Waste Shipment Regulation
Revision of Regulation (EC) No 1013/2006 on shipments of waste

This briefing is one in a series of 'implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. 'Implementation appraisals' aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of an EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the EPRS Ex-Post Evaluation Unit, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

SUMMARY

As one of the main building blocks of the European Green Deal, the new circular economy action plan sets out initiatives for the entire life cycle of products, targeting product design, promoting circular economy processes for production, fostering sustainable consumption, and aiming to ensure that the resources used are kept in the EU economy for as long as possible. At the same time, the circular economy policy is designed to protect the environment and empower consumers.

Waste shipment within and outside the EU is critical in achieving these circular economy objectives. Regulation (EC) No 1013/2006 on shipments of waste (WSR) is the main legislative act regulating transboundary movements of waste. However, deficiencies in the current design and implementation of the regulation are hampering achievement of the European Green Deal’s circular economy objectives. A revision of the rules is therefore necessary.

This implementation appraisal looks at the practical implementation of the WSR in light of the expected Commission proposal for a revision of the regulation. According to the Commission’s 2021 work programme, the proposal, which will be accompanied by an impact assessment, will be submitted in the second quarter of the year.

Background

The WSR has its roots in the identification of waste shipments as a source of possible negative impacts on the environment and public health several decades ago. Growing waste generation coupled with the development of a globalised economy had led to increased volumes of waste being shipped across borders, raising the need to regulate waste shipments and their inherent risks. Development of the regulatory framework began at international level with the adoption in 1989 of the Basel Convention on the control of transboundary movements of hazardous waste and its disposal (the Basel Convention) to which the EU and all EU Member States are currently parties together with many other countries around the globe. Shortly afterwards, in 1992, the Organisation for Economic Development and Cooperation (OECD) adopted a decision on the control of
transboundary movements of waste destined for recovery operations (the OECD Decision), which applies to all OECD countries, including the 22 EU Member States that are members of the OECD, and the EU as a whole. In 1993, an EU regulation on the supervision and control of shipments of waste within, into and out of the then European Community transposed for the first time into the EU legal order the commitments taken by the EU under the Basel Convention and the OECD Decision. The choice of a regulation over a directive as the preferred regulatory tool was led by the aim of ensuring uniform application of the rules across the EU Member States. Certain adjustments to the Basel Convention, which led to changes in the OECD Decision, eventually made it necessary to revise the 1993 regulation. As a result, Regulation (EC) No 1013/2006 on shipments of waste, whose implementation is at the core of this briefing, was adopted by the European Parliament and the Council in 2006. The WSR has since undergone several revisions and, as already noted, is due for a new revision in 2021.

Over the past decade, waste exports (within and outside the EU) have in some cases resulted in negative environmental and health impacts in the countries of destination as well as in the loss of resources and economic opportunities for the EU’s recycling industry. Persistent illegal waste shipment practices add to these concerns. Furthermore, import restrictions introduced by some third countries (e.g. China’s ban on imports of plastic waste from 2018) have shone a light on the EU’s overdependence on waste treatment outside EU borders and the need for the EU recycling industry to improve its capacity and add value to waste inside the EU. The expected revision of the WSR will have to address these challenges, while also ensuring that the legal framework is fit for achieving the circular economy objectives of the European Green Deal. In particular, as mandated by the new circular economy action plan, the review will aim to restrict exports of waste that have harmful environmental and health impacts in third countries or can be treated domestically within the EU, by focusing on countries of destination, problematic waste streams, waste operation types that give cause for concern, and enforcement to counteract illegal shipments.

**Legal framework**

The WSR has five main objectives that can be broadly defined¹ as follows:

- to ensure that waste shipped between EU Member States is managed in an environmentally sound manner during shipment and transported to a suitable destination for treatment, in accordance with the relevant EU waste legislation, including the principles of proximity and self-sufficiency and giving priority to recovery;
- to ensure that waste exported outside the EU does not create adverse effects on the environment or public health in the countries of destination, by prohibiting the export of hazardous waste to non-OECD Decision countries and waste destined for disposal operations outside the EU or the European Free Trade Association (EFTA) area, and by means of specific provisions on the export of other waste;
- to ensure the implementation in EU law of the provisions of the Basel Convention and the OECD Decision;
- to enable uniform application of the WSR in all Member States;
- to keep waste shipment systems and procedures up to date with technical progress.

In terms of scope, the WSR applies to:

- waste shipments between EU Member States, within the EU or in transit through third countries;
- waste shipments imported into the EU from third countries;
- waste shipments exported from the EU to third countries, and
- waste shipments in transit through the EU, on the way from or to third countries.

The regulation covers almost all types of waste. Exceptions include radioactive waste, waste generated on board vehicles, trains, aeroplanes and ships, and – if covered by other relevant EU legislation – waste water, decommissioned explosives and waste resulting from prospecting,
extraction, treatment and storage of mineral resources and the working of quarries, etc. The scope of application of the WSR has been subject to requests for preliminary rulings submitted by national courts to the Court of Justice of the European Union (CJEU).²

In terms of policy instruments, the regulation employs control procedures and trade restrictions and lays down rules on enforcement by the EU Member States. There are two types of control procedure. The first is prior written notification and consent (often referred to as the 'notification' procedure). It applies to shipments of 'notified' waste, which includes hazardous waste, household waste and residues from the incineration of household waste or waste for disposal (for example by landfill). This procedure requires that the competent authorities of all countries concerned by the shipment (i.e. the countries of dispatch, destination and transit) give their consent to the shipment within a certain deadline before it can take place, and the WSR has established a comprehensive notification system facilitating these processes. All shipments of waste subject to the 'notification' procedure are subject to the requirement of a financial guarantee. The second control procedure involves compliance with the general information requirements established by Article 18 WSR. It applies to 'green-listed' (or non-hazardous) waste. Regardless of the control procedure followed, all those involved in the shipment are obliged to ensure that the waste is managed in an environmentally sound manner, respecting EU and international rules, throughout the shipment itself and when it is recovered or disposed of. This requirement means that the exporter or the importing country must demonstrate that the facility that will receive the waste is operated in accordance with human health and environmental protection standards broadly equivalent to standards established by the relevant EU legislation. Furthermore, the notifiers are obliged to take back waste shipments that are found to be illegal or could not be treated as intended (including the recovery or disposal of waste).

As regards trade restrictions, the WSR contains several provisions prohibiting the following waste shipments: exports of waste for disposal to third countries, except to EFTA countries that are parties to the Basel Convention; exports for recovery of hazardous waste and 'other waste' under Annex II of the Basel Convention (mixed household waste and from 2021 also certain plastic waste) to third countries, except those directed to countries covered by the OECD decision; imports of waste for disposal or recovery are prohibited from third countries that are not party to the Basel Convention nor belong to the OECD and have no bilateral agreement with the EU or Member States.³

In terms of enforcement, the WSR requires Member States to provide for inspections of establishments, undertakings, brokers and dealers, of the waste shipments themselves and of the related recovery and disposal operations. Inspections can be carried out at the following stages in the shipment: at the point of origin; during the period of shipment within the EU; at the EU border; or at the point of destination, when the waste arrives at the facility that will carry out the recovery or disposal operations, including both interim and non-interim operations. The WSR obliges Member States to prepare inspection plans (by 2017), taking account of a risk assessment covering specific waste streams and sources of illegal shipments. The regulation also requires Member States to lay down effective, proportionate and dissuasive penalties to apply if the rules are broken and to take all measures necessary to ensure that the rules on penalties are implemented.

The WSR is closely linked to the implementation of other sets of EU rules, such as, for example, the EU Directive on the protection of the environment through criminal law. The latter places an obligation on Member States to ensure that illegal shipments of waste are treated as a criminal offence, when performed in non-negligible quantities, whether executed in a single shipment or in several shipments that appear to be linked.

**European Commission reports and consultation activities**

**European Commission ex-post evaluation of the WSR (January 2020)**

The Commission published the ex-post evaluation (Staff Working Document (SWD)) in accordance with Article 60(2a) of the regulation. It is of note that, at the time of publication in January 2020, the evaluation was not accompanied by a Commission legislative proposal reviewing the WSR, which
Article 60(2a) leaves as a possibility (‘as appropriate’) rather than as an obligation. According to the Commission’s 2021 work programme and the dedicated inception impact assessment roadmap, the legislative proposal will be submitted in the second quarter of 2021.

The evaluation is supported by the findings of sources, identified in the dedicated roadmap. These include: several consultation activities addressed to stakeholders (presented further down in this briefing); the series of reports on the implementation of the WSR prepared by both Member States and the Commission as required by the WSR; Commission (DG Eurostat and DG TRADE) data on transboundary shipments and European Environment Agency (EEA) data; a dedicated external study prepared in support of the Commission ex-post evaluation and other topical studies; a report on waste shipments prepared by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL); etc. In line with the Commission’s Better Regulation Guidelines, the staff working document presents findings on the implementation of the WSR against the following evaluation criteria: relevance, coherence, effectiveness, efficiency and EU added value. The evaluation considers the implementation of the regulation from 12 July 2007 (i.e. its entry into force) until the beginning of 2020 when the SWD was published.

The Commission is positive about the relevance of the original objectives of the WSR – relating to the protection of the environment and public health and the implementation of the Basel Convention and the OECD Council decision across the EU – to the policy objectives of the EU and its global partners. However, while the economic sector regulated by the WSR is instrumental in the EU’s transition to a circular economy and in climate action policies, which are high on the EU agenda in the context of the Green Deal, the regulation does not explicitly contain circularity and climate action as clearly defined objectives, which is a shortcoming of the current legal framework. Furthermore, while the WSR encourages the recovery of waste, it does not do enough to stimulate the recycling of waste, which creates obstacles for the development of a well-functioning market for secondary raw materials. In addition, the WSR leaves room for differing interpretations by Member States, which have become an administrative burden and hence an obstacle to the management of and trade in secondary raw materials.

Based on stakeholders’ feedback, the Commission considers that switching to a harmonised electronic system and encouraging fast track procedures would reduce the administrative burden and facilitate the development of waste markets and a circular economy. However, the Commission also notes that although the current version of the WSR allows for electronic exchange of information (‘data interchanges’), there is no mechanism in place harmonising this process. As a result, Member States follow different approaches – ranging from paper-based practices in some Member States to individual electronic systems used in others – which make data reporting inconsistent across the EU. Based on the results of a feasibility study, the Commission further notes that the introduction of a standardised electronic database system containing information for waste shipments would be beneficial in terms of adapting to technical progress and increasing the efficiency of the procedures implemented under the WSR. In particular, such a system would adapt to the business requirements of stakeholders, while at the same time allowing for more effective data exchange between Member States regarding notification procedures.

The main question under the effectiveness criterion is whether the objectives of the WSR are being achieved through its implementation. In its ex-post evaluation, the Commission explores the effectiveness of the regulation against the five objectives set out in the section on the legal framework, above.

As regards the first objective on intra-EU movements of waste, the Commission identifies both positive and negative aspects. In particular, the Commission assesses positively the fact that, based on available statistics, ‘notified’ waste is treated either predominantly in the Member State where it is generated, or to a lesser extent in another EU Member State. Furthermore, ‘notified’ waste is generally shipped for recovery (rather than disposal), which is another positive trend, showing that this type of waste is managed in an environmentally sound manner, as defined by the relevant EU rules on waste, and in compliance with the WSR’s objective. However, this assessment is based on
data for legal shipments, and the Commission warns that when judging whether or not this objective is being achieved, attention must also be paid to illegal shipments of waste, whose prevalence is a 'source of serious concern' and may involve 'criminal actors'. Although data on illegal shipments of waste are difficult to obtain (as is generally the case for illegal activities), IMPEL data suggest that the number of illegal shipments per year is in the thousands and that violations relate mostly to intra-EU movements, although the illegal exports of waste outside the EU are not unknown (see below). Furthermore, according to IMPEL data, the following waste streams are most often found to be in violation: metals (19 %), paper and cardboard (14 %), plastics (13 %), waste electrical and electronic equipment (WEEE) (12 %) and end-of-life vehicles and car parts (11 %). The Commission notes that one of the main reasons for the persistence of illegal shipments is the lack of uniform enforcement across Member States. The 2014 revision of the WSR, aimed specifically at enhancing national level enforcement as the main policy tool preventing waste trafficking, created an obligation for Member States to report annually (in the form of inspection plans) on the measures taken at national level to address the issue of illegal shipments of waste. However, Member States report only on whether these plans have been prepared and do not report the plans themselves, which correlates well with the fact that the WSR has not created a mechanism for assessment of the plans and the results their implementation has achieved. Therefore, the Commission sees the revisiting of reporting requirements, including inspection plans, as beneficial in terms of increasing the clarity and understanding of the effectiveness of enforcement at national level.

As regards the second objective on shipments outside the EU, based on official data, the Commission highlights that 'notified' waste exported from the EU represents a limited share of the waste generated in the EU. Shipments of 'notified' waste outside the EU are destined mostly for EFTA countries. According to the Commission's assessment, these are positive signs that the EU Member States have established procedures and taken measures that enable implementation of the main WSR instruments regulating exports of such waste outside the EU (i.e. the ban of the exports to non-OECD countries and the notification procedure applied to exports for OECD countries). Another positive sign is that, in line with the ban introduced by the WSR, there are no exports of waste for disposal outside the EU/EFTA area, at least as far as legal shipments reflected in official statistics are concerned. As for the first objective, on intra-EU shipments, the Commission warns that the assessment of the effectiveness of the WSR on meeting the second objective must also take into account illegal shipments of waste (including 'notified' waste) outside the EU.

Additional effectiveness-related challenges concern the stringency of national monitoring and controls on exports of 'green-listed' waste, such as, for example, plastic waste, as compared to 'notified' waste. More specifically, the Commission notes that, even though the WSR provisions on inspections and controls of 'green-listed' waste were strengthened by the 2014 revision of the regulation, its practical implementation shows that it is not clear in all cases whether (and if so, how) operators and competent authorities ensure that exported 'green-listed' waste is treated in an environmentally sound manner in the importing country. In this respect, the Commission sees the decision of China (and other countries) to ban imports of plastic waste as the result of 'growing concerns on the environmental and social impacts of these trade flows on their territories and in their marine environment'.

The failure of exporters to monitor and control exports of 'green-listed' waste outside the EU is an issue because it could provoke adverse environmental impact in the importing countries. More specifically, the Commission evaluation refers to the findings of a 2015 study showing that around 60 % of all the plastics in global waters originates (not least because of mismanagement of the waste) in five Asian countries importing plastic waste from the EU. This example raises doubts as to whether implementation of the WSR is effective in achieving its second objective on shipment outside the EU of 'green-listed' waste and, more specifically, whether such waste is being exported to destination countries where it can be treated in accordance with human health and environmental protection standards that are broadly equivalent to standards established in EU legislation, as required by the WSR. The Commission finds therefore that, as at the beginning of 2020, progress is needed on the implementation of the WSR provisions relating to the export of
'green-listed' waste outside the EU to ensure that the second objective is fully met. The Commission also notes that, following amendments to certain annexes to the Basel Convention agreed in 2019, as from the beginning of 2021, some plastic waste currently classified as 'green-listed' (under the WSR) will be reclassified as 'notified' waste. For the EU, this change de facto means a ban on exports of 'notified' plastic waste to non-OECD countries. However, the Commission warns that the effectiveness of the monitoring of shipments of plastic waste still be considered 'green-listed' after 2021 (i.e. that will not be subject to the 'notification' procedure), and the monitoring of shipments of all other 'green-listed' waste, will remain an issue deserving of 'full consideration'.

The third objective of the WSR is to ensure that the Basel Convention provisions and the OECD Decision are implemented in EU law. The Commission is positive that the WSR has been successful in this respect, even going beyond. In particular, the Commission refers to the opinions of both private and public stakeholders who consider that the Basel Convention alone does not provide enough control and that without the level of detail of the WSR there would be more risk of waste flowing to the cheapest destinations, going against the EU's environmental protection targets.

In the context of the fourth objective of the WSR, which is to enable uniform application of the regulation in all Member States, the Commission notes four main issues constituting a problem in terms of effective implementation of the regulation. The first relates to the fact that Member States have different practices for classifying waste (e.g. determining whether something is waste or not, and whether the waste is hazardous or not). The second problematic issue relates to general differences in the interpretation of the regulation and, hence, its differing application despite existing guidance documents. The third problematic aspect relates to differing interpretations by Member States of their reporting obligations on waste types and low quality reporting practices. The fourth aspect of concern under this objective relates to the fact that Member States do not inspect waste shipments and do not enforce compliance in a uniform way.

As regards the WSR's fifth objective, which requires that waste shipment systems and procedures be kept up to date with technical progress, the Commission notes that the regulation has been updated to meet this requirement. However, the Commission also notes that most business stakeholders find that the WSR has not been sufficiently adapted to technical and scientific progress. In particular, this stakeholder category considers that the WSR controls are too stringent and administrative procedures too lengthy, which makes it difficult for companies to switch to circular economy business models. Furthermore, all stakeholder categories consulted by the Commission consider that the notification system established by the WSR is not adapted to technical progress. In addition, the administrative aspects of the implementation of the regulation are still largely paper-based, making a harmonised EU system for electronic data interchange for the transmission of documents and information relating to waste shipments a necessity.

In the context of effectiveness, the Commission also considers implementation of Commission Regulation (EC) No 1418/2007 on the export of certain non-hazardous waste to non-EU and non-OECD countries. More specifically, while the implementation of this Commission regulation has contributed to the achievement of the health and environmental protection objectives of the WSR, its slow and resource-intensive update (as regards the acceptance or non-acceptance regimes applied by the importing countries) could have a negative effect on the international trade in waste to the detriment of EU-based operators.

The Commission notes the difficulty in providing a comprehensive quantitative evaluation of the costs and benefits stemming from the implementation of the WSR. This is so because little or no data is available for such a precise assessment. However, the report does come up with a few conclusions on efficiency that are worth noting. The Commission has identified costs and benefits generated at the level of public authorities, companies and society. More specifically, the costs stemming from the implementation of the regulation can typically be attributed to businesses and Member States' authorities, while the benefits are much broader than the costs and difficult to attribute to the implementation of the regulation; they are generated mainly at the level of society.
As regards coherence, the Commission is positive that there are no major problems as regards internal coherence, i.e. between the provisions of the WSR itself, between the WSR and Commission Regulation 1418/2007, or between Member States’ strategies and legislation and the WSR. The evaluation report notes that there are synergies between the WSR and EU legislation on waste such as the Waste Framework Directive (WFD) and the directives on specific waste streams such as end of life vehicles (ELV), batteries and accumulators and waste batteries and accumulators, packaging and packaging waste and waste electrical and electronic equipment, all of which contain provisions on transboundary movements of these waste streams that refer to the WSR. In particular, since the adoption of the WSR, waste shipments of these streams have increased, especially inside the EU. However, there are also issues of concern. For example, contrary to what is required by the waste hierarchy, the WSR does not clearly stimulate waste recycling (and preparation for re-use) over waste recovery, and hence, it is not fully aligned with the circular economy ambition of the EU. Furthermore, there are inconsistencies between the provisions of the WSR on shipments of waste outside the EU and the methodology that other pieces of EU waste legislation use to calculate recycling rates, and the relevant WSR provisions are therefore not sufficiently prescriptive to ensure that recycling in the importing non-EU countries is taking place in a proper manner. In addition, based on the opinions of a significant number of the stakeholders consulted, it appears that there are inconsistencies between the WSR and both the WFD and WEEE Directive, which relate mainly to differences in the definitions of waste and differences between hazardous and non-hazardous waste. The Commission also notes that illegal shipments of waste streams such as ELV, WEEE and waste batteries still occur also as a result of coherence-related weaknesses in both the WSR and the relevant waste stream directives.

As regards external coherence, and in particular the WSR’s coherence with commitments taken by the EU at international level, the Commission notes that the regulation is generally coherent with the Basel Convention and the OECD Decision. However, according to the Commission, there are differences between the WSR and these two international legal acts, including differences in the waste classification systems (as compared with both the Basel Convention and the OECD Decision), in the requirements for ‘green-listed’ waste (as compared with the Basel Convention) and in the time allowed for competent authorities to respond to notifications (as compared with the Basel Convention). As regards the coherence between the WSR and other EU non-waste policies, the Commission’s assessment is that the WSR does not fully support the creation and promotion of an internal market for secondary raw materials. More specifically, the Commission finds two main reasons for this – first, the fact that the WSR was not explicitly designed to support the achievement of this objective, and, second, the differing interpretations of certain provisions of the regulation by Member States. In line with the views of certain stakeholders, namely the competent authorities, the Commission also notes incoherencies between the WSR and the EU customs legislation. In particular, there are differences in the classification codes used in each of the pieces of EU legislation concerned. In practice, this leads to situations where one and the same object (and/or material) is classified as waste by some countries and as a product (i.e. non-waste) by others. The ultimate result of this incoherence issue is that businesses need to pay custom fees for exporting what is a ‘product’ in the importing country, whereas it was classified as waste in the exporting country.

The Commission considers that the adoption of the WSR at EU level and its implementation by Member States is beneficial as compared with a situation where Member States applied their own rules or followed the regimes established by documents adopted at international level (such as the Basel Convention and the OECD Decision). It thus confirms the EU added value of the regulation, despite the implementation challenges identified above. More specifically, according to the views of the competent authorities and businesses consulted, transboundary waste shipments would be more difficult were the WSR not in place. There would be fewer opportunities for the treatment of waste in another EU Member State and probably fewer opportunities for recycling waste, because not all Member States have adequate waste treatment facilities, especially for recycling the various types of waste streams. Some of the consequences that stakeholders (across all categories) believe would follow were this policy action no longer provided at EU level include: even more illegal
shipments of waste (including outside the EU); a higher risk of environmental harm; less trade in waste for recycling, which would have adverse effects on the market for secondary commodities owing to the wide variety of national regulatory regimes, and, ultimately, negative impacts on the transition towards a circular economy; the EU would not be compliant with relevant international commitments such as for example under the Basel Convention because it would not implement the provisions of the Convention to which the EU is a party, etc.

Stakeholder consultations

The previous section referred to several stakeholder opinions on implementation of the WSR. These were collected by the Commission to inform its ex-post evaluation on implementation of the WSR. In particular, stakeholders were first invited to comment on the Commission roadmap (which launched the ex-post evaluation back in 2017), and then again throughout 2018 as part of the data collection programme underpinning the ex-post evaluation itself. The latter stakeholder consultation programme included a public consultation (addressed to organisations and individuals alike) as well as a set of interviews, surveys and workshops targeting the professional waste shipment community, including national competent authorities, businesses, and NGOs. The various consultation activities, relevant methodological aspects and some content-related results are presented in Annex II to the Commission’s SWD on the ex-post evaluation; Annex II also presents the main findings of a topical opinion adopted by the REFIT platform.

It is of note that in the context of the revision of the WSR, the Commission consulted stakeholders again – first between March and April 2020 when the Commission gathered stakeholders’ views on its inception impact assessment roadmap and then between May and July 2020, in the context of the ex-ante impact assessment of policy options to accompany the Commission proposal.

European Parliament position / MEPs' questions / citizens' enquiries and petitions

Resolutions of the European Parliament

In the current legislative term (2019-2024), the European Parliament has addressed waste shipments specifically in the context of a non-legislative resolution on the new circular economy action plan adopted in February 2021. In particular, the Parliament expressed support for the Commission’s intention to revise the WSR so as to ensure transparency and traceability of intra-EU trade in waste; to halt the export to third countries of waste that causes environmental or human health damage; and to tackle unlawful behaviour more effectively to ensure that all waste is treated in accordance with circular economy principles. The Parliament also supports the Commission in implementing the recent amendments to the Basel Convention relevant to plastic waste and Commission action in full respect of the EU obligations under the Convention. In terms of required actions, the Parliament asks the Commission to focus on the following: creating financial incentives to establish a real single market and a level playing field for high-quality secondary raw materials; facilitating procedures to promote recycling capacities and infrastructure to treat waste within the EU; implementing the electronic data interchange (EDI) system to monitor waste flows better; and implementing revision of both the WSR and the WFD. In addition, the Parliament calls on the Commission to pay attention to the rules on transboundary movements of waste for recovery between EU Member States and to consider: adapting them in order to increase their clarity and comprehensibility; removing administrative barriers, while maintaining the effectiveness of legislation in protecting human health and the environment; and harmonising their implementation across EU Member States, including through the establishment of a single EU electronic system for recording waste shipments.
Selected written questions

Since the beginning of the current (2019-2024) legislative term, Members of the European Parliament have submitted eight written questions referring directly to the implementation of the WSR or generally related to shipment of waste. Those questions (and relevant Commission answers) relating most closely to the scope of the WSR, its implementation and expected revision are presented below.

Written question on ‘export of plastic for recycling’ by Roberta Metsola (EPP, Malta), 12 July 2019

This question was asked in the following context, as presented by its author: in 2017, China’s decision to ban the import of low-quality plastic for recycling prompted countries looking to recycle their waste overseas to seek out alternatives in countries in south-east Asia with less stringent rules. Furthermore, Vietnam and Thailand had moved to block all imported plastic waste in the coming few years, with other countries also debating full bans. Half of the plastic collected for recycling in the EU was exported to be treated in third countries. The Member recalled that in its answer to a previous written question, the Commission had stated that ‘EU legislation only allows the export of non-hazardous waste for recycling in third countries if the facilities that receive the waste are operated in accordance with human health and environmental protection standards that are broadly equivalent to those established in the European Union’. Against this backdrop, the specific questions of the Member were: i) bearing in mind that the obligation rests with the Member States to implement and enforce Article 49 of the WSR, did the Commission conduct any checks on Member States to ensure that they comply with this EU legislation, and ii) did the Commission plan to address this issue in future agreements with non-EU countries in the medium to long term.

Answer given by Carmenu Vella on behalf of the European Commission, 7 October 2019

In its answer, the Commission noted that Article 49 of the WSR and Article 11a(8) of the WFD indeed allowed the export of non-hazardous waste for recycling in third countries only if the facilities that received the waste were operated in accordance with human health and environmental protection standards broadly equivalent to those established in the European Union. The obligation to implement and enforce these provisions lay with the Member States. The Commission also recalled that as of mid-2020, data on waste shipments reported by Member States must be accompanied by a report on the measures they have taken to ensure that shipments of waste comply with the WSR, including the requirement that the treatment of waste outside the EU has taken place in due conditions. The Commission noted that it was collecting the views and experiences of Member States in implementing the relevant legal provisions and that the findings would serve as the basis for considering further work needed to assist Member States in their implementation and enforcement. In addition, the Commission noted that, as of 2021, new rules on trade in some plastic waste would apply (as explained above). In the Commission's view, their practical implementation would result in a ban on the export of plastic waste from the EU to non-OECD countries, unless the waste in question was destined for recycling and composed of easily recyclable plastic materials.

Written question on ‘Monitoring and preventing the illegal trafficking of toxic waste between the EU and Tunisia’ by Piernicola Pedicini, Rosa D’Amato, Ignazio Corrao (Greens/EFA, Italy) and supported by Eleonora Evi (Greens/EFA, Italy), 13 November 2020

The question was asked in the following context, as presented by its authors: in 2020, Tunisia, which back in 1995 had signed an association agreement with the EU, had been receiving waste trafficked illegally by an Italian company active in Calabria. So far, 282 containers of waste had been sent that, although declared as plastics, actually contained toxic Y46 waste. According to the authors, the waste originated in an area known as the 'land of pyres' that had been devastated by eco-mafias and was one of the worst polluted and most hazardous parts of Italy. The cross-border movement of hazardous waste and its disposal are governed by both the Basel Convention, to which the EU is party, and the Bamako Convention, an African Union treaty. The conventions call on signatory parties to ensure that hazardous waste is managed and disposed of in an environmentally sound
manner. The EU transposed the Basel Convention by means of the WSR, which banned the export of toxic or hazardous waste to countries in the global south.\textsuperscript{16} Given the seriousness of the matter, the specific questions to the Commission were: i) what instruments could be used to check that Member States were actually preventing the illegal trafficking of waste in areas overrun by criminal groups, and ii) did the Commission plan to incorporate tools to tackle illegal imports of toxic waste into the EU-Tunisia association agreement.

Answer given by Virginijus Sinkevičius on behalf of the European Commission, 27 January 2021

In its answer, the Commissioner noted that the WSR contained detailed provisions requiring Member States to perform inspections and controls of shipment of waste, and penalise infringements of the EU rules on the export of waste outside the EU. Even though the application of these rules fell within the responsibility of the Member States, the Commission stated that many initiatives against waste trafficking had been taken at EU level, as is was one of the priorities of the EU’s overall policy on organised crime.\textsuperscript{17} More specifically, the Commission was working on this with national enforcement agencies, IMPEL, Europol, the United Nations Office on Drugs and Crime and the Basel Convention. Furthermore, the European Anti-Fraud Office (OLAF) had launched several operations against illicit exports of waste from Member States to third countries. The EU was also providing financial support for operational projects targeting waste trafficking.\textsuperscript{18} The Commission was in the process of reviewing the WSR in line with the commitment taken in the new circular economy action plan that the EU should not export its waste problems to third countries, and would look into ways to reinforce the EU response to waste trafficking at the same time. The Commission also intended to review the directive on the protection of the environment through criminal law. Finally, on relations with Tunisia, the Commission noted that bilateral negotiations had begun in 2015 on a deep and comprehensive free trade area (DCFTA) and that they were ongoing. The Commission intended to include a trade and sustainable development chapter in this DCFTA that could cover, among others, cooperation on addressing illegal trade in waste.

Citizens’ enquiries and petitions

EU waste policies are often the subject of citizens’ enquiries and petitions addressed to the European Parliament. Since 2019, two enquiries directly related to waste shipments have been submitted. Both enquiries concern exports of waste from the EU to third countries. In addition, since 2019, two petitions relevant to the implementation of the WSR have been submitted by EU citizens and addressed by the Committee on Petitions of the European Parliament. Furthermore, in February 2021, the European Parliament Committees on the Environment, Public Health and Food Safety and on Petitions held a joint hearing on plastics and waste management in the circular economy. In February 2021, the European Parliament’s Policy Department published a study ahead of the hearing to support the discussion. As regards the WSR and in the context of China’s ban of plastic waste imports, the study highlighted the urgent need for the EU to restructure existing recycling systems and policies on the production of plastic and its disposal.

Council of the European Union

In December 2020, the Council adopted conclusions on ‘Making the recovery circular and green’, which contain the Council’s position on the new circular economy action plan. The document addresses shipment of waste among other things. In particular, the Council welcomes the upcoming revision of the EU Waste Shipment Regulation. Its conclusions underline the following aspects as a priority in the context of the WSR revision: to further regulate shipments of waste, notably exports of waste to third countries that could be harmful to the environment and human health in the countries of destination; to ensure effective controls of shipments and to strengthen enforcement against illegal shipments of waste, while at the same time using digital solutions and electronic data interchange for making procedures more effective, without affecting the level of environmental protection; and to ensure smoother functioning of waste shipments within the EU, which is crucial for building up a strong single market for secondary raw materials based on high environmental
standards and transparency. Furthermore, the Council supports ambitious international measures in all policy areas relevant to accelerating the global transition to a circular economy, including in the fight against illegal shipments of waste in multilateral environmental agreements such as the Basel Convention.

European Court of Auditors

In 2020, the European Court of Auditors published a review on EU action tackling the issue of plastic waste, looking in part at waste shipment, and in particular at the shipment of plastic packaging waste. The EU auditors note that Member States are highly reliant on recycling outside the EU to manage their plastic packaging waste and reach the plastic packaging recycling targets. However, in the context of the new stricter rules adopted in the framework of the Basel Convention and applicable as of January 2021, the auditors note that the EU Member States will have to increase and improve their recycling capacity in order to cover the quantities of plastic packaging waste that will no longer be suitable for exporting, while at the same time maintaining the current plastic packaging waste recycling rate and increasing it to meet the new targets (i.e. 50% by 2025 and 55% by 2030 as currently required by the Packaging and Packaging Waste Directive). Pressure on recycling capacities combined with restrictions on exports are, in the auditors’ view, risk factors leading to an increase in waste crime and illegal shipping, compounded by weaknesses in the current EU legal framework for the protection of the environment through criminal law.

Furthermore, based on EEA assessments, the ECA warns that treatment outside EU countries often causes higher environmental pressure in terms of CO₂ emissions, pollution and plastic leakage into the environment, when compared with treatment or recycling performed in the EU and that verification of compliance with EU plastic waste treatment standards in third countries is often insufficient to ensure EU standards are upheld. According to the auditors, the competent authorities in the EU Member States have no control powers in non-EU countries. Furthermore, extended producer responsibility organisations that are in charge of plastic packaging waste management carry out on-the-spot checks only rarely. The ECA concludes, therefore, that this translates into low assurance relating to recycling outside the EU and a significant risk of illegal shipment activities.

The ECA review also covers the issue of the trafficking of plastic packaging waste and its environmental crime aspect, which is relevant to the implementation of the WSR. In particular, referring to a 2019 report prepared by the Secretariat of the Council of the EU, the auditors note that the current detection and prosecution rate for waste-related crimes is low (much lower than for other types of crime) and sanctions are not proportional and dissuasive (in some cases sanctions are lower than the profits generated by the illegal activity). The ECA underlines that shipment chains are complex, which makes the prosecution of those involved and the proof that they knew about the illegal disposal of the waste difficult. More specifically, the waste can change holders many times across several countries before eventually being disposed of illegally, while the waste flow initiator receives documents attesting that the plastic packaging waste is to be recycled.

ENDNOTES

1. See the definition of objectives provided by the Commission in its ex-post evaluation on the implementation of the WSR, SWD (2020) 26 final.
2. In 2019, the CJEU delivered two such preliminary rulings. See the details in the Report from the Commission 2019 – Commission SWD – monitoring application of EU policy areas – part 2.
3. Although numerous, these import restrictions concern only a small number of countries.
5. However, the Commission also warns that preference is still given to recovery operations for shipped notified waste (i.e. incineration with energy recovery) rather than to recycling, which, following the waste management hierarchy, should be the preferred waste treatment operation.
7. SWD (2020) 26 final, p. 37, which refers to a Europol report.
8. This estimate includes all types of violations, including administrative mistakes.
In January 2020, when the Commission SWD (2020) 26 final was published, the Commission notes that the development of such a system is underway. At the time of writing, the system is not yet available. This is also evident from the report 'Contributions to the further development of the EC Waste Shipment Regulation' published by the German Environment Agency in January 2021. See in particular p. 59 of the document.

This is the number of results received when a search is conducted on the European Parliament database of written questions for the 2019-2024 parliamentary term using the following key words of direct relevance to the scope of this briefing: 'waste shipment', 'shipment of waste', 'waste shipment regulation', 'Regulation (EC) No 1013/2006', 'waste trafficking' and 'trafficking of waste' in both the title and the text of the written question as per 11 March 2021. Following the 'subject' classification these written questions concern: increased involvement of international criminal networks in waste reprocessing; insufficient controls in Europe of shipments and discharges of hazardous waste; monitoring and preventing the illegal trafficking of toxic waste between the EU and Tunisia; the regulation itself; export of plastic for recycling; illegal trafficking of waste; exchange of waste with non-OECD countries and in particular a change of code B3010 to B3011; and blast furnace sludge sent from Italy to Cypriot plants with less stringent treatment standards than in Italy.

Written question from 16 April 2019 on 'Illegal and uncontrolled waste dumps in Asian countries' asked by Pascal Arimont (EPP, France) answered by the Commission on 4 July 2019.

The Commission refers specifically to Article 37(5) of the WFD.

Following the information provided in a footnote by the authors, this is a 'Statement by Majdi Karbai, Member [of the Parliament] of the Tunisian Republic'.

The text of the written question refers to Council Regulation (EEC) No 259/93. It is of note that this regulation has been repealed by Regulation 1013/2006 on shipments of waste, which is the one currently in force.

The Commission refers to Council conclusions from 18 May 2017 on setting the EU’s priorities for the fight against organised and serious international crime between 2018 and 2021.

The examples of projects referred to by the Commission were found under the following links: https://www.wasteforceproject.eu/, http://www.lifesmartwaste.com/, https://opfawaste-project.eu/ and https://www.sweap.eu/.

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