

Revision of the Waste Shipment Regulation

Targeted interview guide

1.1 Introduction

- Double check time available
- Restate interview goal and objectives and intended use of the data
- Double-check permission to record

1.2 Background information on the stakeholder organisation

- What is your area of activity / what is the sector whose interests you represent?

FEAD is the EU private waste management association. The companies FEAD represents collect municipal as well as industrial and commercial waste, sort out waste, prepare it for recycling/for material recovery, and treat residual (non recyclable/non materially recoverable) waste, with energy recovery or disposal. They treat non-hazardous and hazardous waste. Their market share across EU is 60% of household waste and 75% of industrial and commercial waste. Outlets for recycled materials often rely, depending on waste flows, on exports within and outside the EU.

- What is your size:
 - If “Company”, what is your number of employees?
 - If “Business association”, “Consumer organisation”, “Environmental organisation”, “Other Non-Governmental Organisation” or “Trade union”, how many persons /employees do you represent (= your direct paying members or the employees / paying members of your affiliated organisations)?
> 320 000 jobs
- If you represent an organisation, at which level do you operate? (local, regional, national, EU, international)
EU level.
- In which countries of the EU does your organisation have physical presence? FEAD is a not-for-profit trade association, based in Belgium, with members in 19 MS and Norway.

In the context of the revision of the WSR, FEAD would like to add a comment on the general questionnaire submitted for public consultation until 30 July. We express our concern on the rather simplistic approach put forward by the questionnaire, making it difficult for our members to provide responses. To this regard:

- We regret that some questions only call for a systematic and positive answer, which does not bring additional information to the legislator. FEAD strongly supports the circular economy and the waste hierarchy. We believe that most stakeholders will answer positively. As a complement to this strong conviction, FEAD recalls that the circular economy and the waste hierarchy encompass all waste treatments with a priority order, and that waste shipments should be made easier and efficient with regard to the market situation allowing the best treatment for the best price.
- In the process of drafting a common position, FEAD had to invest significant resources and time in order to reach an agreement between our members, mainly due to the poor quality of the questions. We regret the lack of room for comments in certain sections, which didn't properly allow for practical and/or technical explanations from our side. In particular, the questions do not make the necessary between hazardous waste and non-hazardous waste.

1.3 Interview questions

The questions are organised against the three policy objectives of a revision of the WSR.

For each policy objective, the general idea is to discuss the following topics:

- For the measures envisaged that you consider as being of most interest / relevance to you:
 - how could / should the measure be implemented in detail in order to maximise their effectiveness in reaching the stated policy objective and other policy co-benefits, while minimising the risks and costs for society as a whole or for your organisation / your constituency.
 - what specific risks / costs and benefits do you think this measure could entail for society as a whole and/or for your organisation / your constituency, that should be flagged and analysed.
- What measures you would recommend to complement or to replace those proposed by the Commission, in order to reach the stated policy objective more effectively, with more policy co-benefits, or with less costs or risks for society as a whole or for your organisation / your constituency.

In each case, we would be grateful if you could provide us with evidence (preferably from primary sources) to help support and justify your views.

1.3.1 *First policy objective: the WSR should support the transition to a circular economy in the EU more effectively*

To this regards, FEAD would like to express its concern on the unclarity of the proposed questions. Several call for a systematic positive answer, while they are too vague and ignore key technical consequences. FEAD clearly supports the circular economy and the waste hierarchy. The circular economy requires a Waste Shipment Regulation, as a procedural regulation, that succeeds in:

- creating better functioning EU waste markets;
- allowing intra-EU waste shipments where the best market solution exists;
- distinguishing between how to ship hazardous waste in a secure and traceable way and non-hazardous waste more easily;
- facilitating shipments of green listed waste destined for re-use or recycling; this should not be done at the expenses of shipments destined for other treatments, such as recovery and/or disposal, since the latter belong to the hierarchy;
- eliminating inconsistencies and lack of legal certainty, while minimising delay and the bureaucratic burden that affect waste shipments, in particular for recycling.

1A - Align the Waste Shipment Regulation with the waste hierarchy and with existing EU legislation

Possible measures

1. Introduce a new **simplified procedure** for intra-EU shipments of waste destined to **preparation for reuse** or to **recycling**. This new procedure would apply instead of the prior informed consent procedure in well-defined cases (shipments only to an approved list of facilities) and under specific conditions (pre-notification through electronic data interchange system, shorter deadlines for authorities for raising objections, combined with tacit consent as a principle)

FEAD welcomes a new simplified procedure for shipments for recycling, if not introduced at the expenses of shipments for other treatments, such as recovery. Moreover, the latter also needs improvement, simplification as well as improved legal certainty. In particular:

- all waste shipments should be made easier, limiting delays and improving the existing lack of harmonisation. A “super fast track” regime for reuse or recycling should not just be introduced as an additional procedure. Improving all procedures and solving issues linked to the current lack of harmonisation should also be made a priority.
 - shame recycling could also become a growing problem if shipments are made extremely simple for reuse/recycling only. It has to be properly tackled.
 - other regulatory tools other than the WSR should be considered in order to promote recycling. The latter include mandatory recycled content rules in certain products.
 - shipping hazardous waste for recycling needs to be regulated, in order to avoid loss of traceability, dilution as well as to protect the definition of hazardous waste. Ensuring a high level of environmental security with regard to hazardous waste should not be done at the expenses of shipping green-listed waste for recycling or for recovery, often subject to unjustified uncertainty and bureaucratic burden.
2. In order to encourage the **fast track procedure** that is currently in art. 14 of the WSR, establish clear conditions at EU level to **pre-consent facilities**, together with the principle of **mutual recognition** of these facilities across the EU by the Member States. **FEAD agrees. There is a need to improve and develop the pre-consent procedure. This measure could represent a way forward for circularity.**
 3. **Narrow down the grounds for objections** to shipments of waste for **preparation for re-use** or for **recycling** (through revision of Article 12)
FEAD doesn't see a need for this. The least different procedures, the better.
 4. **Consider options to limit shipments of waste to energy recovery. FEAD does not support this measure. The WSR should not be transformed into a market regulation, aimed at limiting shipments of waste destined to energy recovery. Energy recovery treatments for residual waste is part of the waste hierarchy and allows for greater circularity.**
 5. Consider options to **limit further or prohibit** (with limited exemptions) shipments for **disposal** between Member States.
FEAD disagrees. Shipments for disposal are already subject to specific rules. Some disposal capacities exist only cross boarder.
 6. Determine **contamination levels** at the EU level in the context of classifying waste as **hazardous** or **mixed**: this can include the development of threshold values for contamination/mixtures of waste.
This question should not address hazardous waste and non hazardous waste simultaneously. FEAD sees a strong need to determine contamination levels and thresholds for non-hazardous mixed waste at EU level. Determining contamination levels should be based on the implementation of the existing EU classification of hazardous waste and should not be introduced in the context of waste shipments. This could otherwise lead to different rules in different contexts (shipment, treatment, etc).

1B - Simplification and reduction of administrative burden linked to the implementation of the WSR

Possible measures

1. Develop at EU level the conditions for the functioning of an **Electronic Data Interchange (EDI)** system to facilitate electronic notification and movement procedures for waste shipments, better monitoring of waste flows and to allow a smooth sharing of information between public authorities. **This represents a good option. FEAD fully agrees on this point.**
2. Rethink the **financial guarantee** provisions/obligations: envisage possible alternatives for the currently used and required systems. This might involve an EU fund, an insurance-based system or other formats. Guidance could accompany this measure. **Insurance-based system should be simplified and improved. FEAD members would favour a rolling system, making it easier and less expensive for smaller companies to insure their waste shipments. FEAD members are not positive about funds. This option, in fact, reduces responsibilities for operators and could promote less professional operators.**
3. Issue guidance on improving efficiency and **simplifying** the implementation of provisions related to the **prior written notification and consent** procedures. **FEAD believes a guidance is not an efficient instrument to improve efficiency and simplify the implementation of provisions related to the prior written notification and consent procedures.**

1C - Harmonisation of interpretation, application and enforcement across Member States

Possible measures

1. Provide further guidance to clarify the links between the different types of **classification of waste**. (Notably differences between classification of waste under (i) the EU list of waste based on the Waste Framework Directive, (ii) customs HS code, (iii) Basel Convention, (iv) OECD Decision....). **To a large extent, this is needed, but a guidance document might not be enough to drive the desired change. A correspondence table would definitely be helpful in promoting clarity. This would however not be enough to harmonise rules.**
2. Clarify rules regarding how **conflicts between Member States** are settled on **whether a commodity is a waste or not** (or has ceased being considered as waste), in situations when waste is shipped cross-border between Member States
 - a. Introduce in the WSR the principle of **mutual recognition** of national classification on whether a commodity is waste or not in case of shipments, including as regards the application of end-of-waste criteria. **There is a need to address the difficulties encountered by waste management operators in exporting/importing waste across the EU. This is because we face a variety of end-of-waste regimes, resulting in delays or in concrete obstacles to shipments. Generally speaking, FEAD favors EU end-of-waste criteria, in particular for paper, as it is not a very complex waste flow. This can be a good option, only if it does not undermine environmental protection, by giving an advantage to MS that are less stringent on classifications/thresholds/etc.**
 - b. Define rules to determine **which Member State's** (dispatch or destination) decision would **prevail** to decide whether a commodity is classified as waste or not, including as regards the application of end-of-waste criteria.. **See FEAD answer on question (a).**
 - c. Develop **guidance** on implementation of Article 28 to foster a **common interpretation** across the EU Member States on how to deal with disagreements between Member States on whether a commodity is waste or not, including as regards the application of end-of-waste criteria. **EU end-of-waste criteria are needed. A clear distinction between waste and commodity is needed and a guidance**

document could be a first step (although not a fully effective instrument). Yet, such guidance should not be set up only with regard to waste shipments, but it should apply to any situation in the waste management chain. See also FEAD answer on question (a)

3. Clarify rules regarding how **conflicts between Member States** are settled on whether a waste is **hazardous** or not, in situations when waste is shipped cross-border between Member States
 - a. Introduce in the WSR the principle of **mutual recognition** of national rules on whether a waste is classified as hazardous or not in case of shipments. **Mutual recognition could be, to some extent, a solution, provided that the highest environmental standards and compliance with EU hazardous waste classification are ensured. In the absence of those conditions, mutual recognition could potentially encourage eco-dumping and further differences between MS.**
 - b. Define rules to determine **which Member State's** (dispatch or destination) decision would **prevail** to decide whether a waste is classified as hazardous or not. **See answer (a).**
 - c. Develop **guidance** to foster a **common interpretation** across the EU MS on how to deal with disagreements between MS on whether a waste is classified as hazardous or not. **A guidance document could be very useful in order to facilitate interpretation. FEAD has been continuously asking for such guidance; yet, we are aware that it would not solve all issues and consequently does not represent an effective and robust solution.**

4. Establish **structured exchange of information** and experiences between MS and at EU level, e.g. by creating a platform for MS to share information. Information can include bilateral agreements on waste shipment related topics, end-of-waste decisions. **FEAD believes this can help only to a certain extent. This does not replace strong, clear and harmonised rules. As correspondants' meetings on the subject matter already exist, it will only be helpful if the waste management sector is directly included. It would be helpful to have more clarity on the difference between the proposed system and the existing Correspondants' meetings.**

1D - Better adapt to technical progress and stimulation of innovation

Possible measures

1. Provide more relevant **delegations** to the Commission¹ to adapt the Regulation over time to technical and policy progress, e.g. on the specifications of the planned Electronic Data Interchange (EDI) format or on the requirements for pre-approval of waste treatment facilities. **This is relevant. EDI is needed and welcomed. Yet, the content has to be adequate. FEAD would be happy to contribute on specifications. The specifications of the EDI are crucial for it to be effective. Same works for pre-approval of waste treatment facilities.**

1.3.2 Second policy objective: Restrict the export of EU waste to third countries

2A - Restrict the export of EU waste outside the EU

Possible measures

1. Introduce a **ban** on exports to **non-EU countries** of **all waste**. **FEAD disagrees with this measures. While FEAD is not against limitations of exports outside the EU, to ensure environment protection, the organisation does not advocated for a general ban of all exports outside the EU.**
2. Introduce a **ban** on export of **all waste** to all **non-EU** countries, with the **exception** of export of green-listed waste to countries which (i) notify the Commission that they want to be able to import waste from the EU and (ii) demonstrate that they comply with a number of criteria designed to ensure that the waste will be

¹ E.g. in the form of Delegated Acts or of Implementing Acts. Implementing and Delegated Acts are texts that specify technical details of EU legislative texts. They are adopted by the Commission, under the scrutiny of Member States and after due consultation of the public and of stakeholders, under a procedure known as "comitology". Further details on Implementing and Delegated Acts can be found on the Commission website [here](#).

- dealt with in an environmentally sound manner. The list of countries could be set up and updated regularly by the Commission through delegated/implementing acts. **This measure is too stringent. It will take years before we have a list. Exports to “green-listed” countries for “green-listed waste” should be allowed by principle, on the basis of compliance to a number of criteria, unless countries notify the Commission that they do not want to import waste from the EU. Waiting for the new conditions will take too long and it is equivalent to a ban.**
3. Introduce a **ban** on export of all waste to all **non-EU, non-OECD** countries, with the **exception** of export of green-listed to countries which (i) notify the Commission that they want to be able to import waste from the EU and (ii) demonstrate that they comply with a number of criteria designed to ensure that the waste will be dealt with in an environmentally sound manner. The list of countries could be set up and updated regularly by the Commission through delegated/implementing acts. **The same concept applies as before. Green-listed waste should remain exportable.**
 4. Require that the **prior informed notification and consent** procedure applies for the export of **green-listed** wastes to **non-OECD** countries **outside the EU**. **This option is not manageable. It is very time consuming, because of linguistic problems and delays. It would not be appropriate for all waste flows. An alternative option would be the guarantee of environmentally sound treatment by the recipient facility, as already existing in the Basel Convention.**
 5. Revisit the current legal regime defining **the right to export green listed waste** to non-OECD countries, as set out in Art. 37 of the WSR and Regulation (EC) 1418/2007: maintain the thrust of art. 37, but ensure updated **information** can be provided in a **more flexible and less resource intensive** way, e.g. via an interactive web platform rather than through a delegated act. **The proposal is not very clear. If the process of fulfilling the conditions is an easy one, this could be an option as long as it is not transformed into a “prior consent” system.**
 6. **Maintain the current rules** on both hazardous and green-listed waste exports to third countries and focus on stronger enforcement measures. **Enforcement measures are key, but in practice third countries often oppose the sovereignty principle against measures aiming at ensuring the enforcement of EU/international rules.**
 7. Specifically for EU export to **other OECD countries**: **review** the current OECD framework governing transboundary movements of waste, to assess if it is the most adequate, when it comes to regulating such trade within the OECD with a view to managing wastes in an environmentally sound manner and in light of the EU Circular Economy approach. **FEAD does not see this proposal as appropriate. It is very difficult to manage negotiations at OECD level.**
 8. Work on the **Basel Convention**: Consider the inclusion of **additional waste streams** in the Convention; reinforce the Convention as regards **Environmentally Sound Management** or even **Circular Economy** aspects like life-cycle approach policy. **Even more complicated to change the Basel Convention.**

2B - Verify Environmentally Sound Management of waste in destination countries outside the EU

Possible measures

1. Clarify what the EU considers as the **environmentally sound management of waste**, by including additional provisions on this point in the regulation or in implementing acts **FEAD agrees to this statement only to a certain extent. There is room for improvement, but FEAD doesn't see a need to change the rules.**

2. Consider the establishment of an **EU agency or equivalent body** designed to **inspect and certify** that waste management facilities in 3rd countries processing waste imported from the EU comply with EU requirements on the **environmentally sound management** of waste. **FEAD agrees only to some extent. This would require many human resources. Illegal shipments would still remain a major problem in the end. If an electronic system is in place, it is unsure if an inspection body is required.**
3. Introduce in the WSR or in a guidance document **more detailed and stricter conditions** governing the **export of waste outside the EU** (notably laying down more precisely what the provisions on “human health and environmental protection standards broadly equivalent to EU standards” means). **To a certain extent, such a guidance could be an appropriate tool.**

2C - Better classify shipped waste as hazardous or mixed/ contaminated when exporting waste from the EU

Possible measures

1. Develop/support the development of guidance to foster a **common interpretation** across the EU Member States and **third Parties** on how to deal with **disagreements** between Member States and third Parties on whether a commodity is waste or not, or whether a waste is hazardous or not. **Guidance is needed, but this is not enough legally speaking. Enforcement is a problem and needs to be implemented - the problem is the complexity. More EU rules should be in place at EU level, but it would be difficult for EU to have enough leadership and keep control on international shipments.**

1.3.3 Third policy objective: Strengthen the enforcement of the Waste Shipment Regulation's provisions

Possible measures

1. Increase the involvement and capacity of **EU bodies (e.g. Europol, OLAF)** to support the control and enforcement actions of Member States against illegal shipment of waste or against illegal treatment of legally shipped waste **Action against illegal treatment of legally shipped waste is definitely needed and represents one of the top priorities.**
2. Establish through the WSR a **forum**, composed of law enforcement and inspection agencies of the EU MS and the Commission, and dedicated to: exchange information, share experiences, set out EU priorities, provide for a stronger investigative capacity at EU level, cooperate and promote joint actions on the fight against illegal waste shipment. This could take then the form of an information exchange group or of an expert group. **Yes this represents a potentially good option. Professionals should be associated to these forum. This would ensure that knowledge from the ground is transmitted to the EU MS and commission.**
3. Improve/specify **reporting requirements for Member States** regarding **enforcement staffing** and actions **Definitely a need for staff at Member State level - more inspections and staff on illegal shipments are needed. In addition, more training and qualifications are needed for inspectors on illegal shipments. At the moment, some are very qualified but others are not.**
4. Improve existing guidance and develop additional **guidance on implementation and enforcement** issues. **Yes this could be a good option.**
5. Actions towards **third countries** to improve **enforcement**: support to projects and cooperation at bilateral, regional, and global levels, notably through the Basel Convention, World Customs Organisation, UN office on Drugs and Crime, Interpol... **Yes this also could represent a good option.**

1.4 Any other issues you would like to raise in relation to the measures?

1.5 Closing

- Recap next steps
- Any additional information promised in interview
- Encouragement to share any forthcoming information with evaluation team
- Thank for participation.