

22 April 2022, Brussels

FEAD overview and comparison table of the draft report on the WSR from 11 April 2022

- Aims to tackle unnecessary administrative burden, recognising the importance of legal certainty and uniform application of EU law (Amd 2, 7)
- Recognises the importance of proper functioning of the Union market for shipments of waste to ensure the long-term competitiveness of the Union. (Amd 3)
- Subject matter: improve treatment of waste, achieve resource efficiency, harmonization, digitalisation and circular economy in Article 1 (Amd 15)
- New Article 1(1)(a) to facilitate sector-specific climate dialogues and partnerships within the waste and land use sector of the economy.
- Cross-border shipments of waste below 20 kg from consumers to companies, for example as part of trade-in collection activities not covered by the regulation (Amd 17)
- Art 4(3)(b) possible shipments of mixtures of waste listed in Annex IIIA above contamination levels where facility can demonstrate ability to treat (Amd 18)
- Shipments for laboratory analysis or experimental treatment under Article 18 procedure in cases of up to 2 tonnes instead of 150 kg (Amd 19). Operators of experimental treatment trials and laboratories also to be allowed to submit a notification when they exceed the amount (Amd 20)
- A dealer or broker, who has ensured written consent by the new waste producer or collector, allowed to sign the notification document (Amd 21)
- Harmonised calculation method for financial guarantee: implementing act to be adopted no later than 3 years from the entry into force of the regulation if the Commission considers it appropriate. (Amd 22)
- All procedural timelines defined by "working days" (Amd 23 and where applicable after)
- Article 9(2): Where the competent authority of destination is not able to take a decision under paragraph 1 within 30 working days after submission of the notification, it shall inform the notifier within those 30 working days and provide the notifier with a motivated explanation upon request (Amd 29)
- Consents validity extended from one to two years (Amd 30)
- No more illegal act in relation to waste management / the environment but illegal act that causes serious harm to the environment or human health. (Amd 32, 35, 39)
- Shipments for disposal:
 - o Makes clear that notifications only cease to be valid through inaction of the authority where tacit consent is not allowed and extends the period from 30 to 60 (working) days (Amd 33).
 - o Member States may enter into agreements under which, in exceptional cases and for shipments of specific waste streams destined for disposal, the conditions may

be made less stringent in respect of cross-border shipments to the nearest suitable facility for disposal. (Amd 34)

- General notification
 - o Aims to harmonise the meaning of "similar physical and chemical characteristics" (Amd 36)
 - o "routing" means "point of exit from and entry into each country concerned". The notifier allowed to cite up to two different options for respectively points of exit and points of entry. (Amd 37 and 38)
- Pre-consented facilities:
 - o Introduces clarity with regard to the conditions under which a revocation is "duly motivated". To the degree that it does not pose imminent danger, the pre-consented facility should be consulted, for the purpose of information-sharing, which may be to the benefit of both facility operators and authorities. (Amd 42)
 - o Validity of notifications of shipments destined to a pre-consented facility extended to five years in case of a general notification. (Amd 43)
- Deadlines increased to two working days (Amd 46, 48, 52)
- Changes in the shipment after consent: introduces clarity to what constitutes "essential changes". Route should not be considered essential. Competent authorities can also waive (unanimous agreement) the need for a new notification. (Amd 50 and 51)
- Public access to notifications: makes clear that competent authorities shall prevent the publication of confidential business information concerning the notifier or any protected personal data. (Amd 54)
- Take back obligations: Ensures that dealers or brokers are held liable, and only in case of being unknown or insolvent should the responsibility resort to the original waste producer. (Amd 56 and 59)
- Electronic notifications:
 - o Introduces possibility to access electronic notification system in its final or near-final version for relevant authorities for the purpose of testing and learning. (Amd 4)
 - o Recognises the necessity of having alternative procedures as safeguards for the electronic system in the event of cyberattacks, accidental breakdowns → COM empowered to lay down such alternatives in implementing act. (Amd 5 and 65) It gives as examples physical copies or screenshots.
- Language requirements: documents to be accepted in English language as a norm (Amd 7 and 66)
- Disagreement on classification issues: Strong mandate to establish criteria to classify specific waste in the Annexes + criteria to distinguish waste from used goods in recital (Amd 8) but no change in Article 28(4) in this respect (Amd 70)
- Waste shipment cooperation group: (new) permanent platform for exchanging on i.a. classifications and any measures which may pose barriers to the EU internal waste market (Amd 72)
- Multilateral agreements possible under Article 30 (Amd 73-77)
- List of countries stays and is to be updated annually (not every 2 years) (Amd 84)
- Monitoring of exports:
 - o For transparency and legal clarity, the Commission shall establish public guidelines for monitoring exports of waste. (Amd 89)

- The procedure in Article 42 will be triggered by increases in exports of a specific waste stream in 30% over three months compared to the previous three-month period (no longer a considerable increase) (Amd 90)
- Audit requirements
 - Third party carrying out the audit to be certified using established, internationally recognised standards, and to have relevant experience. (Amd 91)
 - The Commission shall establish a central, publicly available register for audited facilities. (Amd 92)
 - A central register of international agreements to be established (Amd 93)
- Environmentally sound management includes also the management of the residues generated as a result of waste management. (Amd 95)
- The waste shipment enforcement group shall
 - publish an annual report on trends in illegal shipments and best practices to tackle them (Amd 96)
 - propose to the Commission an action plan within 2 years of its establishment and update it at least every 4 years (Amd 97)
 - The chairperson may also invite e.g. representatives of the industry to their meetings (Amd 98)
- The COM report to include data such as how long authorities need to authorise shipments. (Amd 99)
- "Baled" added as a packaging type in notification and movement documents (Amd 100 and 101)
- Plants of less than 5 years may still be able to demonstrate sound environmental management under Annex X (Amd 106)

Topic	FEAD position	Report	Comment
General	<p>A substantial revision of the Waste Shipment Regulation (WSR) is greatly needed to bring clarity, simplification, efficiency, and effectiveness to the waste shipment rules. The current procedures are overly burdensome, long and insufficiently reliable.</p> <p>Facilitating the safety of waste shipments through consistent and effective rules, enables the re-looping of valuable secondary raw materials back into the value chain and incentivises circular economy models.</p>	<ul style="list-style-type: none"> - It aims to tackle unnecessary administrative burden, recognizing the importance of legal certainty and uniform application of EU law (Amd 2, 7) - It recognises the importance of proper functioning of the Union market for shipments of waste to ensure the long-term competitiveness of the Union. (Amd 3) 	
Subject matter (Article 1)	As under Recital 1, the waste hierarchy and promotion of the circular economy should be mentioned in Article 1 WSR.	<ul style="list-style-type: none"> - Includes: improve treatment of waste, achieve resource efficiency, harmonization, digitalisation and circular economy in Article 1 (Amd 15) - New Article 1(1)(a) to facilitate sector-specific climate dialogues and partnerships within the waste and land use sector of the economy. 	
Scope (Article 2)		Cross-border shipments of waste below 20 kg from consumers to companies, for example as part of trade-in collection activities not covered by the regulation (Amd 17)	
Shipments subject to		In Art 4(3)(b) possible shipments of mixtures of waste listed in Annex IIIA (green listed)	Ok?

Article 18 procedure (Article 4(3))		above contamination levels where facility can demonstrate ability to treat (Amd 18)	
Shipments for laboratory analysis or experimental treatment (Article 4(4))	<p>There were discussions in FEAD with different views among members:</p> <ul style="list-style-type: none"> - 5 T - Leave 150 - Possible compromise 1 T but only for non-hazardous waste 	<ul style="list-style-type: none"> - Article 18 procedure in cases of up to 2 tonnes instead of 150 kg (Amd 19). - Operators of experimental treatment trials and laboratories also to be allowed to submit a notification when they exceed the amount (Amd 20) 	
Notification (Article 5(2))	Dealers or brokers acting on behalf of waste producers should be able to sign notification documents under Article 5(2), to avoid massive and unnecessary bureaucracy.	A dealer or broker, who has ensured written consent by the new waste producer or collector is allowed to sign the notification document (Amd 21)	
Consent procedure (Article 9(2))	<p>FEAD supports the extension of the tacit consent also to dispatch authorities as a way to streamline the consent procedure. However, in cases where an explicit consent is required (i.e., for the authority of destination), delays are 'normalised' in the proposal, as the possibility of no response after the 30-days deadline is legally foreseen under Article 9(2). Competent authorities often favour 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</p>	<ul style="list-style-type: none"> - Where the competent authority of destination is not able to take a decision under paragraph 1 within 30 working days after submission of the notification, <u>it shall inform the notifier within those 30 working days</u> and provide the notifier with a motivated explanation upon request (Amd 29) - Consents validity extended from one to two years (Amd 30) 	

	approval and potentially losing customers in Member States due to a decrease in competitiveness, entailed by the long delays.		
Clear distinction between smaller administrative errors and significant illegal acts (Articles 11(1)(b), 12(1)(f), 14(1)(g) and Annex X(1)(g))	Requiring evidence or attestation that the legal or natural person owning or exercising control over the facility has not been convicted of illegal shipment or any other illegal act in relation to environmental protection / waste management is too broad and should be limited in time to unredeemed offenses, and only cover serious and criminal, legally binding offences in relation to waste management, but not minor and administrative ones (e.g., administrative error when filling in a form or filing a document).	It recognises the importance of clearly distinguishing between smaller administrative errors and significant illegal acts and replaces <i>illegal act in relation to waste management / the environment</i> with <i>illegal act that causes serious harm to the environment or human health</i> . (Amd 32, 35, 39)	No changes in relation to illegal shipment, which still covers shipments that are not in accordance with the information contained in the notification or movement documents, meaning that administrative errors can still occur and be penalised in this way. This would also be the case for Article 18 shipments, where the information has to be submitted no later than one day before the shipment, meaning that changes the day of the shipment are not possible, which could lead to inconsistencies with the transport documents, i.e. illegal shipment? Should we work on a more specific proposal for this?
Shipments for disposal (Article 11)	Tacit consent is foreseen under Article 9(1) for the authorities of dispatch and transit, which is, according to the title, also applicable for disposal. No derogation of this regime is introduced by Article 11. However, Article 11(1) clearly mentions a 'written consent', which by nature excludes a tacit consent. The proposed Article 11(3) also stands in contradiction with the possibility of tacit consent foreseen in Article 9(1). In this case,	<ul style="list-style-type: none"> - Makes clear that notifications only cease to be valid through inaction of the authority where tacit consent is not allowed and extends the period from 30 to 60 (working) days (Amd 33). - NEW: Member States may enter into agreements under which, in exceptional cases and for shipments of specific waste streams destined for 	<p>The clarification of Amd 33 should also be made in paragraph 1 of the same Article 11.</p> <p>The new paragraph introduced with Amd 34 would open the possibility of shipments of mixed municipal waste for disposal in exceptional/emergency situations. This would,</p>

	<p>inaction may mean at the same time consent and invalid notification. Here it should be specified that it applies only to the authority of destination (for which no tacit consent is possible), or it should be clearly stated in general, that only written consents are possible for disposal (i.e., derogation from Article 9).</p>	<p>disposal, the conditions may be made less stringent in respect of cross-border shipments to the nearest suitable facility for disposal. (Amd 34)</p>	<p>nevertheless, be subject to the existence of such an agreement.</p> <p>Would you like to make a proposal in relation to the reversed burden of proof under Article 11(notifier needs to demonstrate that .. and it is no longer the administration who raises objections if ... is not fulfilled)? The system where it is the administration who raises objections to a shipment (as under the current WSR) allows a case-by-case assessment in relation to illegal shipments, i.e. it may decide to raise objections or not depending on the severity of the case (e.g. administrative error). Please see a proposal in separate document.</p>
<p>General notification (Article 13)</p>	<p>Article 13 WSR currently leads to different interpretations by different competent authorities across Member States. A consensus on the interpretation of this provision would lead to fewer notifications, without limiting control and traceability by the competent authorities.</p> <p>Our suggestion to define only the point of exit/entry has been included in the proposal. However, this is not specified again in paragraph 2, so that a new notification is still required if the same routing cannot be followed. Alternatively, it should be allowed to define two or three alternative routes when</p>	<ul style="list-style-type: none"> - Aims to harmonise the meaning of “similar physical and chemical characteristics” (Amd 36) - "routing" means "point of exit from and entry into each country concerned". The notifier is allowed to cite up to two different options for respectively points of exit and points of entry. (Amd 37 and 38) 	

	handing in the notification. In addition, it should be possible to hand in alternatives to truck shipment, such as sea, rail or combined transport.		
Pre-consented facilities (Article 14)	<p>It is unclear whether the approval happens at the discretion of the competent authority, or whether it is a direct consequence of the complete submission of the request. When reading paragraph 7, FEAD understands that the pre-consent is a direct consequence of the complete submission of the request (refusal is seen as a derogation from paragraph 6) and therefore paragraph 5 should be deleted.</p> <p>Making the granting of a pre-consent by the competent authority conditional to the fact that the pre-consent will ensure a high-quality treatment of the waste concerned will lead to diverging interpretations across the Member States, and even within one Member State. In this sense, objective parameters should be taken as a reference. Plants operating in the EU are already approved under relevant EU legislation and therefore meet the requirements for an environmentally sound and high-quality treatment per se, so that no stricter requirements should apply for a pre-consent.</p> <p>Revocation should be limited to the non-compliance with the same objective and uniform parameters that determine the granting of the consent.</p>	<ul style="list-style-type: none"> - Introduces clarity with regard to the conditions under which a revocation is "duly motivated": A revocation shall be considered duly motivated in the event of incorrect information being supplied, a violation of conditions set out in Article 14(6), a conviction for illegal shipment or any other illegal act in relation to waste management, or in the event of the recovery facility posing a substantial risk to the environment or human health. - To the degree that it does not pose imminent danger, the pre-consented facility should be consulted, for the purpose of information-sharing, which may be to the benefit of both facility operators and authorities. (Amd 42) - Validity of notifications of shipments destined to a pre-consented facility extended to five years in case of a general notification. (Amd 43) 	<p>Refusal to approve pre-consent request still based on "high quality recycling" requirement (Art. 14(7)).</p> <p>Should we insist on the refusal point, i.e. need for objective parameters and no stricter requirements than under operating permit as these should already mean environmentally sound and high-quality treatment?</p>

Procedural deadlines (whole regulation)	The confirmation deadline for the receiving facility should not be reduced to one day and stay with the currently established three days, as such reduction is unnecessarily strict and will create unnecessary complications (Articles 15(3), 16(3) and 18(4))	<ul style="list-style-type: none"> - Deadlines increased to two working days (Amd 46, 48 and 52) - In general, all procedural timelines defined by "working days" (Amd 23 and where applicable after) 	
Changes in shipment after consent (Article 17)		<ul style="list-style-type: none"> - introduces clarity to what constitutes "essential changes": Changes in the intended quantity of waste shipped of more than 15%, in the points of exit from and entry into each country concerned, in the date of shipment of more than two days or in the carrier shall constitute essential changes. - Route should not be considered essential. - Competent authorities can also waive (unanimous agreement) the need for a new notification. (Amd 50 and 51) 	
General information requirements (Article 18)	It must be ensured that changes to the transport can still be reported if, for example, the weight of the transport changes the day of the shipment.		<p>Annex VII still to be submitted no later than one day before shipment, i.e. no changes possible the day of the shipment → makes consent procedure more flexible in this regard, especially after the clarifications introduced with Amd 50 and 51.</p> <p>Should we make a more specific proposal on this?</p>

Public access to notifications (Article 21)	The publication obligations from the proposed Article 21 WSR are too extensive and at the same time too vague when referring to national and European legislation on the protection of confidential data. This raises the question of the concrete implementation. A publication must protect trade secrets under all circumstances. Publication of rejected notifications and shipments subject to general information requirements should be definitely avoided.	It makes clear that competent authorities shall prevent the publication of confidential business information concerning the notifier or any protected personal data. (Amd 54)	
Take back obligations (Article 22 and 24)		Ensures that dealers or brokers are held liable, and only in case of being unknown or insolvent should the responsibility resort to the original waste producer. (Amd 56 and 59)	
Electronic submission and exchange of information (Article 26)	<p>It is essential that, as an interim solution and fallback procedure:</p> <ul style="list-style-type: none"> - authorities accept e-mail correspondence as a default system, and - signed documents are also accepted in scanned PDF format. <p>The transitional period to implement the electronic notification system should be reduced, e.g., to one year. During this transitional period, its implementation should be prepared gradually through pilot projects.</p>	<ul style="list-style-type: none"> - Introduces possibility to access electronic notification system in its final or near-final version for relevant authorities for the purpose of testing and learning. (Amd 4) - Recognises the necessity of having alternative procedures as safeguards for the electronic system in the event of cyberattacks, accidental breakdowns → COM empowered to lay down such alternatives in implementing act. (Amd 5 and 65) It gives as examples physical copies or screenshots. 	No procedure established for the transitional period.

Language requirements (Article 27)	All authorities should accept documentation in English	Documents to be accepted in English language as a general norm. Authorities may require a translation only in exceptional and duly motivated cases (Amd 7 and 66)	
Delegated Acts under Article 28(4)	FEAD sees a need for better harmonisation, especially for a harmonised understanding of what is considered as 'green-listed' waste in the different Member States. The proposal also misses the opportunity to determine that all authorities should mutually recognise EoW/BP criteria. Such measures would facilitate and streamline shipment procedures, especially while EU-wide EoW/BP criteria are still under development.	Strong mandate to establish criteria to classify specific waste in the Annexes as well as criteria to distinguish waste from used goods in recital (Amd 8) but no change in Article 28(4) in this respect (Amd 70)	The Commission is empowered but not required to adopt delegated acts under Article 28(4).
Waste shipment cooperation group (Article 28a (new))		NEW: permanent platform for exchanging on i.a. classifications and any measures which may pose barriers to the EU internal waste market (Amd 72)	
Border area agreements (Article 30)	<p>Efficient and sound waste treatment also depends on cooperation across borders. There are many areas within the EEA/EU where it is not feasible for individual countries to have individual national capacity for all waste fractions, neither financially, technologically nor environmentally.</p> <p>For these reasons, Article 30 should open for multilateral agreements between neighbouring countries, where such agreements demonstrate that the waste</p>	<p>Multilateral agreements possible under Article 30 (Amd 73-77)</p> <p>Multilateral agreements may also in exceptional cases be concluded for shipments of waste destined for disposal pursuant to Article 11, if the geographical and demographical situation warrants such a step.</p> <p>Multilateral agreements shall demonstrate that the waste is treated in accordance with the waste hierarchy and the principles of proximity and selfsufficiency at Union and national levels,</p>	

	covered will be treated in accordance with the waste hierarchy, the principles of proximity and self-sufficiency, as well as legally binding EU environmental protection standards (i.e. BAT-requirements, etc.) in order to reduce unnecessary administrative burdens.4. The agreements referred to in this Article shall be notified to the Commission before they take effect.	as laid down in Directive 2008/98/EC; that the waste is treated in accordance with environmental protection standards, in accordance with Union legislation; that, if the facility is covered by Directive 2010/75/EU, the best available techniques as defined in Article 3(10) of that Directive are applied in compliance with the permit for the facility; and that the agreements do not lead to a significant harmful fragmentation of the Union market for shipments of waste.	
List of countries (Article 38)	A list of countries to which exports of non-hazardous waste for recovery are authorised is a high administrative burden for third countries, which can easily be assumed to have a disproportional deterrent effect. To ensure a sound environmental management of exported non-hazardous waste, FEAD considers an audit certification of the specific facility in a third country, carried out by an independent and accredited third party to be sufficient. In any case, the transitional period foreseen should be increased to 5 years.	List of countries stays and is to be updated annually (not every 2 years) (Amd 84)	Should we work on a more specific proposal for the list of countries/exports system?
Monitoring of exports (Article 42)	The provision introduced by Article 42(2) to monitor exports grants the Commission excessively far-reaching powers and creates considerable legal uncertainty as it includes very vague terminology.	<ul style="list-style-type: none"> - For transparency and legal clarity, the Commission shall establish public guidelines for monitoring exports of waste. (Amd 89) - The procedure in Article 42 will be triggered by increases in exports of a specific waste stream in 30% over three months compared to the previous 	Are you ok with this or should we make a concrete proposal here?

		three-month period (no longer a <i>considerable</i> increase) (Amd 90)	
Audit requirements (Article 43)		<ul style="list-style-type: none"> - Third party carrying out the audit to be certified using established, internationally recognised standards, and to have relevant experience. (Amd 91) - The Commission shall establish a central, publicly available register for audited facilities. (Amd 92) - A central register of international agreements to be established (Amd 93) 	<p>Under Article 43(5), a natural or legal person that has commissioned or carried out an audit for a given facility shall ensure that such audit be made available to other natural or legal person intending to export waste to the facility in question, <i>under fair commercial conditions</i>. The Commission shall establish a central, publicly available register for audited facilities.</p> <ul style="list-style-type: none"> ➔ Are you ok with this? ➔ How is this register going to work/What function will it have? ➔ The COM would have to publish the name of the operator who carried out the audit so that others can request the availability of this audit as foreseen in Article 43(5). ➔ Will this system not create sorts of monopolies/oligopolies where one/few (big) operator(s) has audited all facilities and everyone else needs to pay this one/few operator(s)?

Environmentally sound management (Article 56)	<p>FEAD supports the introduction of environmentally sound management requirements but would like to recall that these requirements need to be fair and transparent, and should not lead to arbitrary restrictions of exports in practice, due to the lack of legal security introduced by the vague terminology used in the proposal. The use of vague terminology in this context is very problematic as non-compliance means illegal shipments and their enormous legal and economic consequences.</p>	<p>Environmentally sound management includes also the management of the residues generated as a result of waste management. (Amd 95)</p>	
Waste shipment enforcement group (Article 63)	<p>FEAD welcomes the idea of a waste shipment enforcement group, but Article 63 shockingly lacks action proposals. The group is merely foreseen as an exchange forum and has no mandate at all to use the information and data gathered, which is a clear missed opportunity to introduce and implement a concrete action plan and recommendations to share with control authorities.</p>	<p>The waste shipment enforcement group shall</p> <ul style="list-style-type: none"> - publish an annual report on trends in illegal shipments and best practices to tackle them (Amd 96) - propose to the Commission an action plan within 2 years of its establishment and update it at least every 4 years (Amd 97) - The chairperson may also invite e.g. representatives of the industry to their meetings (Amd 98) 	