

## **FEAD's position on the Revision of the Waste Shipment Regulation**

### **1. Introduction: fair and open waste markets for recycling and recovery**

In line with the objectives of the Green Deal and of the new Circular Economy Action Plan (CEAP), achieving a circular and more resource efficient economy will require major changes in the way secondary raw materials are perceived and re-looped into the economy.

Facilitating safe waste shipments, through consistent and less burdensome rules, is set to incentivize circular economy. **A fair and open EU market for recycling and recovery is necessary to treat waste in line with the waste hierarchy and comply with targets put forward by waste legislation.** The Waste Shipment Regulation (WSR), as identified in the new CEAP (par. 4.4), is a vital piece of legislation with regards to these objectives. **Its revision is thus a crucial opportunity to introduce much-needed adjustments,** by rendering it fit for purpose. This means, in our view, resolving some existing bottlenecks and setting up appropriate long-term policies.

If the transition to a circular economy is to succeed while maintaining industrial production, it is essential that recycling materials can be provided reliably and “just in time”. Due to the progressive introduction of mandatory recycled content in sectorial legislation, it can be assumed that the demand for recyclates in Europe will increase exponentially.

### **2. Elements to address in a revised WSR**

Notification procedures for waste shipments are overly burdensome, long and insufficiently reliable. Thus, FEAD believes that the revision of the WSR should address:

- **long and persistent delays of shipments, due to the delays of national authorities in consenting to the latter;**
- **bottlenecks linked to differing interpretations by authorities.**

We thus support a substantial revision of the WSR, bringing clarity and simplification to waste shipments' rules. In doing so, it is important to establish and maintain a key distinction between hazardous and non-hazardous waste, to avoid a single approach for both waste types, due to health, safety and environmental reasons.

#### **a) Notification procedure**

##### **→ Enforceable time limits**

Waste operators face a lack of consistency when confronted with notification requirements in different Member States. Our experience shows that this is caused by:

- **autonomy of all authorities to request additional information:** for instance, different Member States ask for different documentation to be provided, and do not respect the same timelines. Although Annex 2, Part III lists the information which can be requested, authorities often ask for additional information on composition, origin, recovery process of the shipment. The additional documents requested, in most cases, generate further delays for the approval. The whole procedure thus creates heavy administrative burden for waste operators. Our experience also shows that this situation occurs when notifications are repeated.
- **non-respect of delays in consenting to the shipments:** competent authorities often favor unnecessary bureaucracy over the safe and timely movement of waste, thereby causing significant delays in reaching their destination (3-6 months, on average). Despite the WSR setting time limits for the notifier and the authorities, these limits are, in practice, seldomly respected by the latter. These delays entail additional costs for operators due to storage costs, extra administrative burden derived from chasing approval and potentially losing customers in Member States due to a decrease in competitiveness, entailed by the long delays. It remains, of course, essential that operators file their notifications correctly.

To solve these issues, FEAD suggests the following amendments to the WSR:

- **introducing the element of “relevant and reasonable” to the requests for information by the authority present in Annex II.** This has the potential to rebalance the existing situation, in which competent authorities can be asked to substantiate their demand for additional documents. In our view, it would be ineffective to introduce further details in the text of Annex II, to prevent additional requests for information.
- **extending the initial delay to 7 days, for the request of additional documents,** after which tacit consent on the acceptance of the document will not be possible.
- **In case of renewal** (which represents a large share of notifications introduced), **we suggest that only changes in waste composition should be clearly indicated to the competent authority.** This can reduce the time needed and the administrative burden for the renewal of the notification. This can be further enhanced through digitalization (see below).

#### → Interpretation of criteria for “general notification” under art. 13 WSR

**Art. 13 regarding general notification leads to different interpretations by different competent authorities across Member States.** These differentiated interpretations strongly limit the role of waste operators in an efficient infrastructure for waste collection and treatment without creating an environmental benefit. A consensus on the interpretation of this provision will lead to fewer notifications, without limiting control and traceability by the competent authorities:

- a) **“essential similar physical and chemical characteristics” (par. 1(a))** is for instance, interpreted by some authorities to allow only one specific stream, while others rely on a list of EWC-codes. FEAD believes that it should be interpreted as follows:
  - i) **Same physical state**
  - ii) **Same treatment process**
  - iii) **Same category of waste in acceptance policy of the treatment facility**
  - iv) **Same category of waste in national waste management plans.**

- b) “**same route**” (par. 1(c)) is, in practice, unnecessarily strict, by requiring that every transport use exactly the same route as indicated in the transport document. Assuming that this provision has been introduced to facilitate authorities’ checks, we suggest the following alternatives:

- i) **Define only the point of exit/entry, and/or**
- ii) **Allow the notifier to define a specific route on the transport pre-notification, without previous consent** (as requested by art. 17 concerning changes in shipments after consent).

- c) “**same producer**”: despite not being mentioned in art. 13, some authorities interpret the above-mentioned criteria (contained in par.1 (a) and (c)) so as to deny the possibility of several producers. We believe that a notification should take into account the legal entity (notifier), because the financial guarantee is linked to the latter. Thus, if there are multiple producer sites under the same legal entity, the sites must be well listed. **One main notification of the legal entity with a list of the sites and tonnages shipped to a unique destination point should be sufficient.**

#### → Implementing electronic notification procedures

FEAD fully supports the introduction of an electronic notification procedure that can be used throughout the EU and easily accessible to all stakeholders and authorities involved in the shipments’ procedures (while protecting business secrets) and believes that the implementation of the Electronic Data Interchange (EDI) is a priority.

It is crucial for waste operators that the upcoming EDI is interoperable across all Member States and guarantees transparency and traceability to waste operators and competent authorities. Yet, while EDI is set to alleviate the administrative burden of competent authorities and waste operators, digitalization in itself is not sufficient.

**FEAD believes that effective improvements could be introduced in art. 26, which defines the allowed formats of correspondence.** For instance:

- always accept e-mail correspondence as the default communication method;
- signed documents should be accepted in the form of PDF-scans.

Under the COVID limitations introduced over the past year, many authorities have come to allow the above-mentioned practices over the now outdated formats prescribed by art.26 (post, fax, formal digital signatures). This experience shows that this can be easily done, without jeopardizing control and traceability of shipments.

#### → Language of communication with competent authorities

**FEAD suggests the revised WSR to foresee that all authorities accept documentation in English.**

#### → Interpretation of validity dates

Authorities interpret the validity dates indicated on the notification document in different ways. For instance, in Box 6 of the notification document (Annex IA), two dates have to be indicated: “first departure” and “last departure”. Many authorities interpret the latter as being “last arrival”, i.e. the shipment must arrive at the destination prior to that date. This means that waste operators have to start the final shipment(s) far in advance of the date states, in order to ensure it arrives at the facility in time. This can considerably shorten the validity period of the notification, making it only usable for 10 or 11 months rather than the full 12 months. This is particularly relevant in the case of multimodal transport. Thus, we believe that competent

authorities should be obliged to implement the literal meaning of the “last departure” consistently.

### → Modification of the Financial Guarantee Scheme

The financial guarantee system should be changed in several respects. There should be a uniform calculation of the amount as well as the type of guarantee. So far, different Member States have different requirements for the type and the amount. This complicates the shipment unnecessarily.

### b) Art.14 WSR’s pre-consented facilities

In order to facilitate shipments, pre-consented facilities can represent a privileged option to radically accelerate art.14 procedures and avoid delays<sup>1</sup>. An improved procedure under art.14 has the potential to ensure enhanced traceability, while complying with the needed requirements. Only installations meeting those requirements can become pre-consent facilities and benefit from this fit-for-use shipment procedure.

Regrettably, pre-authorisations for waste shipped for recovery are very limited, with very few pre-consented facilities existing in the EU-27. In principle, we believe that the system established is a step in the right direction to further harmonise EU waste markets, providing flexibility while guaranteeing safe and environmentally sound shipments; yet crucial improvements are needed.

Under the current system, it is often not worth becoming a pre-consented facility, particularly because of the heavy bureaucratic burden.

FEAD suggests that:

- Following a submission for pre-consent, ***recovery facilities fulfilling requirements within the EU should become pre-consented facilities.***
- ***Requirements for pre-consent should be uniform throughout the EU*** and competent authorities, potentially in relation with permitting authorities, should check compliance with requirements using a checklist (same questions, same requirements).
- ***Administrative fees related to the pre-consent procedure should be standardized,*** to avoid large differences across Member States.
- ***Pre-consent validity should be longer and should benefit from a facilitated renewal system.***
- ***Transit countries should only be allowed to raise limited objections in relation to transport safety of shipments to pre-consented facilities exclusively.***
- ***A uniform waste code should be sufficient.*** The current administrative procedure does not currently indicate which code is needed (national codes, UN codes,...). The use of a single uniform code could further ease the administrative burden (for waste operators) linked to this procedure.

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<sup>1</sup> What some stakeholders call a “fast track” must be understood as the much-needed improvements to art. 14 WSR aimed at accelerating the existing procedures.

### c) Annex VII procedures

FEAD stresses the need for a risk-based enforcement of Annex VII with proportionate measures (penalties) taken by the regulators depending on the degree of non-compliance. It is thus important to establish a clear distinction between administrative mistakes and illegal shipments.

***FEAD thus suggests amending Annex II (35)(g) as to explicitly stipulate that a shipment shall not be regarded as automatically illegal if an administrative error in relation to Annex VII occurs.***

### 3. Circularity in the EU and at global level

FEAD strongly stands by the objectives of the Circular Economy Action Plan and of the Green Deal. Strengthening EU recycling and recovery markets is, in our view, essential to achieving the long-term objectives of the EU.

**We agree in restricting exports of non-hazardous untreated waste to countries (non-OECD) where their environmentally sound management cannot be ensured. However, it is essential that waste management operators are allowed to export processed waste beyond EU borders. Commodities markets are global so processed waste also relies upon exports beyond EU borders, where a large fraction of global manufacturing is located.**

With the recyclates' market significantly suffering from a lack of demand from manufacturers of new products, potential export restrictions are set to further sink the prices of recyclates in the EU-27, unless clear and significant recycled content obligations are introduced in the short term. While the effects on EU treatment capacities and recyclates' markets are difficult to estimate at this stage, a forecast can be provided on the basis of past experiences. In particular, in 2017, the introduction of China's so-called "green fence" has led to a de facto ban on imports of a number of waste flows. This unilateral policy has significantly impacted the paper recycling sector, among others, due to the still limited capacities for recycling currently existing in the EU. With a EU treatment capacity for this stream set at 48 300 000 tons, this has left the market with a surplus of 8 600 000 tons in need of recycling. This clearly shows the need for exports in ensuring that treatments higher up the waste hierarchy can be ensured, unless policies to substantially stimulate the market demand for recyclates are put in place beforehand and on the long-term.

**We believe that such policies can be implemented if other instruments are put in place. This is the case, for instance, of the establishment of clear EU-wide end-of-waste criteria for secondary raw materials, in order to facilitate exports of recyclates outside the EU.**

Long term policy options are suitable to reach circularity without creating market disruptions. In this regard, we strongly advocate for measures that foster recycling markets, i.e. through mandatory recycled content targets in sectoral legislation (extended to a wider range of products'/materials' categories), mandatory green public procurement criteria and financial incentives (i.e. reduced VAT for products which re-incorporate recycled content), among others. These are set to work on the **long term** as strong push measures to foster the increasing uptake of recycled materials, while manufacturing processes increasingly move away from linear models.

**For more information, please contact [info@fead.be](mailto:info@fead.be)**