

# Public Consultation on the Functioning of Waste Markets

## **Public Consultation on the functioning of Waste Markets in the European Union**

### **Part 1 - Identification of stakeholder or expert**

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Please enter your country of residence/establishment

- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
- LIETUVA
- LUXEMBOURG
- MAGYARORSZÁG
- MALTA
- NEDERLAND
- OTHER COUNTRY (non-EU)
- POLSKA
- PORTUGAL
- ROMÂNIA
- SLOVENIJA
- SLOVENSKO
- SUOMI / FINLAND
- SVERIGE
- UNITED KINGDOM
- ÖSTERREICH
- ČESKÁ REPUBLIKA
- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΥΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country of your residence/establishment:

Your name or organisation:

European Aluminium

Please provide your EU Transparency Register ID number (if you have one)

No 9224280267-20

If your organisation is not registered, you can register now (please see the introduction to this consultation under 'How to submit your contribution').

Can your reply be published? Please tick the box of your choice.

- With your name or that of your organisation
- Anonymously

For information on how your personal data and contribution will be dealt with, please refer to the privacy statement in the introduction to this consultation.

I am replying to this consultation as...

- an individual
- a private enterprise
- a non-governmental organisation (NGO)
- an organisation or association (other than NGO)
- a government or public authority
- a European institution or agency
- an academic/research institute
- other

If you are replying on behalf of a company, please specify in which of the following markets you predominantly operate:

- The whole EU market
- In one or several Member States, please indicate which one in the list below:
- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
- LIETUVA
- LUXEMBOURG
- MAGYARORSZÁG
- MALTA
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- SLOVENSKO
- SUOMI / FINLAND
- SVERIGE
- UNITED KINGDOM
- ÖSTERREICH
- ČESKÁ REPUBLIKA
- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΥΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country in which you predominantly operate:

Turkey

If you are replying on behalf of a company, please indicate the number of its employees:

- Between 1 and 49
- Between 50 and 249
- 250 and more

## Part 2 - Questions

### A. Identification of the main perceived regulatory failures

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For the purpose of this consultation, regulatory failures are defined as situations in which the regulatory environment hampers the efficient functioning of the waste markets (i.e. where waste meant to be recycled or recovered can move freely within the EU, without unjustified restrictions) and fails to ensure optimal implementation of the waste hierarchy (according to Article 4(1) of the EU waste framework directive, the following waste hierarchy shall apply as a priority order: prevention; preparing for re-use; recycling; other recovery, e.g. energy recovery; and disposal).

1. Do you think there are any regulatory failures or obstacles currently affecting the functioning of EU waste markets?

- Yes, a large amount
- Yes, but limited
- No (go to Section B)
- Don't know (go to Section B)

2. What do you think is the most important aspect of policy and/or legislation that creates distortions in the waste markets or creates unjustified obstacles to the proper functioning of waste markets in the EU?

European Aluminium represents the whole value chain of the aluminium industry in Europe. The aluminium recycling industry is a relevant part of the whole aluminium's industry. Due to its intrinsic properties aluminium is infinitely recyclable, without losing its properties. The aluminium is used in several applications and it is vital to continue to collect and keep the aluminium scraps in Europe, while today scrap availability for recycling in Europe is a clear challenge. The EU installations producing primary and recycled aluminium are operating in compliance with demanding environmental legislation covering emissions to air, discharges to water, handling, storage and transport of wastes and of hazardous substances. The environmental permits are regulated by the Industrial emission directive. The industrial wastes produced are in many cases recycled and used as raw material in other sectors, owing to good synergies which have been

created over the years.

In order to maximize the recycling of aluminium scraps and avoid the landfill of recyclable industrial waste it is crucial to have a clear and harmonised legislation.

The following aspects can generate distortion:

Lack of harmonized waste legislation

In order to facilitate the recycling or recovering of the wastes within the EU, the waste regulation should be harmonised within the Member States. In particular:

- The definition of waste and by-products.
- The end of waste criteria applicable to aluminium 333/2011
- The waste classification
- Definition of recycling

Heavy administrative procedure for transport of waste

In order to increase the recycling business in Europe, the transport of waste should be facilitated by simplifying the administrative processes without hampering the environmental protection.

A true 'Schengen for waste' should be put in place.

Leakage of waste/material to third countries

The aluminium scraps are often transported outside EU and having in mind shortage of scrap in Europe, it impacts the internal waste recycling markets. The accessibility to valuable secondary raw materials (e.g. aluminium scrap, ELV's) for recycling in EU should be addressed via for example a better monitoring of legal and illegal exports of those materials.

Monitoring of end of waste

Legal exports of 'end-of-waste' aluminium fractions should be better monitored; today Eurostat lists only exports of 'aluminium waste and scrap', and does not provide any information on exports of "end of waste". A respective trade code is missing, causing an obstacle for monitoring the exports of high quality aluminium scrap. High quality aluminium scrap is defined as having the total amount of foreign materials  $\leq 5\%$  by weight or the metal yield  $\geq 90\%$  (according to Annex II of Regulation No 333/2011).

The customs offices should have a crucial role in monitoring the exports of end of waste scraps. A clear set of criteria should be defined in order to facilitate the control of the shipments and therefore avoiding the illegal export of wastes by taking advantage of the lack of conformity checks on end of waste material.

Some countries outside Europe cannot import wastes to Europe, indeed it is crucial that the material of good quality are properly classified by the customs offices.

Interface with chemicals legislation

The chemical legislation such as REACH and CLP legislation would avoid creating additional obstacles in recycling activities (e.g. new REACH authorization for waste recycling of some substances). The interface between chemicals legislation and waste legislation should be improved.

3. Could you provide an example of such a regulatory failure/obstacle? Please describe it briefly.

Some Member States interpret differently the end of waste criteria. This cannot facilitate the transfer of waste within different Member States. Below you can find an example which occurred to a Company member of European Aluminium. An aluminium remelter, transporting aluminum scraps defined as the end-of-waste from Austria to Romania was stopped at the Hungarian border. The customs did not acknowledge the end-of-waste status of the transported aluminium scrap claiming that this is waste, where different legislation on shipments applies. The case was unsolved for a few years and the company was requested to pay a high fine. Finally a court agreed that the transported scrap was end-of-waste

4. What do you think this regulatory failure/obstacle is linked to? (multiple answers possible)

- EU legislation or policy
- National policy, legislation or administrative decisions
- Regional policy, legislation or administrative decisions
- Local policy, legislation or administrative decisions

Please briefly describe which specific policy/policies, legislation(s) or decision(s) is/are to blame for this:

Waste framework directive. The definition of waste, end-of-waste and by products can be interpreted differently by the Member States, therefore not facilitating the recycling of the material. The waste classification as hazardous or not hazardous is not always harmonised and in some case overprotective.

Waste Shipment Regulation. Too complex procedure for the waste transport. The procedure for export wastes, in particular amber waste list, is very heavy.

5. Which of the following impacts do you think such regulatory failure/obstacle has within the EU? (multiple answers possible)

- Reduces reuse or recycling
- Reduces recovery, including energy recovery
- Increases waste generation
- Leads to increased environmental impacts
- Leads to reduced resource efficiency
- Other
- None

If relevant, please provide additional information in relation to your above reply.

The following actions should be considered in order to facilitate the waste recycling.

- Harmonisation of waste legislation across the EU
- Simplify the administrative procedures Avoid overlapping with chemical legislation

6. How did you become aware of this regulatory failure/obstacle? (multiple answers possible)

- Reported by members of your organisation
- Through complaints reported to the authority
- From literature
- From own market analyses
- Own experience
- Other

If relevant, please provide additional information in relation to your above reply.

- The definition of by-products according WFD may generate some different interpretations and difficulty in the application. For example the “normal industrial practice” is not clear defined (eg Rumanian law 211/2011 or Italian D.lgs 152/2006)
- The difficulty in applying the “by-products” criteria do not facilitate the reuse of valuable materials.

7. What actions are you aware of that could solve or mitigate this problem? (multiple answers possible)

- Not aware of any actions
- Legislative changes
- Changes in the policy or decision-making by authorities
- EU guidance on waste legislation or policy
- Co-operation between authorities in different Member States
- Co-operation between authorities in the same Member States
- Other

If relevant, please provide additional information in relation to your above reply.

The transboundary legislation needs to be simplified for hazardous wastes. More specifically:

- A website is created by DG ENV where all the pertinent authorities from each OECD country are listed (email, address, phone) so all communication is done electronically

- When an application is made under the “notification and consent” procedure, the legislation specifies exactly the time frame for each phase that the authorities are required to respond. (ie. the authorities from the applicant’s country to forward the request within 10 days or so to the receiving country authorities, and the receiving country authorities respond with another 10 days). This way it is ascertained that the whole procedure is concluded within reasonable time frame and does not drag on forever.

- Shipping means are specified on a European level so it is not up to the Member States to impose strict and many times unreasonable restrictions. (ie. if a waste can be transferred in bulk, why should it be required to be shipped in shipping containers, or in big bags?)

8. Are there other important aspects of policy and legislation that distort the waste market or create obstacles to the functioning of waste markets? If yes, please describe these taking into account the previous questions.

## B. Obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation

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9. Do you consider that there are any obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation?

- Yes, many
- Yes, but limited
- No (go to part C of the questionnaire)
- Don't know (go to part C of the questionnaire)

10. What are the drivers/causes of these regulatory failures or obstacles to the efficient functioning of waste markets?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Application of the system of notification- and consent requirements under the Waste Shipment Regulation (Articles 4-17 and 26-33 of the Waste Shipment Regulation).

*between 0 and 5*

4

b. Application by national authorities of the provisions concerning waste shipments through transit countries (Waste Shipment Regulation).

*between 0 and 5*

3

c. Other controls imposed on waste or waste shipments by application of EU waste legislation.

*between 0 and 5*

d. Different interpretations of the definition of 'waste' according to the Waste Framework Directive.

*between 0 and 5*

4

e. Diverging classifications of waste as 'hazardous' or 'non-hazardous' (Waste Framework Directive).

*between 0 and 5*

4

f. The distinction between 'recovery' and 'disposal' (Waste Framework Directive).

*between 0 and 5*

g. Application of the 'proximity principle' resulting in an outcome which is inconsistent with the waste hierarchy (Waste Framework Directive and Waste Shipment Regulation).

*between 0 and 5*

3

h. Divergent application of the so-called 'R-codes', i.e. the recovery operations listed in Annex II to the Waste Framework Directive.

*between 0 and 5*

i. Application of national end-of-waste criteria established in accordance with the Waste Framework Directive, see further Article 6(4) of the directive.

*between 0 and 5*

i. Application of national end-of-waste criteria established in accordance with the Waste Framework Directive, see further Article 6(4) of the directive.

j. Application of the grounds for reasoned objections to shipments of waste for recovery, as listed in Article 12 of the Waste Shipment Regulation, or the requirement for environmentally sound management (ESM), see further Article 49(1) of the regulation.

*between 0 and 5*

k. Other obstacles not listed above.

*between 0 and 5*

If relevant, please provide additional information in relation to your above reply.

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11. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)

See comments section A - points 4 and 6

### C. Obstacles to the functioning of waste markets arising from national, regional or local rules or requirements and decisions which are not directly linked to EU legislation

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12. Do you consider that there are any distortions created by waste policy, requirements or decisions taken at national, regional or local levels?

- Yes, many
- Yes, but limited
- No (go to question 15)
- Don't know (go to question 15)

13. What are the drivers/ causes of these market distortions?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Differing taxes or fees leading to internal or cross border 'shopping behaviour', i.e. waste is transported to locations where it is cheaper to manage to the detriment of more environmentally sound management options which are locally available.

*between 0 and 5*

b. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

*between 0 and 5*

c. Development of waste treatment networks leading to local overcapacities or under-capacities for different types of waste treatment (e.g. incineration) to the detriment of higher positioned treatment steps in the EU waste hierarchy.

*between 0 and 5*

d. Inefficient use of available capacity in recycling or energy recovery in a neighbouring country or within the country itself.

*between 0 and 5*

e. Regulatory barriers that lead to shipments of waste in spite of facilities existing nearer to the source that could treat the waste in an equivalent or better manner in terms of environmentally sound management and the waste hierarchy.

*between 0 and 5*

f. Design and implementation of extended producer responsibility schemes leading to competition distortions or market access problems for producers and waste operators.

*between 0 and 5*

g. Permits and registrations which are not linked with EU legislation, requested from companies established in other Member States, even if they have fulfilled similar requirements in their home Member State.

*between 0 and 5*

h. Excessive controls on waste or waste shipments by national/regional/local policy, decisions and legislation that go beyond EU requirements ('gold plating').

*between 0 and 5*

i. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

*between 0 and 5*

j. Other obstacles not listed above.

*between 0 and 5*

If relevant, please provide additional information in relation to your above reply.

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14. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)

•The interpretation of waste classification is not harmonized within the Member States, and this could create some obstacles in the waste circulation. According to EU regulation 1013/2006 a green list of waste exists that allows to transport certain wastes and mixture of wastes using the general information requirements procedure. A case of different interpretation of classification of green waste has been reported. In Germany a shipment of aluminium waste has been stopped because contained more than 10% of plastic parts. Both wastes are not hazardous and under the Green list of wastes and according the regulation the general notification cannot be applied in case the wastes are contaminated by other material to an extent which (a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 91/689/EEC; or (b) prevents the recovery of the wastes in an environmentally sound manner. In the above case both wastes are in the green list under the codes B1010 and B3010. The use of a more complex procedure, where not necessary, could create some additional administrative work and cost for the company without adding any benefit to the environment.”

•In some countries there are not clear provisions for the by-products definition and this imply the impossibility to categorize some wastes as by-product although they are reused in normal operation practice.

15 a. Please rank the three most important drivers of market distortions and obstacles according to their importance with respect to being tackled first to improve the efficient function of waste markets. Please indicate the relevant number and sub-letter from 10a)-k), 13 a)-j).

10 a)  
10 e)  
13 h)

15 b-c.

- 15 b. Cannot rank them. They are all equally important.
- 15 c. Not enough knowledge to rank them.

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

a. Increased waste generation or less reuse

*between 0 and 3*

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

b. Less recycling

*between 0 and 3*

c. Less recovery, including energy recovery

*between 0 and 3*

d. Less environmentally sound management of waste

*between 0 and 3*

e. Less resource efficiency

*between 0 and 3*

f. Lack of market access

*between 0 and 3*

g. Other

*between 0 and 3*

If relevant, please provide additional information in relation to your above reply.

## D. Final questions

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17. Do you consider that there are large differences between the Member States in the way their waste markets function?

- Yes, very large differences.
- Yes, but the differences are small.
- No differences.
- Don't know.

18. Please briefly describe the differences between Member States, perceived as obstacles to the functioning of waste markets:

The main differences between Member States are related to the following points:

- Application of different criteria for the waste classification. The rules on the allocation of EWC codes is unclear and there are often inconsistencies of assignment for the same refusal between countries.
- Not harmonised definition of end of waste criteria and by- products.
- Waste registers: in some countries (eg Italy) the registers are compiled for both hazardous waste and non-hazardous, while in other (eg Germany) only for hazardous. Here too it would be good that the rules were the same for everyone.
- Fines: lack of uniformity for the same infraction: es. It is necessary to understand if an infringement leading to a criminal offense in one country can instead cause a simple administrative penalty in other countries.

These differences do not facilitate the waste recycling in Europe.

19. What solutions would you propose in order to address the regulatory failures or obstacles you have identified above?

In order to facilitate the waste recycling it should be important to have a better harmonization of waste legislation across the EU. It would be advisable to issue regulations instead of directives.

### Part 3 – Follow-up activities

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20. Would you be interested in participating in a stakeholder meeting on these issues that will be held on 12th November 2015?

- Yes, I would like to attend.
- No, I'm not interested.

My contact details are (optional):

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