

Waste Shipment Regulation

Proposed Legislation Overview

19 November 2021

This document provides an overview of the newly [proposed Waste Shipment Regulation](#) (WSR). It outlines the key provisions of the proposed legislation and a brief analysis of its potential effects on the European Recycling Industry. This will better allow EuRIC to prioritize the future lobbying activities.

The proposed legislation will now be under the EU [Ordinary Legislative Procedure](#). Here the joint legislators (European Parliament and Council) will review, make amendments and vote on the adoption of the legislation. Adoption or not, **the process can take 1-2 years**.

Please find the summary of the main thematic topics covered by the WSR:

- **Title I:** contains general provisions on the purpose, scope and definitions of this Regulation (Art. 1 – 4).
- **Title II:** contains provisions on shipments within the Union, with or without transit through third countries (Art. 4 – 32).
- **Title III:** consists of one article (Article 33) and relates to the need for Member States to have national regimes concerning shipments of waste within one Member State to safeguard coherence with the Union system (Art. 33).
- **Title IV:** contains provisions on exports from the Union to third countries (Art. 34 – 46).
- **Title V:** contains provisions on imports into the Union from third countries (Art. 47 – 53).
- **Title VI:** contains provisions on transit through the Union from and to third countries (Art. 54 – 55).
- **Title VII:** contains provisions on enforcement of this Regulation (Art. 57 – 68).
- **Title VIII:** contains final provisions (Art 69 – 82).

Below a summary is provided of the key provisions within each Title of the proposed WSR.

Title I: Scope / Definitions

*“This Regulation lays down measures to **protect the environment and human health** by preventing or reducing the adverse impacts which may result from the shipment of waste. It establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.”*

“‘Environmentally sound management’ means taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste”

The definition for recycling is based on the Waste Framework Directive (2008/98/EC): “means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations”.

Title II: Shipments within the EU

General provisions (Art. 4)

Waste shipments within the Union for disposal are de facto banned, unless the Member State (MS) states otherwise in Article 11.

Shipments of member listed waste (Annex IV), wastes not classified at green-listed or mixtures (Annex III, IIIB), and mixtures of waste (unless listed in Annex IIIA), are subject to Prior Written Notification (see below).

Shipments for laboratory analysis has been increased to a maximum 150kg (or higher on case-by-case basis agreed with competent authorities), and if the amount does not exceed a reasonable amount to perform the analysis.

Prior written notification and consent (“notification”)

Notification must include the Notification document (Annex IA) and Movement document (Annex 1B). The information required in these documents can be found in Annex II to the revised WSR (Art. 5).

Shipments where notification is required, must have a contract between the notifier and consignee. This ensures the notifier will take back waste, and/or consignee will treat/dispose waste if it is an illegal shipment, and that the facility of treatment will provide a certificate that the waste has been treated (Art. 6).

All notifiable shipments required a “**financial guarantee or equivalent insurance**” to cover (cost of transport, cost of treatment, cost of storage for 90 days). The Commission will assess the feasibility of establishing a harmonized calculation method for determining the amount of the financial guarantees or equivalent insurance (Art. 7).

A written consent for a planned shipment cannot cover periods longer of one year (Art. 9).

Prohibitions of shipments of waste for disposal (Art. 11), and recovery (Art. 12) are still possible within 30-day period, given shipments do not meet criteria (including treatment not being technically or economically feasible, or via contradicting proximity principle). This is near-identical to the current WSR.

General notification is still possible where different shipments are physically and chemically similar, with the same consignee/facility, and the routing from notifier to facility is the same (Art. 13).

Pre-consented facilities now remain pre-consented for a seven-year period (Art. 14). However pre-consented status can still be revoked at any point by a competent authority. General notifications to pre-consented facilities have an extended validity of consent for three years – this can be shortened in duly justified cases.

For interim treatment operations, confirmation must be provided one day after receipt of the waste by the interim facility (Art. 15).

Movement documents

For shipments with where notification applies: After consent, the movement document(s) (Annex VII) must be completed and made electronically available – electronic documents must also be available during shipment. This must be submitted (filled in as best as possible) one day prior to shipment (Art. 16).

For green-listed waste shipments: the movement document(s) (Annex VII) must also be filled in and made electronically available, one day prior to shipment and for the duration of the transport. If the exporter and the facility receiving waste is owned by the same organization: instead of a contract (in the annex) the organization must make a declaration meeting the same obligations as the contract (Art. 18).

Mixing waste, documentation, and access to information

All actors must now keep all documents related to notified shipments in the Union for five years (Art. 20).

Take-back obligations

Take-backs are still required if the shipment for treatment cannot be completed as intended with the terms of the notification/movement documents, or contract (Art. 22) or if the shipment is illegal (Art. 24). If a notifier fails to fulfil its take-back obligations, the original waste producer/new waste producer or the collector who authorized the shipment dealer/broker will become the new responsible notifier (notifier de jure) (Art. 22).

Costs are at charged firstly to the notifier. If this is not possible it is charged to the notifier de jure (see above), the competent authority of dispatch, or as agreed between competent authorities of concern (Art. 23). For illegal shipments costs are related to how the take-back requirements occurred (Art. 24-25).

Electronic exchange of information

The Commission will operate a central electronic submission system for the exchange of information and documentation. This system will be interoperable with freight transport information. Information can also be shared via national electronic systems (however these systems must be interoperable with the central database). The following documents **must** be shared electronically (Art. 26):

- Notifications (and relevant requests/submissions of information and decisions),
- Consent to a notified shipment and the conditions for a shipment (and possible information on changes made to shipments after consent),
- Objections to shipments,
- Information related to pre-consented facility decisions/applications,
- Certificates of recovery/disposal,
- Prior information of actual start of shipment,
- Movement documentation (Annex VII),
- If feasible consent and movement documents for non-Union shipments (import/export) and transits.

Additional general information provisions

The language of documentation shall be provided in that acceptable to the competent authority concerned. The notifier is responsible of translation (Art. 27).

If the competent authorities disagree on the status of a shipment as waste or end-of-waste (EoW), the shipment will always be regarded as waste. If competent authorities further disagree on the classification of waste (green/amber list) the waste will always undergo notification. If agreement is not found on whether the classification of the waste treatment (being recovery or disposal), the operation will be defined as disposal. The Commission can adopt delegate acts to establish criteria on contamination thresholds to classify waste as green/amber list (Art 28).

Title III: Member State national regimes

MS will ensure shipments only taking place in their territory will have adequate supervision and control – this system will be communicated to the Commission (Art. 33).

Title IV: Exports from Union to third countries

General provisions

Exports for disposal are de facto banned to third countries. EFTA countries (who are party to the Basel Convention) are exempt from this unless they prohibit specific imports (Art. 34). Exports to EFRA countries mostly follow provisions under Title II, except for some specific additions (Art. 35).

Exports of hazardous waste destined for recovery is banned to non-OECD countries (Art. 36).

Non-OECD country exports

The shipment of green-listed waste to non-OECD countries is de-facto prohibited (Article 37 & Annex III, IIIA, IIIB), **unless** the following criteria applies (Art. 37):

- The facility complies with domestic legislation and undertakes recovery operations (subject to general information requirements of WSR) (Art 37.2),
- The country of import is on a “list of countries to which exports are authorized” (Art 38).

“List of countries to which exports are authorized”

The Commission will prepare a delegated act to create this list. The list will include countries which have submitted a request and complied with an assessment carried out by the Commission. The list will detail: the name of country, the specific waste streams allowed, a list of facilities which are licensed under domestic law, information on specific domestic import legislation.

The Commission will set up this delegated act 30 months after entry into force of the new WSR. After the list is established, the Commission will review the list at least every 2 years, to add/edit/remove countries and their input.

Countries included in the list will have to update their information every 5 years, if not requested sooner. The Commission can further contact the country and ensure they are complying with the provisions of the WSR (Art. 38).

Any country wanting to be included in the list must submit a form (Annex VIII) in English. The Annex asks the countries the following:

1. List of waste included in the request (and relevant waste code),
2. Detailed description of the national waste management strategy,
3. Description of domestic legal framework for waste management,
4. Description of any other related domestic legislation on protection of the environment and public health applicable to waste management operations,
5. Description of specific legislation on import/export of waste concerned in the request,
6. Provide a list of facilities authorized under domestic legislation,
7. Status of the country regarding membership to various agreements (Basel, Stockholm, and Minamata Conventions, UNFCCC, Paris Agreement, Montreal Protocol),
8. Description of how the country complies with its obligations in the above agreements,
9. Description of how the Framework for the Environmentally Sound Management (ESM) of hazardous wastes and other wastes under the Basel Convention are taken into consideration,
10. Description of the country's strategy for enforcement of domestic legislation on waste management and waste shipment.

In addition to this form the country must be able to display that it will ensure that waste is managed in an environmentally sound manner via the following (Art. 39.3). All information must be provided in English:

- **A comprehensive waste management strategy to cover its entire territory:**
 - Amount of waste (general and as specified in request) generated in the country / yr,
 - Estimation on country's treatment capacity for the waste currently and for the next 10 years,
 - Proportion of domestic waste collected (and any measures to increase this in the future),
 - Proportion of domestic waste landfilled (and any measures to decrease this in the future),
 - Proportion of domestic waste collected (and any measures to increase this in the future),
 - Information on amount of waste littered (and measures to prevent and clean litter),
 - Provide a strategy on how to ensure the ESM of waste imported into its territory and how imports could affect management of domestically generated waste,
 - Information and methodology on the calculations on the above points.
- **A legal framework for waste management in place:**
 - Permitting or licensing for waste treatment facilities,
 - Permitting or licensing for transport of waste,
 - Provisions to ensure ESM of residual waste from recovery operations,
 - Adequate pollution controls on waste management operations,
 - Provisions on enforcement, inspection, and penalties for domestic and international implementation on waste management and shipment.
- **Is a Part to multilateral environment agreements and implementing them accordingly (Annex VIII).**
- **Has a strategy in place for the enforcement of domestic legislation on waste management and shipment (i.e., inspections).**

The Commission will assess all requests based on the information provided above, as well as other relevant information (Art. 40). If the information is deemed to be incomplete the Commission can request additional information, which must be provided within a min. three-month period. An additional extension of three months can be provided if a reasonable justification is provided. If information is deemed insufficient or incomplete, the Commission will inform the country it will not be added to the list (with its justifications). This is without prejudice of the country making a new request.

OECD country exports

For exports to OECD-countries, the OECD decision applies and EU legislation from Title II, with some certain adaptations (Art. 41):

- Mixtures of waste (Annex IIIA) for interim operations shall be subject to prior written notification, if any subsequent treatment operations (interim or otherwise) in non-OECD countries,
- Waste in Annex IIIB (additional green listed waste¹) is subject to prior written notification and consent,
- The export of waste in Art. 4(5) shall be prohibited (mixed municipal waste),
- Consent as required in Art. 9 may be provided in the form of tacit consent of OECD-country Competent Authority,
- The contract in Art. 6 must specify terms and conditions for the consignee to bear the costs to return waste if incorrect certificates of recovery are provided, the facility must within three days provide receipt of the waste for recovery and within 30 days of treatment the certification that waste was treated (to Competent Authority of dispatch).
- For shipments requiring prior written notification and consent must receive written consent from the competent authorities of dispatch, destination and (if relevant) transit.
- If amber listed waste (Annex IV) is in transit through a non-OECD country: the transit country has 60 days to provide information on where prior informed consent was not required, and the Competent Authority of Dispatch can take the decision to consent to the shipment.
- Shipments must be for recovery operations (in authorized facilities),
- When illegal shipments are detected, the Competent Authority without delay must contact the Competent Authority of Dispatch and ensure detention of the waste.

OECD waste monitoring & safeguard procedures

The Commission will monitor the levels of waste shipments to OECD countries. This monitoring will include reviewing requests from natural or legal persons who possess relevant information/data (Art. 42). If exports increase “considerably within a short period of time” and without sufficient evidence to show the country concerned can recover this waste following ESM.

If this happens, the Commission will request information and evidence from the OECD country in question about whether the country can adequately manage the waste in question (*legal measures in place, sufficient capacity for treatment, strategy for treatment of domestically generated and collected waste, and enforcement measures to tackle illegal shipments*).

If insufficient evidence is provided by the OECD-country in question, the Commission will adopt (a) delegated act(s) and prohibit the export of waste to said country. The prohibition can be lifted with sufficient evidence that waste can be managed in an environmentally sound manner.

Obligations on exporters

Exporters are required to prove (via an audit) that **all receiving facilities outside of the Union** can treat waste in an environmentally sound manner (Art. 43). The audit must be achieved prior to export and will be repeated at regular intervals (min. every three years) – ad hoc audits are required if exporter receives information that the facility no longer complies with previously held audits.

Competent Authorities or inspection authorities can request to see evidence of the audit in question prior to export, this must be provided in the language suiting the competent authority concerned. Exporters must further publish (publicly and digitally) on a yearly basis how they comply with this provision.

For OECD countries, audits are not required where an international agreement exists between the Union and country of concern which recognizes that the facility in that country will manage waste in an environmentally sound manner. A competent authority can further require the export to provide evidence of this international agreement in the language acceptable to the competent authority concerned.

The audit must ensure that the facility complies with the following criteria (Annex X):

- It is authorized by the competent authority to import and treat said waste,
- It is designed and operated in a safe and environmentally sound manner,

¹ BEU04 (composite packaging of mainly paper and plastic), BEU05 (clean biodegradable waste).

- Proof of insurance covering potential risks and liabilities,
- Waste treatment methods must be outlined,
- How the facility deals with residual waste (via downstream traceability).
- It establishes management and monitoring systems for preventing and minimizing:
 - Health and safety risks to workers,
 - Adverse effects on the environment caused by the activity.
- It ensures the traceability of all waste received (average annually, and what is allowed according to permits), treated (average annually) and residual waste generated. The latter must be sent only to authorized waste management facilities with the minimum information,
- It has taken measures to save energy and limit emissions,
- It can provide records of its waste management and shipment activities for the last five years,
- It has not participated in illegal activities linked to waste shipment or waste management.
- The auditor must take into account equivalent EU standards and legislation, as well as BAT conclusions (the guidelines adopted under the Basel Convention on environmentally sound management of waste could be further considered).

Member States of export must take all measures necessary to ensure that exports do not take place to third countries where a prohibition for exports exist or no audit has been carried out (Art. 44).

Exports to the Antarctic or overseas countries or territories outside the Union are all forbidden (Art. 45-46).

Title V: Imports into the Union from third countries

Imports for disposal from third countries are prohibited de facto, except with Parties to the Basel Convention, countries which the Union/MS has/have bilateral/multilateral agreements, areas where a situation of crisis is occurring. Such agreements can be made on grounds of certain countries not treating waste in an environmentally sound manner (Art. 47).

Imports for recovery from third countries is prohibited de facto, except to countries mentioned above, or OECD-countries. Member States can again make bilateral agreements to import where the non-EU country will not treat waste in an environmentally sound manner (Art. 49).

In such cases, Title II provisions will apply with some additions (Art. 48 and 50).

Imports from MS overseas country/territory can be done with the linked MS, via the national procedures of that MS (Art. 53).

Title VI: Transit through the Union

For transit shipments through a Union MS (from and to non-EU countries), where it is destined for disposal or for recovery to a non-OECD country, Article 48 applies (see above). Where the destination is for recovery to an OECD country applies, Article 50 applies (see above) (Art. 54-55).

Title VII: Enforcement of the Regulation

Environmentally sound management

Environmentally sound management of the waste in destination facility will be assured by the waste producer, or notifier – with the objective of not endangering human health or the environment. The latter is achieved if it can be demonstrated that broadly equivalent conditions across the shipment and treatment is achieved to a level similar to EU legislation.

“When assessing such broad equivalence, full compliance with requirements stemming from Union legislation shall not be required, but it should be demonstrated that the requirements applied in the country of destination ensure a similar

level of protection of human health and the environment than the requirements stemming from Union legislation.”
(Art. 56)

Enforcement

Most provisions are directly relevant for MS to set up proper inspection operations (Art. 57), review documentation (Art. 58), and create inspection plans (Art. 59). MS will cooperate at a national and MS-level (Art. 61-62). All MS will further set up a waste shipment enforcement group to better establish such cooperation (Art. 63).

MS will further have to lay down rules for “effective, proportionate, and dissuasive” penalties related to infringements of this Regulation. The “the nature, gravity and duration of the infringement” must now be considered, as well as the intention or negligent character of the infringement. Possible penalties are also exemplified (Art. 60).

The Commission can further carry out inspections of shipments, if necessary, in close cooperation with MS (Art. 65).

Title VIII: Final provisions

MS must annually provide reports based on the questionnaire in Annex XI. The Commission will publish a report based on the results of this. The European Environment Agency will provide further support on monitoring of shipments of specific waste streams (Art. 69).

Small updates are made to the Ship Recycling Regulation (Art. 78) and electronic freight transport information (eFTI) Regulation (Art. 79).

The Regulation will be reviewed by the Commission by the 31 December 2035 (Art. 80).

The proposed regulation is anticipated to replace the older WSR two months after the entry into force of the new legislation. However, several provisions will have a transitional implementation. Certain provisions on shipments within the Union², exports to EFTA countries³, exports to OECD countries⁴, imports into the Union⁵, and the transit through the Union from non-OECD countries⁶ will apply two years after entry into force of the new legislation. The provisions on shipments to non-OECD countries⁷ and on setting up systems to ensure broadly equivalent conditions⁸ will apply three years after entry into force of the new legislation (Art. 81 - 82).

² Articles 4, 7, 8-9, 14(4-5), 15-16, 18, 26.

³ Article 35.

⁴ Article 41.

⁵ Articles 41, 47-49, 50-51.

⁶ Articles 54-55.

⁷ Articles 37-40.

⁸ Articles 43-44.