Waste Shipment Regulation (WSR) proposed legislative revision

Substantial changes needed to protect Europe's recycling industries

17 January 2022

The European Recycling Industries' Confederation (EuRIC) represents the recycling industry at a European level. Gathering the vast majority of national recycling federations from EU/EEA Member States, the Confederation represents about 5.500+ recycling companies – from market leaders to SMEs – generating an aggregated annual turnover of about 95 billion € by treating various waste streams such as household or industrial & commercial waste including ferrous and non-ferrous metals, end-of-life vehicles (ELVs), electronic waste (WEEE), packaging (paper and plastics), end-of-life tyres or textiles. As a result, EuRIC represents the industries that are working tirelessly to transform everyday (and specific) waste streams into high-quality and high-value Raw Materials from Recycling (RMR). These materials directly substitute many extracted raw materials, and therefore represent a drastic reduction in product embedded Greenhouse Gas (GHG) emission and environmental impacts. To achieve the goals defined by the European Commission, we believe it is essential to adopt an approach to waste shipment that necessarily distinguishes high quality RMR from lower quality waste.

EuRIC thanks the European Commission for publishing the recent **proposed revision of the Waste Shipment Regulation (WSR)**[1]. While EuRIC strongly supports the key objectives of the legislative revision namely combatting illegal shipments or improving the internal market for Raw Materials from Recycling (RMR)[2], the European recycling industry would like to express its grave concern on the consequences of the proposed measures on the EU's recycling industry. The one-size-fits-all approach vested in the Commission's proposal would, if endorsed, result in devastating consequences on the competitiveness of EU's recycling industry.

This paper provides the position of the European Recycling Industry, which outlines how future Waste Shipment Legislation must be designed with the objective of enabling the Circular Economy, rather than dismantling it. The paper will focus on the three key objectives of the proposed revision of the WSR: enabling intra-EU material recovery, reducing the export of EU waste challenges to third countries, and tackling illegal waste shipments & implementation.

Key messages

EuRIC commends and recommends the following:

Reducing the export of EU waste challenges to third countries – The measures in regard to exports to non-OECD countries are considered by EuRIC as de-facto export bans for a variety of clean "low risk"[3] RMR, when the objective is in fact to limit the risk of exports of wastes/materials to non-Union facilities. This one-size-fits-all approach will have devastating consequences on the competitiveness of the EU's recycling industry. Fair audits must be enshrined as the key tool to measure this risk when shipping to non-OECD countries, ensuring that they do not increase the already excessively high administrative burden. To achieve the Commission's objective measures must be focused only on lower quality waste streams.

[1] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056. COM(2021) 709 final. Link here.

[2] RMR are high-quality raw materials from recycling processes with minimal risks for human health and the environment and are fully compliant with industrial specifications and/or industrial material standards and can readily substitute primary raw materials in production processes.

[3] SWD(2021) 331 final. "Green-listed waste" is defined as waste presenting a low risk for human health and the environment and not requiring major controls.

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Enabling intra-EU material recovery – EuRIC applauds a variety of measures on intra-EU shipments, including the great ambition over enforcing Electronic Data Interchange (EDI) for all documentation requirements regarding waste shipments, protections, and increased status periods for pre-consented facilities, among others. Nevertheless, further ambition is required on the harmonisation of classification of waste and financial guarantees, to make shipments between Member States work for a Circular Economy, rather than blocking it. Further work is required on simplifying further general provisions for reducing the administrative burden for intra-EU shipments (see below).

Tracking illegal waste shipments & implementation – Illegal shipments are a large concern for European recyclers, as they undermine legal business opportunities and burden the industry image of our recycling sector. Therefore, many of the measures are supported. However, some further nuance is required between small administrative mistakes (which are classified as illegal) and consciously illegal activities (which leads to large environmental concerns). Furthermore, regarding implementation, measures supporting an intra-EU Circular Economy must be fast tracked (EDI, pre-consented facilities etc.), whilst measures hindering European Recyclers must be implemented in a timely fashion (5 years) to ensure it does not shoot those implementing the Circular Economy in the foot (list of countries, audits, OECD-monitoring).

Reducing the export of EU waste challenges to third countries

Overview

While EuRIC supports the overarching objective of "ensuring that the EU does not export its waste challenges to third Countries", we are concerned with how this objective has been implemented in the proposed legislation. The measures, particularly on non-OECD countries, are *de-jure* export "restrictions", which will inevitably lead to *de-facto* export bans. What is of an even greater concern is that this is openly acknowledge as restrictions on "green-listed waste" which is by definition clean waste. A much greater differentiation between RMR which are inherently of a high quality - such as metals or recovered paper meeting industry specifications – and lower quality wastes must be worked into the way the proposed WSR is framed if it really wishes to implement a circular economy in the EU and abroad.

The key concerns are as follows:

- **For OECD countries (Art. 42)**: the monitoring of OECD exports and the possibility of waste export bans should only be limited to lower quality waste streams. For audits, there is a lack of detail on what international agreements between the Union and OECD-member countries should entail.
- **For non-OECD countries (Art. 38-40, 43-44 and Annex IX and X)**: the mixing of a "list" of allowed countries of export with auditing requirements for all types of green-listed waste is excessive and will lead to a general waste export ban. EuRIC favours ensuring the list of countries is simplified to an obligation similar to that of Regulation 1418/2007, while audits could be a piece of legislation to prove EU operator compliance when accessing non-EU markets with their high quality RMR.

OECD waste monitoring

Most of the rules for OECD shipments in the new WSR proposal apply Title II provisions (intra-EU shipment rules) *mutatis mutandis.* This is in line with the international law that must be followed by the Union (i.e., OECD Decision). Nevertheless, EuRIC has some reservations about the measures introduced by the European Commission to provide possible export bans in the future to shipments destined for recovery in OECD country facilities. Especially when many of these "wastes" refer to high-quality fractions of low-risk materials which are considered as a "product" by European recyclers and OECD producers (i.e., paper and cardboard or scrap metals).

The way this future waste "restriction" can be implemented is extremely generic and all-encompassing within the proposed revision. It is paramount that there is a differentiation made between RMR (which is inherently of a high quality) and lower quality wastes. EuRIC advocates for the monitoring of OECD waste shipments (with the possibility of future waste bans) to be restricted to only lower quality wastes.

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Any generic focus on all wastes shipped to OECD countries with limited justification or without specification on the requirements for the Commission to assess what constitutes a "serious environmental or human health damage" (Art 42(1)), "short period of time", and "sufficient evidence" (Art 42(2)), cannot be allowed in law.

Non-OECD waste "restriction"

EuRIC's main concern with the proposed WSR legislation is the draconian measures put in place as de-jure waste export "restrictions". European recyclers are fully in line with the EU's objective to not "export [EU] waste challenges to third countries". However, this broad-brush and heavy-handed approach adopted by the Commission will result in a waste export ban for many resource streams which recyclers and third country producers depend on.

When viewing this objective from the point of view of many advocates of such "restrictions", it is clear the focus is on stopping exports of (mixed) plastic waste ending up in non-OECD countries where it is sent to landfill, taken by runoff, and subsequently ends up in the environment. Clearly, this represents a huge environmental impact that must be addressed. However, this is where nuance is required for high quality materials such as RMR.

Further voices echo that, even for RMR, waste exports can be seen as a resource drain outside of Europe,[4] where the materials could otherwise have been taken up in production processes (e.g., steel or paper mills). This is a clear misrepresentation of the situation. As shown in the EEA publication, only 3.6% of EU generated waste is shipped to non-EU countries (even less to non-OECD countries). 90% of waste generated is treated within the same EU country, showing a strong respect for the proximity principle.[5] European recyclers would be much more content if they could ship more of their raw materials inside the EU, as this would save a major administrative burden and reduce operation (transport) costs. It is beneficial to export RMR outside the EU for the simple fact that **there is insufficient demand from EU producers and a complete absence of pull measures (such as recycled content targets for all waste streams except for some polymers under the SUP Directive)** – whilst the demand for such raw materials exist in non-EU countries.

The focus therefore should be less on recyclers being forced to sell the remaining RMR (not already sold to EU producers) for critically low prices inside a captive EU market, but more on ensuring producers are willing to take responsibility and increase their circular production processes for a fair price (see section on reciprocity, below).

List of countries

One measure in the revised Regulation which must factor in this nuanced focus on lower quality wastes is the list of non-OECD countries, as specified in Articles 38 – 40. This measure can be seen as a much more ambitious version of Regulation 1418/2007.[6] This is furthermore concerning for recyclers, owing to the huge administrative burdens caused by this regulation in the past. For example, in the recent update of Regulation 1418/2007 in November 2021 an administrative mistake was made in the submission for India. It was noted that India will not accept the import of paper and cardboard waste under B3020, whereas it was meant to be written that they will accept. This has been officially notified by the Indian government, however because of this minor mistake there is an ongoing export ban of paper and cardboard waste to India. This can be seen as a huge unjustified burden for shipments of green-listed wastes.

The ambition has been radically increased in the new proposed list of countries system within the WSR for the following reasons:

- There is no differentiation of high quality waste (RMR) and lower quality wastes,
- When no response to the questionnaire is provided there is a direct ban of shipments green-listed waste to said country (unlike in Regulation 1418/2007 where notification would thus be applied),
- Replacing the simplified checklist in Regulation 1418/2007 with an immensely complex questionnaire,
- Non-OECD countries must respond in English.

[4] BIR (2020) World Steel Recycling in Figures 2016-2020. Link here. For steel scrap there is an annual trade surplus of nearly 20 Mt.
[5] EEA (2021) BRIEFING: Linking cross-border shipments of waste in the EU with the circular economy. Link here.
[6] Regulation (EC) No 1418/2007 [...] concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 [...]. Link here.

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EuRIC implores that the European Commission readjusts the provisions to actually meet the objectives set out in these revisions "ensuring that the EU does not export its waste challenges to third countries". This can be achieved by replacing Articles 38 – 40 and Annex VIII with the written request procedure, like that already implemented in Regulation 1418/2007. This system would ensure that third country sovereignty is preserved.

Audits

EuRIC supports a system of audits in place to ensure that all shipments of waste to non-EU countries and being received in proper recovery facilities. As operators that only export to further recycling or production facilities, it is pivotal that RMR are exported for the benefit of the circular economy, rather than to remove EU-waste problems by placing them on third countries. However, the provisions in place for audits are sometimes overly ambitious and/or vague which could lead to issues of implementation. These must be resolved.

Regarding ambition, these audits require the third party performing the audit to consider specific issues related to EU legislation and particularly consideration of the Best Available Techniques conclusions on industrial emissions[7]. These considerations are hugely ambitious as well as representing an encroachment on the sovereignty of the third country (i.e., by forcing them to apply EU law). The audits should rather focus more directly on environmental and proper treatment assurances. Therefore, EuRIC suggests that this reference should be deleted in Annex IX and X.

Certain criteria in Annex X of the proposed legislation provide uncertainty on whether new facilities in non-OECD countries would be eligible to meet the auditing requirements. Section 1 (f) of the Annex states that the facility must have five years of records of its waste management. However, for new facilities they will not have five years of operational documentation. Ironically, it will be the newest facilities that are most likely to have adopted more modern standards of treatment operations. Therefore, EuRIC suggests this section is made clearer to allow for modern and newly constructed facilities to pass the auditing process under Annex X:

Annex X: The audit referred in Article 43(2) verifies that the facility managing the waste in the country of destination complies with the following conditions:
[…]
(a) it establishes and is able to provide records of its waste management and waste shipment activities for the last five years, or if constructed less than five years prior to the audit the facility can provide records of less than five years up to the amount of time in which the facility has been operating; […]

Shipments to OECD countries have the possibility to be exempt from the requirements for holding an audit on the treatment facility of destination if there is in place an international agreement between said country and the Union. However, there is limited detail explaining how this would be actualized (i.e., if the Union will stride to achieve such agreements, or if the onus is on third countries to apply for such an agreement). This suggests an unwillingness for the Union to achieve any such agreements, revealing the true nature of the auditing (a limitation on international trade). The Commission must elaborate in greater detail what is required to achieve such an international agreement and a timeframe in which it will achieve any possible agreements, and levers that could be utilized to begin negotiations (i.e., based on quantities of traded "waste" commodities, or by request of third country).

Article 43 (8): Where an international agreement between the Union and a third country to which the OECD Decision applies which recognises that the facilities in that third country will manage waste in an environmentally sound manner, in accordance with the criteria laid down in Annex X, natural and legal persons which intend to export waste to that third country shall be exempted from the obligation in paragraph 2.
i. The European Commission must contact all OECD partners within [*OP: Please insert the date six months after the date of entry into force of the Regulation]* to establish such agreements,
ii. When third countries have registered facilities as pre-consented in accordance with the OECD Decision, such facilities will also be exempted from the obligation in paragraph 2.

Beyond focusing on the exporters responsibility to audit non-EU facilities of destination, there should be reciprocity for importers to audit recycling facilities from outside the EU shipping waste into the Union. This should place identical

[7] JRC (2018) Best Available Techniques (BAT) Reference Document for Waste Treatment. Link here.

obligations of an auditing requirement on importers of waste into the Union, in line with what is required in Annex X. Without this an uneven market will be created, where EU recyclers have more limited market access to sell their high-quality RMR, whilst non-EU recyclers (which do not comply with EU climate legislation) will be free to export RMR into the Union. This will likely drive demand for RMR towards non-EU imports, which would have reduced costs compared to the EU materials.

Reciprocity

Most of the measures focused on exports to non-Union countries penalize exporters (i.e., the European recycling industry) without providing any reciprocal measures on imports into the Union or on producers who utilize RMR. As noted in the previous section, this will incentivize either non-EU recycling operations or raw materials from extraction, which as products do not have the same legislative restrictions regarding trade. Prior to any restrictions on EU exporters there must be measures which incentivize producers to take the mantle of responsibility for implementing the circular economy. This can be achieved via the following policy tools, as further specified in several position papers from EuRIC[8]:

- **Due diligence requirements**: expanding beyond forestry products, to addressing the environmental impacts associated with imports of mining products that compete with RMR.
- **Recycled content targets for producers**: this should be enforced for a variety of product categories, something that EuRIC has been advocating for in several other policy dialogues (ELVs, Packaging, WEEE, Batteries, etc.). Beyond just addressing plastics, targets should further ensure that producers also take up RMR for other product types (i.e., metal, paper). This could have a sizable drive in increasing the demand of RMR in Europe. The supply is already available and incentives are required now for this to be taken up by the industry.
- **Carbon taxation**: the EU Emission Trading Scheme (ETS) and Carbon Border Adjustment Mechanism (CBAM) are two policy tools that could effectively remove incentives to primary raw materials and push further demand towards RMR in the EU.[9]

Enabling intra-EU material recovery

Overview

EuRIC highly commends the European Commission for several of provisions taken up in Title II of the proposed revised WSR. Many of the measures will simplify intra-EU shipments when final treatment is intended for materials recovery. This is crucial for European Recyclers, who consistently face huge barriers for receiving waste feedstock, and shipping high-quality RMR to producers or interim treatment operations.

The main provisions that must be maintained to ensure the objective of enabling intra-EU shipments for material recovery are:

- **Electronic Data Interchange (EDI) mandated for all waste shipment documentation (Art. 26)**: This is a crucial measure and greatly applauded by European recyclers. This will reduce administrative burdens on both waste management operators and Member State Competent Authorities. Additionally, it will increase traceability and bolster enforcement activities to ensure faster flows of legal waste shipments whilst more easily identifying and stopping illegal ones.
- **Pre-consent facilities to ease shipments of notified waste to trusted actors (Art. 14)**: Once a treatment facility has proven its environmentally sound management of waste it should be treated like a producer within the Circular Economy and benefit from reduced administrative burdens on shipments of RMR to its facility. Therefore, increasing pre-consent periods to seven years is applauded by recyclers as it will increase the productivity of EU recycling operations.

However, certain provisions require additional attention to better achieve the objective of waste shipments facilitating the intra-EU circular economy:

[8] https://www.euric-aisbl.eu/position-papers

[9] Please see BDSV (German Steel Scrap Recycling Association)'s "Scrap Bonus" video and paper, which outline the key issues on this topic.

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- **Mutual recognition (Art. 28)**: conflicts between different Member State classifications of (national) End-of-Waste (EoW) criteria, should always result in the acceptance of the status of waste as EoW, owing to the fact that this national status has already been confirmed with the European Commission by said Member State, in line with the Waste Framework Directive (WFD). Due to a lack of resources, European EoW criteria are not being defined quickly enough, therefore national EoW criteria should be encouraged as much as possible.
- **Financial guarantee (Art. 7)**: The current financial guarantee system is immensely burdensome and costly for European recyclers, sometimes blocking future investments into future recycling operations. This is unfair as for European recyclers most shipments are legally carried out without the need for such a guarantee. Therefore, a simplified and unified system should be investigated to ensure that in the future only those who require the guarantee suffer the immense financial penalties under the current measures.
- **Other general provisions (multiple)**: these comments provide required updates to several provisions on general procedures regarding waste shipments. For further information please see the relevant text below.

Financial Guarantee

The financial guarantee obligations, though a necessary tool to ensure mismanaged waste is properly dealt with, is a major obstacle to legitimate shipments. They lead to large lump sums (up to 1 million €) of cash being blocked from a notifier's account. The Commission's Impact Assessment acknowledges the huge burden, with between 6 – 237 million € per Member State being held per year. This holding of such large quantities of money on the company's credit line creates a negative image on the balance sheet and can block future investments.

This is especially an issue since most of EuRIC's members never end up requiring the use of their financial guarantee in any of their shipment operations. North Sea Resources Roundabout (NSRR) working group on fast track notification, estimated that 1 in 10 000 notified shipments actually require the financial guarantee to be spent (0.001%).[10] Though this blockage of money is only rarely required it causes immense difficulties for all operators, and therefore must be revised.

While EuRIC acknowledges the requirement of some financial guarantee instrument to finance the protection of the environment when shipments are improperly carried out, a new system is required. This new solution must be an instrument that benefits those that carry out their shipments properly and legally. There has been a lack of focus on trying to achieve a new system. Therefore, EuRIC supports new measures for the Commission to review, develop, and incentivize alternative systems and calculation methodologies to be used for the financial guarantee.

This must be reflected in the legislation with a Commission's review in the form of a delegated act and a follow-up study on the issue:

Article 7 (10): The Commission shall, at the latest by [OP: Please insert date of [one] years after the date of entry into force of this Regulation], assess the feasibility of establishing a harmonized [less financially burdensome system to replace conventional financial guarantees as establish in this Article and], if appropriate, adopt an implementing act to establish such a harmonised [less financially burdensome system for financial guarantees]. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 77(2).

For a harmonized insurance-based financial guarantee, additional work is required to push insurers to provide possibilities for such systems. Certain EuRIC members are already utilizing insurance-based financial guarantees (i.e., in Flanders), however many countries do not offer beneficial insurance based-systems and many brokers charge higher insurance premiums to operators based in different Member States to that of the insurer. This lack of harmonization inside the European Single Market, is a huge barrier to the uptake of insurance-based systems to replace the bank (financial) guarantee. It must be stimulated via the WSR to review this and push for harmonized insurance-based possibilities at an EU level:

Article 7 (new): The European Commission shall review the possibility for operators to utilize fair insurance-based systems for the financial guarantee obligations of this Article. In cases where no systems exist, Member States are encouraged to work with insurance companies to develop mature insurance systems. The European Commission

[10] NSRR (2022) Feed-Back to the public consultation from the working group "Fast Track Notifications". Link here.

shall further coordinate this work with other Member States to facilitate harmonized Union-wide insurance systems.

Article 7 (10): The Commission shall, at the latest by [OP: Please insert date of [one] years after the date of entry into force of this Regulation], assess the feasibility of establishing ~~a~~ harmonized [insurance-based financial guarantees across Member States] […].

Pre-consented facilities[11]

EuRIC applauds the European Commission for ensuring that pre-consented facilities are enforced and incentivized across the Union. Article 14 (6) and (9) are instrumental for this. The former ensuring Member States are obliged to approve pre-consented status where facilities have provided all the relevant information, and the latter increasing pre-consent status validity to a seven-year period. These are instrumental to increase the flow of raw materials from recycling (RMR) to approved and trusted recovery facilities, boosting the ease of operators implementing the circular economy.

However, Article 14 (10) allows for this status to be revoked, with limited explicit obligations on what is required. The provision states a decision to revoke pre-consented status must be "duly motivated", which provides too much leeway for competent authorities to revoke such status without sufficient justification, or without the facility to oppose this action. This should be revised to the following:

Article 14 (10): A pre-consent of a recovery facility may be revoked at any time by the competent authority. A decision to revoke a pre-consent shall be duly motivated and communicated to the facility concerned. A pre-consent of a recovery facility may be revoked by the competent authority after prior consultation with the person concerned (operator of the recovery facility) if:
a) The information that led to a pre-consent is subsequently found to be incorrect or has changed;
b) The facility has violated the conditions for prior consent set out in Article 14(6);
c) The facility has been convicted of illegal activities;
d) The facility poses a serious risk to the environment and human health for other reasons.

In case of imminent danger, the revocation of the prior consent may be made without a hearing of the person concerned.

The operator has 30 days to object to the revocation.

Electronic notification / documentation

The enforcement of complete digital systems for the submission and exchange of information as obligated in provisions under Chapter 5 of the proposal are a game changer for EuRIC members. As outlined in the Impact Assessment, a fully-fledged electronic system for notification could save between 450 – 950 thousand € per year for notifiers and 0.95 to 3.2 million € per year for competent authorities.

It is immensely positive that such obligations have been placed on all documents and exchanges regarding waste shipments, as it is not just notification that is extremely burdensome regarding administrative procedures. As EuRIC members have reiterated time and again, this measure will save hundreds of thousands of hours per year on managing outdated admin procedures, for Annex VII (movement) documentation alone.

Beyond being an immense cost saving measure, it will further drastically increase the ease for the filing, possible updating, and traceability of information related to shipments. This will allow for a better picture of the status of waste flows across the EU. This is further a major support in tackling the problem of illegal shipments, by providing a better helicopter view of the shipments that take place and greater efficiency to review possible infringing shipments. It is further expected that fewer administrative mistakes will be made in movement documentation as a result, which again will reduce the need to enforcement agencies to waste their time stopping shipments that made minor administrative mistakes.

[11] See also the work of the North Sea Resources Roundabout Working Group on Fast-Track Notifications.

This measure and all associated provisions must be adopted into the final Regulation for all submissions and exchanges of documentation. EuRIC only foresees the need to increase the timelines for the implementation of such an electronic data interchange (see section on implementation). Furthermore, it should be considered that during the interim period between entry into force of this legislation and the inclusion of an EU EDI that electronic submissions in a pdf format (via email) is allowed. This would facilitate the transition from the current system into a fully digital one.

Mutual recognition

The issue of coherence between different Member State classification, sadly, has only been partially addressed by the European Commission in the revision of the WSR. Article 28 ensures that the more conservative classification of a waste shipment is enforced when two Member States disagree on such a classification. This is the case for disagreements on status of waste as green/amber-listed waste, End-of-Waste (EoW) classification, and treatment operations being undertaken in the destination facility. Though the objective of this measure is understood, it will allow for the continuation of major barriers and complications for the shipments of RMR required to implement the EU circular economy.

For most waste classifications, it is accepted that Member State sovereignty of the Member State of destination for the shipment should supersede all other concerns. However, when the shipment of green-listed waste meets Member State EoW criteria - complying with article 6 of the WFD which have been notified to the European Commission - these criteria must be mutually recognized across the EU. This is all the more important since, currently, very few EU EoW criteria exist, and according to the work carried out on the topic little progress will be seen in the near future. The Commission and JRC has already acknowledge only one new EoW criteria will be worked on in the upcoming four-year period. Therefore, mutual recognition, which is a cornerstone of the principles of the internal market, is therefore required to achieve the goal of facilitating the internal EU circular economy, and subsequently the objectives of the WSR.

Article 28 (1): […]
When deciding whether waste which has undergone a recycling or other recovery operation shall be considered to have ceased to be waste, Member States shall base their decision on the conditions laid down in Article 6 of Directive 2008/98/EC.
If the competent authorities of dispatch and of destination cannot agree on the classification as regards the distinction between waste and non-waste, the object or substance shall be treated as if it were waste for the purpose of the shipment, except when national end-of-waste criteria exist in accordance with Article 6 (3) Directive 2008/98/EC. This shall be without prejudice to the right of the country of destination to deal with the shipped material in accordance with its national legislation, following arrival of the shipped material and where such legislation is in accordance with Union or international law.

B3030 Textile wastes

Entry B3030 of the WSR shows a huge gap between the legal framework for shipments of textile waste and the reality of what is shipped as collected for sorting. Typical items that can be found in container collections and are explicitly encouraged to be deposited in that way, include clothes and accessories. However, those items are not mentioned in entry B3030 with the consequence that shipments of as collected “clothing, accessories and footwear” for sorting and subsequent reuse have been stopped as illegal shipments of waste. We therefore propose to amend Annex IIIB of the WSR to include used footwear and accessories as well as mixtures of used footwear, accessories, worn clothing and other worn textile articles into its scope and as potential future Basel Convention entries:

Annex IIIB:
BEU06 Used footwear for preparing for reuse (e.g., sandals, shoes, boots)
- Of natural fibres, leather or synthetic materials
BEU07 Used accessories (e.g., belts, scarfs, gloves, hats, bags) for preparing for reuse
- Of natural fibres, leather or synthetic materials
BEU08 Used soft toys made out of textiles for preparing for reuse (e.g., cuddly toys)
BEU09 Mixtures of worn clothing, other worn textile articles, used footwear, used soft toys, and used accessories, for preparing for reuse

- Of natural fibres, leather or synthetic materials

Other general provisions

Language obligations: EuRIC is of the opinion that significant harmonization and reduced administrative burden could be achieved if English is designated as the lingua-franca of all shipment documentation and communication. This should be officially included within Article 27, to assure operators can communicate efficiently. Machine translation, via the EDI, could be a means to digitalise this communication need.

Article 27:

1. Any notification, information, documentation or other communication submitted pursuant to the provisions of this Title shall be provided in [English].
2. ~~The notifier shall provide the competent authorities concerned with authorized translations of the documents referred to in paragraph 1 into a language which is acceptable to them, where they so request.~~ Any information provided should be machine translated by the centralized database system established in Article 26 of this Regulation.

Multilateral cooperation: Article 30 proposes bilateral border area agreements for MS to developed cooperative waste management infrastructure. However, in many cases it would be beneficial to develop regional "multilateral agreements" to share the administrative and infrastructural burdens. Therefore, an inclusion should be made for multiple neighboring countries, where such agreements demonstrate that the waste 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.).

Signing of notification, where the notifier is not the original waste producer: Today brokers/dealers are often acting on behalf of waste producers/collectors when signing notification documentation. Article 5 (2) of the revised regulation states that only the original waste producer or collector to sign notification documentation. This must be revised to allow brokers/dealers who have received an official written authorization from the original waste producer or collector to be able to sign notification documents to avoid massive and unnecessary bureaucracy.

Protect business secrets in notification information disclosure: In Article 21, there must be assurances in the text to ensure that sensitive information relating to business secrets and private data remain protected.

Tackling illegal waste shipments & implementation

Overview

EuRIC fully supports the objectives of tackling illegal waste shipments, a sadly necessary set of measures for the good of the environment. European recyclers consider proper enforcement/implementation measures as pivotal to ensure that legal actors shipping waste and facilitating the circular economy can do so with as few legislative barriers as possible. There are only three issues with the final sections of the proposed regulation which EuRIC finds necessary to revise. These include:

- **Inspections by authorities (Art. 58 (2))**: the vagueness of the regulation regarding proving that a substance is not a waste, could infringe on EoW criteria and status. This must be amended accordingly to facilitate the achievement of EoW status.
- **Penalties (Art. 60)**: which should be "effective, proportionate, and dissuasive" must explicitly reference small administrative errors being treated more fairly than intentionally illegal shipments.
- **Transition periods (Art. 82)**: there must be a revision on the strategy of transition periods. Simple internal market provisions (electronic notification, pre-consented facilities etc.) must be fast-tracked with a shortened 1-year transition period, with complex requirements on exporters of waste to be extended to a 5-year transition period, to ensure this can be done without immensely negative effects for the circular economy.

Inspections by the authorities

As stated in Article 58 (2) of the revision, authorities have the power to inspect whether substances/objects being shipped are "not waste". The purpose of this is understood, however the revision is very general in what is required in the "documentary evidence". EuRIC believes having achieved EoW status according to Article 6 of the WFD should suffice as evidence to prove that the substance is no longer a waste. This could be proved by the operator providing their "statement of conformity" (Regulation No 333/2011) or equivalent for the relevant EoW criteria. This must be included in revision to ensure that EoW criteria are respected.

Penalties

EuRIC supports more precise measures ensuring those participating in illegal shipments are penalized accordingly. Therefore, Article 60 is broadly accepted by European recyclers. However, it does not properly exempt small administrative mistakes sufficiently (properly differentiating them from criminal behaviour). Often extremely minor administrative mistakes can be made in waste shipment documentation (something expected to decrease with the enforcement of the electronic data interchange). Currently these minor mistakes lead to court cases and the sanctioning of high fines. This should never be the case for operators who file tens of thousands shipment documentation per year, with a high degree of precision (but of course with a small margin of errors).

EuRIC therefore suggests exempting such small administrative mistakes from legal penalties more precisely within Article 60:

Article 60 (2): When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following criteria:

a) the nature, gravity and duration of the infringement;
b) where appropriate, the intentional or negligent character of the infringement. A sanction does not apply if the violation is an administrative error that has no practical effect and cannot lead to a risk to the environment and human health.
c) […]

Transition period

The length and complexity of the revision of the WSR and all the various moving parts ensure the need for a transitional period for many of the measures within the proposed legislation. However, EuRIC feels that the timelines provided in Articles 81 – 82 should be modified to better represent the required periods required to adequately adopt and test certain provisions.

As many of the previsions focused on intra-EU shipments (and shipments to EFTA/OECD countries where Title II applies *mutatis mutandis*) are broadly already in place, with minor updates required, a shorter transition period would be better to fast-track the implementation of the EU's circular economy. This is particularly the case for all notification legislation (i.e., pre-consented facilities). EuRIC is aware that the Commission has already begun a great deal of work into assessing possible electronic data interchanges and its interoperability with electronic Freight Transport Information (eFTI) requirements (also required in this proposed legislation). As a result, and according to the pressing need for the electronic systems to be put in place, EuRIC implores the transition period for this to further be fast tracked to a one year-transition.

For the provisions regarding new extensive administrative burdens (see last section on non-OECD shipments), longer timeframes are a required to ensure the stability of raw material markets to adequately prove they can legally be made to non-OECD countries and to provide time for markets to develop within the EU (i.e., an increased capacity and demand for RMR in production processes). As was clear with the updating of Regulation 1418/2007, there is a high propensity for countries to make small administrative mistakes when providing information to the European Commission. These small administrative mistakes however can result in major legal changes negatively effecting European Recyclers and third country producers. Therefore, to ensure third countries and EU exporters can adapt to these monumental changes to the legislation, a five-year transition period would be required as a minimum.

This could all be updated in the legislation as follows:

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Article 82: […]
However, Articles 5, 8 and 9, Article 14(14) and (15), Articles 15, 16, 18, Article 26(1), (2) and (3), and Articles 35, 41, 47, 48, 49, 50, 51, 54 and 55 from [*OP: Please insert the date [one] year~~s~~ after the date of entry into force of the Regulation*] and Articles 37, 38, 39, 40, 43 and 44 shall apply from [*OP: Please insert the date [five] years after the date of entry into force of the Regulation*].

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