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FEAD position on intra-EU shipment of hazardous waste

The Commission's proposal for a new Waste Shipment Regulation (WSR) moves from a system based on the competent authority's power to raise reasoned objections to shipments of waste destined for disposal based on listed grounds, to a prohibition to ship waste for disposal unless it is authorised by the authorities following the fulfilment of strict conditions.

FEAD supports the aim to increase recycling and reduce waste disposal, which motivates this shift in the procedure to ship waste for disposal (see Recital 17 of the WSR Commission's proposal). We appreciate the alignment of the WSR revision with the waste hierarchy to facilitate shipments for recovery and recycling, but this should not mean that shipments for disposal become virtually impossible. **Even within a functioning circular economy, waste will be produced that must be disposed of in an environmentally sound manner in highly specialised treatment plants.**

The proposed rules do not differentiate between hazardous and non-hazardous waste. However, **in hazardous waste management disposal operations** and consequently shipments for disposal **are particularly relevant, and even mandatory in certain cases**, because the main objective when treating it is precisely to eliminate risks for human health and the environment. Here, **the critical size needed to create and operate the highly specialised and technical plants to treat hazardous waste does not allow for their replication in each Member State**. This is especially the case of small Member States and islands. For example, The Netherlands officially closed its D10 (disposal by incineration) rotary kilns capacity in 2006 and thus depends on facilities located in Germany, Belgium or France to dispose hazardous and medical waste. On its side, Austria relies on facilities located in Germany to dispose hazardous fly ash from municipal solid waste incineration. The shipments to D10 installations (mainly cross-border and to EU permitted BAT installations) is a well-established European routine and necessary service to waste producers.

FEAD believes that within the EU, waste should be treated where the best economic and ecological outcome can be provided. For hazardous waste, this means that **waste transfers are essential to ensure safe and efficient treatment options**. Therefore, FEAD would like to address the following issues in the current WSR revision proposal:

- **Reversed burden of proof for shipments for disposal (Art. 11)**. In the Commission's revision proposal from 2021, it is the notifier who must demonstrate that the conditions for a shipment for disposal are fulfilled. Among others, the notifier must demonstrate that the waste cannot be disposed of in a technically feasible or economically viable way in the country where it was generated. Such burden of proof is not only a huge administrative burden imposed to the notifiers, but **it is in fact**

impossible for the notifier to be aware of all the possibilities within a Member State to demonstrate those requirements.

→ FEAD advocates for maintaining the current system where the authorities are empowered to raise concerns because it is the Member State's authorities who have the required data for it and because it allows for a case-by case assessment.

- **The proposed text of Article 11 is very strict and leaves no room for a case-by-case assessment.** Article 11 requires that all the conditions are fulfilled. This not only affects the demonstration by the notifier of national possibilities for disposal, but also the fact that:
 - o the notifier or the consignee has previously not been convicted of illegal shipment or any other illegal act in relation to environmental protection (Art. 11(1)(b), or
 - o the notifier or the facility has not failed to comply with Articles 15 and 16 in connection with past shipments of waste (Art. 11(1)(c).

These two points are particularly strict because they are extremely broad. In the case of illegal shipments, the provision must be limited in time, to unredeemed offenses, and to serious and criminal, legally binding offences. It must not include minor and administrative offences, such as administrative errors when filling in a form or filing a document as such unintentional 'administrative errors' cannot be considered at the same level of criminal offences. In addition, waste management companies operate more and more at European level with possibly multiple locations in several EU Member States. **The proposed wording by the Commission can lead to a situation where an error made by one facility or even one person in one facility will impede the whole company (including all its facilities/activity branches) shipping waste forever.**

In the same line, only repeated failures to comply with Articles 15 and 16 should justify the impossibility for ship forever. Considering the amounts (thousands) of shipments carried out by EU waste companies, errors cannot be discarded, which are partly not even the notifier's responsibility (transporter and recipient have their own tasks).

→ **A risk-based approach and the possibility of a case-by-case assessment is crucial.**

- **Where there are no national capacities to treat or dispose of hazardous waste as needed**, the procedure should be streamlined to ensure that once the competent authority of destination has authorised the shipments, **the CA of dispatch and transit shall not raise objections/not authorise the shipment.**
- It should be **clarified** that the provisions contained in Article 9 in relation to the assumption of **tacit consents** by the competent authorities of dispatch and transit **and the requirement to provide motivated explanation** where there is no

decision within the determined 30 days period **also apply to shipments for disposal under Article 11.**

- For example, 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. However, Article 11(1) only refers to 'written consent'.

Please find concrete amendment proposals in the annex.

FEAD is the European Waste Management Association, representing the private waste and resource management industry across Europe, including 19 national waste management federations and 3,000 waste management companies. Private waste management companies operate in 60% of municipal waste markets in Europe and in 75% of industrial and commercial waste. This means more than 320,000 local jobs, fuelling €5 billion of investments into the economy every year. For more information, please contact:

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FEAD amendments WSR – Hazardous waste

Issue	Description of the issue and arguments	AM proposal
<p>Shipments for disposal</p>	<p>Burden of proof in Art. 11(1)(a): the notifier demonstrates that:</p> <ul style="list-style-type: none"> - the waste cannot be recovered in a technically feasible, economically viable <i>and environmentally sound manner</i>, or must be disposed of due to legal obligations in Union or international law; - the waste cannot be disposed of in a technically feasible and economically viable manner in the country where it was generated; <p>the planned shipment or disposal is in accordance with the waste hierarchy and the principles of proximity and self-sufficiency as laid down in Directive 2008/98/EC;</p>	<p>(a) the notifier demonstrates that <u>competent authority does not raise objections. The competent authority may raise motivated objections based on one or more of the following grounds:</u></p> <p>(i) the waste <u>could</u> cannot be recovered in a technically feasible and economically viable manner, <u>unless disposal is mandated by</u> or must be disposed of due to legal obligations in Union or international law;</p> <p>(ii) the waste <u>could</u> cannot be disposed of in a technically feasible and economically viable manner in the country where it was generated;</p>

			<p>(iii) the planned shipment or disposal is <u>not</u> in accordance with the waste hierarchy and the principles of proximity and self-sufficiency at Union and national levels as laid down in Directive 2008/98/EC;</p> <p>(iv) (b) the notifier or the consignee has previously not been convicted of <u>a criminal act in relation to an illegal shipment or any other illegal act in relation to environmental protection that caused serious harm to the environment or human health within the past 2 years;</u></p>
	Align 11(c) with 12(g)		Art. 11(1)(c): the notifier or the facility has not failed to comply <u>repeatedly</u> with Articles 15 and 16 in connection with past shipments;
	Clarify that tacit consent also applies to disposal shipments ('written' is mentioned in paragraph 1)	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.	New paragraph (2a): <u>Tacit consent by the competent authority of dispatch and transit may be assumed if no objection is lodged within the 30-day time limit referred to in Article 9, paragraph 1.</u>
	Clarify that a motivated explanation is also required for Article 11	Delays and inaction are normalised having a huge impact and creating uncertainties for operators. Article 9 is, according to the title, also applicable for disposal, but	Article 11(3): Where the competent authorities concerned have not authorised a planned shipment of waste destined for disposal <u>within a time limit of 60</u>

		<p>the text in Article 11 should specify this to avoid misunderstandings and allow for a harmonised implementation.</p>	<p><u>days</u>, the notification of that shipment shall cease to be valid and the shipment shall be prohibited in accordance with Article 4(1). <u>The obligation of the competent authority of destination to provide a motivated explanation remains applicable as foreseen under Article 9(2) subparagraph 2 within the 30 days after submission of the notification.</u> In cases where the notification ceases to be valid after the elapse of the 60 days period, and the notifier still intends to carry out the shipment, a new notification shall be submitted, unless all the competent authorities concerned and the notifier agree otherwise.</p>
<p>Shipments of hazardous waste</p>	<p>The critical size necessary to create and operate the highly specialised and technical plants to treat hazardous waste does not allow for their replication in each MS. For this reason, waste transfers are essential in order to ensure an effective hazardous waste recovery and treatment that protects the environment and human health, and the WSR should include specific provisions for such shipments.</p>	<p>Shipments for recovery: the procedures should be streamlined where there are none or not sufficient national capacities, which is for example the case in small MS. The authorisation of the shipment should be up to the receiving country and dispatch and transit countries should not raise objections. Conditions under Art. 10 remain possible.</p> <p>Shipments for disposal: possibility of agreements</p>	<p>New Art. 12(2a): <u>Where there is a lack of capacity to treat specific hazardous waste streams in the country where such waste is generated, the competent authorities of dispatch and transit shall not raise any objections, provided that the competent authority of destination gives its consent to the shipment.</u></p> <p>New Art. 11(2b):</p>

		<p>included in Art. 30 for shipments for disposal to the <i>nearest suitable facility</i>, but there should be a structural facilitation for hazardous waste shipments in cases where there are no national capacities.</p>	<p><u>Where there is a lack of capacity to treat specific hazardous waste streams in the country where such waste is generated, the competent authorities of dispatch and transit shall always give their consent with or without conditions, provided that the shipment is authorised by the competent authority of destination.</u></p>
<p>Scope of illegal acts (Art. 11(1)(b), 12(1)(f))</p>	<p>The provisions proposed are too broad and should be limited in time to unredeemed offenses, and only cover serious and criminal, legally binding offences, but not minor and administrative ones (e.g., administrative error when filling in a form or filing a document). The proposed wording by Commission can lead to a situation where an error made by one facility or even one person will impede the whole company (including all its facilities/activity branches) shipping waste forever.</p>		<p>Art. 11(1)(b): the notifier or the consignee has previously (not) been convicted of <u>a criminal act in relation to an illegal shipment or any other illegal act in relation to environmental protection that caused serious harm to the environment or human health within the past 2 years;</u> (The deletion of the ‘not’ is in line with the changes on the burden of proof above).</p> <p>Art. 12(1)(f): the notifier or the consignee has previously been convicted of <u>a criminal act in relation to an illegal shipment or any other illegal act in relation to environmental protection that caused serious harm to the environment or human health within the past 2 years;</u></p>