

# 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 (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

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

Your name or organisation:

Chartered Institution of Wastes Management (CIWM)

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

05829149535-55

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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- SLOVENIJA
- SLOVENSKO
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- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

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

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?

Definition of Waste issues have been clearly identified by our membership as an area of legislation/regulation that creates confusion, adds a burden to business in its current form and is a barrier to resource efficiency.

The interpretation and application of the legislation appears to be extremely variable across the EU. In part this is due to the relative complexity around End-of-Waste decisions, the highly case-specific nature of the decision making process and the reliance on national case law. The decision by the EU to curtail its efforts to develop any more End-of-Waste criteria in itself demonstrates how challenging this area of legislation can be.

In light of not being able to add supporting evidence CIWM includes:

One of the primary market barriers or distortions (in the context of the European Commission's articulated desire to support the development of Circular Economy principles and realize the environmental and economic benefits thereof), is that competitive and open markets in secondary raw materials will not develop until they can operate and compete with primary raw materials in a fair and equitable way. The EU regulatory construct is fit for purpose for waste management, it is not necessarily fit for purpose for secondary raw materials management.

CIWM recognises that a critical balance has to be achieved. Our members acknowledge the importance of developing frameworks to allow materials that were originally waste to be welcomed in the market in the same way as materials of non-waste origin, however we would not accept any dilution of the regulation of waste which could be used to encourage waste crime or increase the risk of environmental damage.

The fractured methods of implementation across the EU create further barriers in an industry that now routinely moves recovered raw materials across global markets. The system also discourages innovators who are pioneering new methods to recover and reuse secondary raw materials; they cannot get consistent and timely decisions from regulators and face hurdles to recovery and re-use which can be in excess of those demanded of primary raw materials they are seeking to replace.

Without a fundamental re-think of the waste versus non-waste core regulatory construct, much of this innovation - and the associated economic growth and job opportunities - will and is already migrating overseas to countries prepared to innovate in this area.

The recovery and re-use of secondary raw materials are also affected by decisions covering product regulations, economic regulations and trade agreements - so these must also be aligned with the regulatory framework to provide the necessary step change.

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

The UK has a classic example with waste lubricating oils. It took years of legal argument before it became accepted that waste lubricating oil could be recovered as a product and used in the UK to displace fossil fuels to a standard no worse than the material they replace. This decision is not accepted across the EU where the requirement is to show that recovered products from waste lubricating oil show no significant environmental or health effects. This is a more stringent requirement than that placed on competing primary raw materials.

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:

Whilst secondary raw materials are regulated as waste across the EU and OECD countries, common End of Waste criteria or standards are critical to their effective recovery and add costs not born by primary raw materials. Work in the EU and the UK has shown how progress can be made within the existing legal framework but it is both time consuming and costly. The withdrawal of the EU from the process of developing End of Waste criteria illustrates that this area of legislation needs attention.

Currently, in the absence of EU decisions in this area, it is left to regulators operating at national or regional level to take these decisions, with reference to relevant case law where it exists. There is no common clearing house for such decisions to be taken once and then adopted across the EU where appropriate.

There are unequal compliance standards between EU Members States and unequal government support for markets.

Recent indications of the update for the Fertilizer Regulations would have had a major impact on the bio-waste market in the UK. The key aspect being incorporating the biowaste end of waste criteria work that was undertaken by the JRC alongside the stricter requirements for fertilizers being maintained and applied to compost and digestate.

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.

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.

CIWM surveyed its members about some aspects of this consultation and one of the questions asked was this one.

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.

CIWM included this question in its survey and offered additional answers. Over 45% of our members who responded also identified greater clarity on the meaning of regulations and changes in the policy or decision-making by authorities as offering potential solutions.

In addition, efforts to extend End-of-Waste criteria or implement pan-European standards or frameworks for the main waste-derived products - along the lines of the Quality Protocol work done in England - would provide a higher degree of consistency. CIWM believes that this is particularly important for biowaste-derived products.

Important biowaste/product standards work has been done in England, especially PAS 100 (composts) and PAS 110 (digestate) which could be used as a basis for EU-wide standards in this area.

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.

1.           Standards: A number of CIWM survey respondents highlighted the need for pan-European standards and CIWM would certainly urge the Commission to consider specifications or standards for waste-derived materials that are commonly exported between Member States, for example with RDF and biowaste-derived soil conditioners/fertilisers.

In the case of RDF, the primary objective of this would not be to declassify RDFs as waste but to create quality standards to ensure that the recipient Member State does not have a distortionary/negative effect on the exporting Member State in terms of the Waste Hierarchy by allowing significant recyclable material content in the RDF it purchases.

In the case of biowaste-derived products, the current uncertainty around the Commission's intentions regarding the revision of the Fertilisers Regulation is not helpful.

CIWM also notes the intention by the Commission to develop an Internal Market Strategy for goods and services - it would be helpful if the scope of this was clear with regard to waste-derived products.

2.           Transfrontier Shipment: CIWM members highlight a number of issues with the TFS regime, notably that it is unwieldy in terms of its administrative burden, leading to abuse of the regulations and illegal activity. There is also variation in the interpretation, application and monitoring of the regulations across MS. Administration of trans-boundary waste movement regime could be streamlined through development of a web-based tool for creating, sharing, approving and storing documents. This could be a development of a LIFE+ funded tool in the UK - edoc which is used to monitor non-hazardous waste transfers within the UK.

3.           Taxation: the impact of differences in taxation and levies related to waste, waste-derived materials and secondary raw materials across the EU is unclear and should be assessed to establish what barriers and market distortions might be happening. As fiscal measures are increasingly seen as important in changing behaviour around resource use, a pan-European framework for levies and taxes may be needed.

4.           Unintended consequences of the WEEE Directive: recycling under the WEEE regime is predicated on shredding of WEEE items/materials, a requirement that disincentivises re-use and remanufacture. This works against the Waste Hierarchy, is counterintuitive from a circular economy perspective, and will become a more serious issue if targets are increased.

5.           Wider Producer Responsibility issues: the wide range of implementation models for Producer Responsibility in place across Member States has the potential to cause market distortions. From a UK perspective, for example, differences between PRNs (Packaging Recovery Notes) and PERNs (Packaging Export Recovery Notes) incentivises the export of material over domestic reprocessing.

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## 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*

5

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

*between 0 and 5*

2

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

*between 0 and 5*

2

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*

2

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.

4

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.

With regard to i) above...

It should be noted that the UK, and in particular England, has taken a very proactive and strategic approach to End-of-Waste and there is much good practice here that could be replicated in other Member States. In addition to the development of 13 Quality Protocols that have set End-of-Waste criteria for key, high volume waste derived materials and improved market demand, a formal End-of-Waste Panel has been created by the Environment Agency in England to consider material specific applications. There has also been a successful Life+ project that has developed online decision support tools for businesses looking to understand how to achieve End-of-Waste status for their products.

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.)

CIWM does not have any information on this.

### 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*

4

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

*between 0 and 5*

4

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*

4

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

*between 0 and 5*

4

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*

4

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*

4

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.

Issues have arisen regarding transboundary movement of waste between the Republic of Ireland and Northern Ireland due to different tax regimes.

In addition, there is the potential for distortions as devolved powers on waste are leading to divergent policy landscapes in the four UK countries. Examples might be incineration caps in Wales and Scotland, landfill restriction and/or bans, etc.

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.)

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).

13f, 10d and 10i

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 different split of responsibility for waste management between public and private sector in different Member States means that some are more impacted by commercial factors, particularly secondary raw materials market trends and prices, in the delivery of policy objectives.

Although not necessarily leading directly to market distortion, differences in the thoroughness with which EU legislation is implemented by Member States, late or non-compliance, and variations in the way Member States calculate their performance against targets means that there is not a level playing field, for example, non compliance with Landfill Directive targets (Article 4) allows continued reliance on landfill in some States and frustrates in-state and inter-state trade in waste materials which should be being treated by other means.

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

The revised EU circular economy package must address the need for 'pull' mechanisms to ensure that the economic case for capturing, processing and putting materials back into the market is sufficient to ensure that there is sufficient value in the system to support the necessary services and infrastructure.

The package must also focus on improving statistics on raw and secondary material flows, and clarifying and harmonising definitions and calculation methodologies. This is essential for meaningful and accurate comparison of performance across Member States.

More robust monitoring of Member States performance is also needed, coupled with more effective and timely enforcement where there is non-compliance - at present there can be little incentive for some Member States to comply.

### 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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## Contact

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