (10,7€/t).

4. What do you think this regulatory failure/obstacle is linked to? (multiple answers possible)

- EU legislation or policy
- National policy, legislation or administrative decisions
- Regional policy, legislation or administrative decisions
- Local policy, legislation or administrative decisions

Please briefly describe which specific policy/policies, legislation(s) or decision(s) is/are to blame for this:

Article 3 and 18 of the Waste Framework Directive (WFD)

Article 28 and 29 of the WFD and article 3 and 4 of the Waste Shipments Regulation.

5. Which of the following impacts do you think such regulatory failure/obstacle has within the EU? (multiple answers possible)

- Reduces reuse or recycling
- Reduces recovery, including energy recovery
- Increases waste generation
- Leads to increased environmental impacts
- Leads to reduced resource efficiency
- Other
- None

If relevant, please provide additional information in relation to your above reply.

A lack of clear definitions means that potentially valuable materials are sent to landfill or incineration rather than being treated to be reused.

Poor enforcement in and between member states creates the ability for free riders resulting in an increase in illegal activities, meaning the costs of complying with complex legislation and procedures is avoided.

Lack of, or unclear guidelines lead to an inability to comply with legislation and an unawareness of specific responsibilities

6. How did you become aware of this regulatory failure/obstacle? (multiple answers possible)

- Reported by members of your organisation
- Through complaints reported to the authority
- From literature
- From own market analyses
- Own experience
- Other

If relevant, please provide additional information in relation to your above reply.

7. What actions are you aware of that could solve or mitigate this problem? (multiple answers possible)

- Not aware of any actions
- Legislative changes
- Changes in the policy or decision-making by authorities
- EU guidance on waste legislation or policy
- Co-operation between authorities in different Member States
- Co-operation between authorities in the same Member States
- Other

If relevant, please provide additional information in relation to your above reply.

Further specificity and clarification of definitions is required under article 3 as well as article 6 (end of Waste) of the WFD.

Increased clarification of terms and language in legislation should occur to determine what is 'waste' and what can be a 'resource'. This would mean that legislation would only apply for those materials that serve no purpose in the value chain, such as end of life materials, which can then be sent to landfill or incineration. Whereas, materials which serve a purpose in the value chain can be classified as resources.

Challenges in implementation and enforcement under article 18 of the WFD. To solve this problem, uniform enforcement across the EU is needed.

Advance the development of guidelines under article 29 paragraph 5 of the WFD and Annex VIII of the Waste Shipments Regulation

A harmonized definition of the different types of waste and waste streams will provide a better basis for implement the waste hierarchy. Greater cooperation between authorities and private companies will allow a more comprehensive understanding of the status of the waste market (constraints, costs, issues etc.)

Updating existing BAT and BREF guidelines for handling waste and recycling in the public sector and focusing more generally on the use of BAT guidelines would facilitate more cooperation between the public sector and private companies. This would ensure more coherent and uniform application within a member state.

8. Are there other important aspects of policy and legislation that distort the waste market or create obstacles to the functioning of waste markets? If yes, please describe these taking into account the previous questions.

There is a need for transparent EPR schemes, with clear roles and responsibilities for all economic actors and these should be harmonized across member states. This would ensure that such schemes contribute in the most effective way to increased recycling. A large problem is that many compliance schemes independently decide what information producers should report, the scope covered and the categorization of different products. A more harmonized system would allow accurate information to be provided to the Commission in order to carry out comparative analysis.

B. Obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation

9. Do you consider that there are any obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation?

- Yes, many
- Yes, but limited
- No (go to part C of the questionnaire)
- Don't know (go to part C of the questionnaire)

10. What are the drivers/causes of these regulatory failures or obstacles to the efficient functioning of waste markets?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Application of the system of notification- and consent requirements under the Waste Shipment Regulation (Articles 4-17 and 26-33 of the Waste Shipment Regulation).

between 0 and 5

5

b. Application by national authorities of the provisions concerning waste shipments through transit countries (Waste Shipment Regulation).

between 0 and 5

5

c. Other controls imposed on waste or waste shipments by application of EU waste legislation.

between 0 and 5

4

d. Different interpretations of the definition of 'waste' according to the Waste Framework Directive.

between 0 and 5

5

e. Diverging classifications of waste as 'hazardous' or 'non-hazardous' (Waste Framework Directive).

between 0 and 5

5

f. The distinction between 'recovery' and 'disposal' (Waste Framework Directive).

between 0 and 5

3

g. Application of the 'proximity principle' resulting in an outcome which is inconsistent with the waste hierarchy (Waste Framework Directive and Waste Shipment Regulation).

between 0 and 5

3

h. Divergent application of the so-called 'R-codes', i.e. the recovery operations listed in Annex II to the Waste Framework Directive.

between 0 and 5

5

i. Application of national end-of-waste criteria established in accordance with the Waste Framework Directive, see further Article 6(4) of the directive.

between 0 and 5

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5

j. Application of the grounds for reasoned objections to shipments of waste for recovery, as listed in Article 12 of the Waste Shipment Regulation, or the requirement for environmentally sound management (ESM), see further Article 49(1) of the regulation.

between 0 and 5

3

k. Other obstacles not listed above.

between 0 and 5

If relevant, please provide additional information in relation to your above reply.

Application of the system of notification- and consent requirements under the Waste Shipment Regulation (Articles 4-17 and 26-33 of the Waste Shipment Regulation) - in particular article 28. For example the application of R and D codes as well as Basel codes is very divergent across EU - this often results in a situation where a shipment is put on hold.

As regards article 3 in the Waste Shipment Regulation shipment of more than 20 kg of orange or unlisted waste requires a notification - this hinders the test of smaller amounts of for example shredder waste as you need a notification regardless of it can be used for recycling or not. This is a barrier in relation to finding new EU business partners to handle this kind of waste as notifications are costly and it takes 6-12 month to close a deal with a potential partner.

Another challenge relates to the export of "green Waste" an operator must fill out Annex VII in the Waste Shipment Regulation - in Denmark and Sweden the authorities want registration of the name of the person in the country where the shipment was loaded - this is not the case in other EU countries where you only register the person who arranges the transport. In other words this creates confusion among business partners if you for example as a Danish operator buy scrap in the Netherlands and want to sell it to a German buyer.

Very different legislation and requirements in different EU countries regarding operators approved for transport of waste - this should be harmonized as it is a serious obstacle for operators to comply.

The control systems that derive from the Waste Shipment Regulation are not functioning properly. When applied by recycling companies, the systems prove to be overly complex. The systems make it increasingly difficult to organize compliant trans-boundary shipments, whilst also failing to tackle illegal shipments sufficiently. Furthermore, there are currently lengthy and costly delays for approving cross-border shipments which impact all economic actors. These delays represent an important obstacle to the emergence of a well functioning market for secondary raw materials.

Clear and concise 'end-of-waste' criteria are needed (article 6 in the WFD).

11. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)

Additional costs are caused by lengthy and costly delays to cross border shipments.

Without clear end of waste criteria negative environmental impacts will persist.

C. Obstacles to the functioning of waste markets arising from national, regional or local rules or requirements and decisions which are not directly linked to EU legislation

12. Do you consider that there are any distortions created by waste policy, requirements or decisions taken at national, regional or local levels?

- Yes, many
- Yes, but limited
- No (go to question 15)
- Don't know (go to question 15)

13. What are the drivers/ causes of these market distortions?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Differing taxes or fees leading to internal or cross border 'shopping behaviour', i.e. waste is transported to locations where it is cheaper to manage to the detriment of more environmentally sound management options which are locally available.

between 0 and 5

5

b. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

between 0 and 5

5

c. Development of waste treatment networks leading to local overcapacities or under-capacities for different types of waste treatment (e.g. incineration) to the detriment of higher positioned treatment steps in the EU waste hierarchy.

between 0 and 5

5

d. Inefficient use of available capacity in recycling or energy recovery in a neighbouring country or within the country itself.

between 0 and 5

3

e. Regulatory barriers that lead to shipments of waste in spite of facilities existing nearer to the source that could treat the waste in an equivalent or better manner in terms of environmentally sound management and the waste hierarchy.

between 0 and 5

3

f. Design and implementation of extended producer responsibility schemes leading to competition distortions or market access problems for producers and waste operators.

between 0 and 5

3

g. Permits and registrations which are not linked with EU legislation, requested from companies established in other Member States, even if they have fulfilled similar requirements in their home Member State.

between 0 and 5

h. Excessive controls on waste or waste shipments by national/regional/local policy, decisions and legislation that go beyond EU requirements ('gold plating').

between 0 and 5

i. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

between 0 and 5

j. Other obstacles not listed above.

between 0 and 5

If relevant, please provide additional information in relation to your above reply.

There are large differences regarding handling waste and implementation at the local level. This results in uneven competition depending on which municipality a company is based in and legislative barriers.

Furthermore, there is a need to address competition issues in the waste and recycling sectors, which are in practice monopolies in many EU member states. Likewise, recycling companies across the EU are facing acute

situations where the lack of competitive neutrality between private and publicly entities, or entities taking advantage of special rights, endangers their economic viability by restricting the access to waste i.e. raw materials. This situation damages the emergence of well-functioning markets, by focusing on treatment of waste that is lower in the waste hierarchy (typically by incineration) and results in less efficient operations which rely on public subsidization at the citizens'/tax payers expense.

14. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)

In Denmark there are 98 different municipalities. Therefore there are 98 different waste plans and waste requirements as well as "waste taxes".

This

means companies have an extraordinary amount to comply with.

Further the Danish "land fill tax" put an extraordinary burden on Danish companies.

15 a. Please rank the three most important drivers of market distortions and obstacles according to their importance with respect to being tackled first to improve the efficient function of waste markets. Please indicate the relevant number and sub-letter from 10a)-k), 13 a)-j).

15 b-c.

- 15 b. Cannot rank them. They are all equally important.
- 15 c. Not enough knowledge to rank them.

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

a. Increased waste generation or less reuse

between 0 and 3

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

b. Less recycling

between 0 and 3

c. Less recovery, including energy recovery

between 0 and 3

d. Less environmentally sound management of waste

between 0 and 3

e. Less resource efficiency

between 0 and 3

f. Lack of market access

between 0 and 3

g. Other

between 0 and 3

If relevant, please provide additional information in relation to your above reply.

Please see answers above in regards to impacts.

D. Final questions

17. Do you consider that there are large differences between the Member States in the way their waste markets function?

- Yes, very large differences.
- Yes, but the differences are small.
- No differences.
- Don't know.

18. Please briefly describe the differences between Member States, perceived as obstacles to the functioning of waste markets:

Lack of competition within a member state leads to poor recycling and waste management.

Different rules and particularly different amounts of legislation to abide by.

Lack of enforcement in some member states in comparison to others
Role of municipalities is strong in some member states not in others

Clarification of the roles and responsibilities of the economic operators.

Harmonized EPR schemes across different member states.

19. What solutions would you propose in order to address the regulatory failures or obstacles you have identified above?

EU action

EU 'waste' legislation should progressively be re-labelled as EU's 'resource' legislation in order to better reflect this shift in the language of the regulatory framework.

For example iron and metals are traded with a high value according to the relevant market prices but often classified as waste (if they contain more than 5 percent "waste" due to End of Waste criteria) and thus controlled through strict market processes regarding import and export creating a major barrier for recycling. Despite the fact that recycled steel scrap are to be delivered directly to metal processing plants and smelters as secondary raw materials. Secondary raw materials should be a natural part of the value chain and treated as a resource in order to "close" the circular cycle.

Another example is the fact that recycled materials originating from wastes, which are by nature less homogeneous than virgin materials have

to compete with these on quality and price. The recent cumulative cost assessment for the steel industry has clearly demonstrated that, despite huge benefits in terms of energy and CO2 savings and growth potential, the cost of EU regulation is much higher for EAF steelmakers (Electric Arc Furnaces) using recycled steel scrap (17,4€/t) than for BOF steelmakers (Basic oxygen furnace) using primary raw materials (10,7€/t).

Ensuring free and fair trade of secondary raw materials with limited export restrictions. A circular economy cannot stop at EU borders especially since recycling is part of a global industry. Access to the world's markets is even more crucial to avoid price distortions between Europe and the rest of the world and ensure that the EU's recycling industry remains competitive and market-driven.

Ensure binding rules at EU level for EPR Schemes, so that policy tool aiming at correcting market failures for specific streams result in minimum market distortions to meet their environmental objectives and foster recycling. Operating requirements should improve transparency and fair competition to avoid the creation of new monopolies, whose market power can be particularly detrimental to SMEs, as well as secure a non-discriminatory access to recyclables and fair revenues.

Interplay between EU's waste and chemical laws as well as product policies (eco-design requirements) should be improved. Sorting and depolluting end-of-like products, to take out hazardous substances and components (e.g. batteries), are standard practice for recyclers. Hazardous substances at the design stage should be reduced as well as keeping a clear list-based and risk-based approach for classifying non-hazardous and hazardous waste to minimise room for interpretation and bring legal certainty.

Uniform enforcement across EU is needed. Strict and comprehensive waste legislation, combined with rather poor enforcement in some EU member states can result in a paradox that sees the uptake of illegal activities, escaping costly and overly complex legislation and procedures with which recycling businesses have to comply.

National action:

There is a need to address competition issues in the waste and recycling sectors, which in practice are monopolies in many EU member states. Recycling companies across the EU are facing acute situations where the lack of competitive neutrality between private and publicly entities or entities taking advantage of special rights, endangers their economic viability by restricting the access to wastes i.e. essential raw materials. This situation hinders the emergence of well-functioning markets, which again foster treatment types lower in the waste hierarchy (typically incineration) and less efficient operations relying on public subsidisation to operate at the citizens' expenses.

Move treatment of resources up the waste hierarchy by advance the

phasing out of the incineration of unsorted wastes, including industrial & commercial waste, to avoid that recyclables, with an economic value, are converted into energy instead of being recycled, and ensure that only residues are incinerated.

Address the huge differences regarding waste handling and implementation at the local level that results in uneven competition and legislative barriers. In Denmark there are 98 different municipalities and thus 98 different waste plans and requirements for companies to comply with.

There should be a stronger focus on the use of BAT guide lines for waste handling and recycling in the public sector through cooperation with private companies ensuring more coherent and uniform application across the country.

Improve open tendering regarding waste management & recycling activities also striving for longer period contracts aiming at rewarding investments in technology and capacity related to the particular contract.

Part 3 – Follow-up activities

20. Would you be interested in participating in a stakeholder meeting on these issues that will be held on 12th November 2015?

- Yes, I would like to attend.
- No, I'm not interested.

My contact details are (optional):

arb@danskerhverv.dk

Contact

✉ Peter.Wessman@ec.europa.eu
