

Illegal treatment and management of waste

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EU WASTE LEGISLATION AND COMBATTING WASTE CRIME
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Why do you need to know about EU waste legislation?

- **You are super-important** for enforcement of EU Waste Law!
- To **understand the scope** of the EU requirements and the core principles behind them.
- To **apply the correct legislation** (legal regime)
- To interpret the national law

It is not necessary for the parties to expressly plead before the national courts which individual provisions of national law those courts should disapply or interpret in accordance with EU law (Opinion in Case C-254/19, Friends of the Irish Environment, para. 67, 69).

- **Identification of certain material** = **a crucial question** for planning and permitting procedures (EIA, SEA, IPPC), liability, environmental protection, tax law, state aid/subsidies, public procurement, intellectual property...



Content

- ELVs and WEEEs
- Landfill Directive
- CJEU case law
- (Illegal waste shipment, Ship recycling regulation - tomorrow)



EU waste legislation: system

General framework

- Directive 2008/98/EC on waste (WFD)
- Regulation (EC) 1013/2006 on shipments of waste (WSR)
- (Ship Recycling Regulation (EU) 1257/2013) – specific waste stream?

Waste management operations

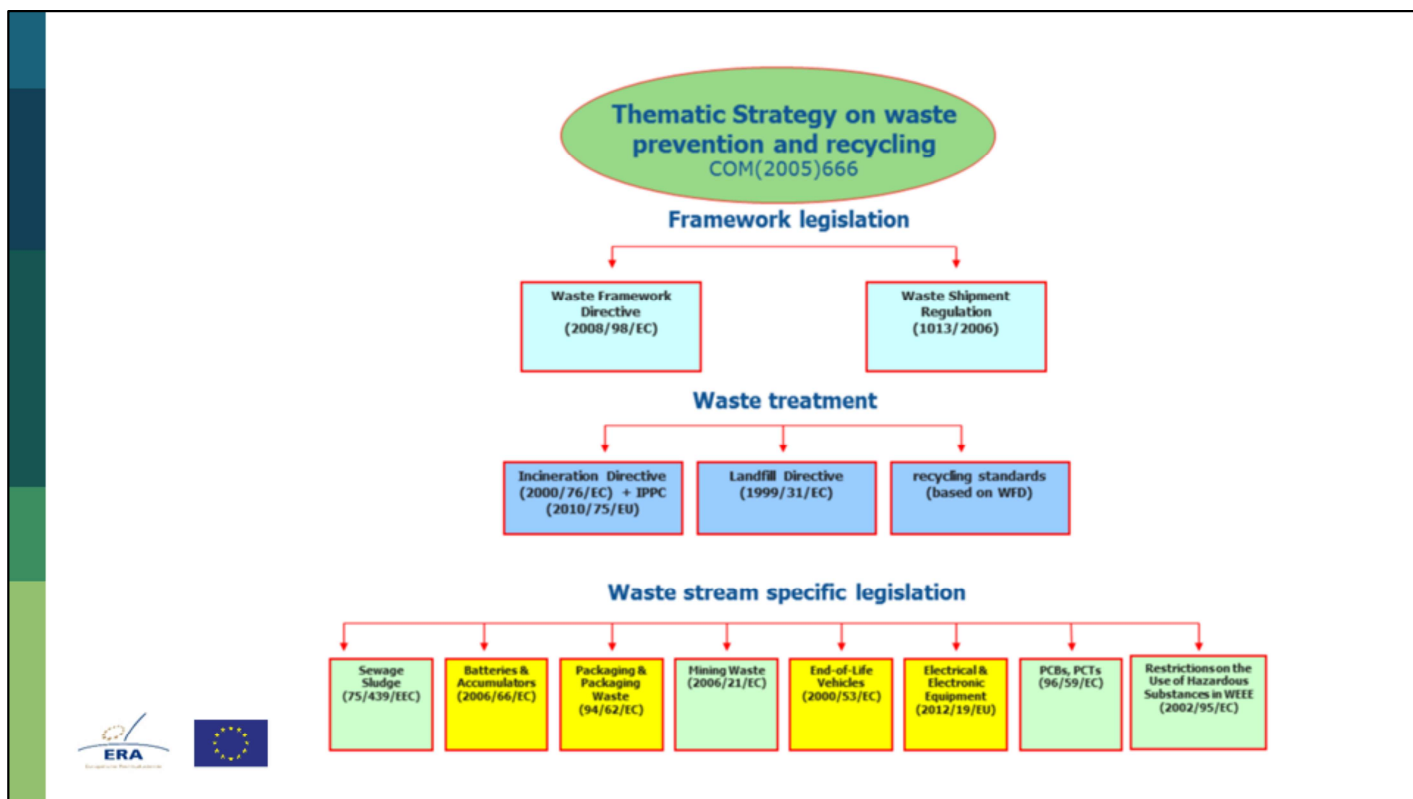
- Directive 99/31/EC on the landfill of waste
- Directive 2010/75/EU on industrial emissions: for waste incineration

Specific waste streams (e.g.)

- Directive 94/62/EC on packaging and packaging waste
- Directive 2000/53/EC on end-of-life vehicles (ELV)
- Directive 2006/66/EC on batteries and accumulators
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)
- Directive 2019/904/EU on the reduction of the impact of certain plastic products



This slide lists the key EU waste legislation



Thematic strategy on the prevention and recycling of waste, COM(2005) 666 final - sets as long-term goal for the EU to become a recycling society that seeks to avoid waste and uses waste as a resource: -It set 7 actions how to reach these objectives, for example, step up enforcement, modernise waste legislation, develop recycling standards and improve prevention. -The Strategy played an important role in guiding policy development and has contributed to significant improvement in waste management.

the Waste Framework Directive and the Landfill Directive also the Directives marked in yellow provide for specific collection, recycling and recovery targets.

ENFORCEMENT

- Environmental Crime – Already covered
- Art. 36 (2) WFD:
- *Members States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.*

Enforcement of the WFD > ELV, WEEE, Landfill?

- Art. 13 WFD: waste management is to be carried out without endangering human health and without harming the environment
- Art. 15 WFD: original holder of waste is responsible that, inter alia, Art. 13 is respected
- ELV, WEEE and Landfill specify these general obligations > breaches of specific obligations will often also be breaches of the general obligations
- Art. 22 WEEE also requires penalties



This provision underlines the general obligations of the MS with regard to the penalisation of breaches of waste law.

Even if other directives do not always have similar clauses, breaches of them will often fall within the scope of the WFD clause.

ENFORCEMENT

- Environmental Crime – Already covered
- Art. 36 (2) WFD:

Members States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

Art. 36 (2) WFD expresses a general principle of EU law: According to the principle of sincere cooperation (Article 4(3) TEU), while the choice of penalties applicable to infringements of EU law remains within their discretion, MS must ensure in particular that they are effective, proportionate and dissuasive (eg *Hansen*, C-326/88, para 17, *Scialdone*, C-574/15, para 46)



Moreover, general EU law also requires effective penalties for the infringement of EU obligations.

ENFORCEMENT

- Where sanctions implement EU law they must respect the fundamental principles of EU, in particular the Charter (cf. Åkerberg Fransson (C-617/10, para 27), Berlioz Investment Fund (C-682/15, paras 39 - 42)
- Effective, proportionate and dissuasive >> Proportionality >> sufficient, but not excessive (Art. 49 (3) Charter)
- *Nulla poena sine lege* – Legality - no retroactive application, certainty + lex mitior –the lesser penalty (Art. 49 (1) Charter)
- *Presumption of Innocence* (Art. 48 (1) Charter)
- *Rights of the Defence* (Art. 48 (2) Charter)
- *Ne bis in idem* (Art. 50 Charter)
- *Nulla poena sine culpa* (intention/negligence)? Is strict criminal liability allowed, can it be required?



Moreover, general EU law also requires effective penalties for the infringement of EU obligations. Art. 48 – 50 of the Charter are particularly relevant.

CJEU ON PROPORTIONALITY

- C-69/15 (*Nutriver*) - administrative fines imposed for infringements of the rules on shipments of waste
- CJEU:
the national court is required, in the context of the review of the proportionality of such penalty, to take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.

...Such an infringement may, in principle, be subject to an equivalent penalty to that provided for in respect of infringement of the obligation to complete that document. (...) if the circumstances of the infringement make it possible to find that they involve equally serious infringements in the light of the risks they entail for protection of the environment and human health, which it is for the national court to ascertain

Similar: C-487/14 (*Total Waste Recycling*) - Point of entry different from that specified in the notification and in the prior consent



The case-law of the CJEU on proportionality implies that the national court is required, in the context of the review of the proportionality of such penalty, to take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.

CJEU ON EFFECTIVENESS

- C-129/16 (*Túrkevei Tejtermelő Kft.*) - whether the owner of a leased-out plot of land may be penalised because waste was illegally incinerated there

CJEU:

63 In those circumstances, the answer to the first question is that (...) **do not preclude national legislation**, (...) which identifies another category of persons who, in addition to those using the land on which unlawful pollution was produced, share joint and several liability for the environmental damage (...) **provided that such legislation complies with the general principles of EU law**, all relevant provisions of the EU and FEU Treaties and of the acts of secondary law of the European Union.

66 (...) **provided that the legislation laying down such a fine is, in accordance with the principle of proportionality, appropriate for the purposes of contributing to the attainment of the objective of more stringent protection**, which is the purpose of the legislation prescribing joint liability, and that the methods for determining the amount of the fine do not go beyond what is necessary to attain that objective.

67 In the present case, **it is for the referring court to establish whether the national legislation at issue** in the main proceedings, notably Article 34(1) of Government Decree 306/2010, **fulfils these conditions**.



The Member States enjoy discretion to identify another category of persons who, in addition to those using the land on which unlawful pollution was produced, share joint and several liability for the environmental damage (...) provided that such legislation complies with the general principles of EU law

Waste Stream Directives

- Directive 94/62/EC on packaging and packaging waste
- Directive 2000/53/EC on end-of-life vehicles (ELV)
- Directive 2006/66/EC on batteries and accumulators
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

+ plastic policy: plastic carrier bags (2015/720), plastic policy (2019/904)

- An EU-wide ban of single-use plastic cotton buds, straws, plates, cutlery, beverage stirrers, balloon sticks, oxo-degradable plastics, and expanded polystyrene food containers, beverage containers and beverage cups by 2021.
- The EU's Plastics Strategy (2018) refers to the automotive sector as a significant source of plastic waste that could be recycled and to its good potential for uptake of recycled content and includes under its actions the assessment of regulatory or economic incentives for the uptake, in particular in the context of the evaluation/review of the ELV Directive - **RELATIONSHIP**



Directive 2000/53/EC on end-of-life vehicles (ELV)

- Owners of ELVs delivered for waste treatment must receive a certificate of destruction. This is necessary to deregister the vehicle.
- **Manufacturers, importers and distributors** must provide systems to collect ELVs and, where technically feasible, used parts from repaired passenger cars.
- pushes producers to manufacture new vehicles without hazardous substances (in particular lead, mercury, cadmium and hexavalent chromium),
- specific exemptions in Annex II (to regular reviews according to technical and scientific progress).
- clear **quantified targets for reuse, recycling and recovery** of the ELVs and their components.



Directive 94/62/EC on packaging and packaging waste

- covers all packaging placed on the European market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.
- Requires EU countries **to take measures**, such as national programmes, incentives through extended producer responsibility schemes and other economic instruments, to prevent the generation of packaging waste and to minimise the environmental impact of packaging.

recycling targets for various materials



ELV

It sets out measures to prevent and limit waste from end-of-life vehicles (ELVs) and their components by ensuring their reuse, recycling and recovery. It also aims to improve the environmental performance of all economic operators involved in the life-cycle of the vehicles.

Directive 2000/53/EC on end-of-life vehicles (ELV)

Preamble:

- End-of live vehicles represent 12 million vehicles per year in the EU
- Between 8 and 9 million tonnes of waste.
- It means an important impact on the environment

Definitions (Article 2)

Vehicle :

- Passenger cars (max. 8 people)
- Utilities (max. 3.5 t)

End-of life vehicles

- Vehicle which is waste within the meaning of the general Directive
- ELVs = hazardous waste (before dismantling)

Scope (Article 3)

- Vehicles and end-of life vehicles
- Components and materials
- Incl. removed used parts (repair)



Preamble

End-of live vehicles represent :

12 million vehicles per year in the EU

Between 8 and 9 million tonnes of waste.

It means an important impact on the environment.

Directive 2000/53/EC was adopted:

to improve the environment protection, of course,

but also to ensure coherence between national approaches particularly with a view to the design of vehicles.

Definitions (Article 2)

Article 2 gives us many definitions. The most important concern the definitions of “vehicle” and “end-of life vehicle”.

“**vehicle**” mainly means passenger car with maximum 8 people but also utilities with a maximum weight of 3.5 tonnes.

“**end-of life vehicle**”: vehicle which is waste within the meaning of the general Directive 2008/98/EC on waste. You know what waste is according to the directive and the case-law from the Court of Justice of the European Union. So, a vehicle could become an end-of life vehicle and consequently waste in itself or by a decision made by the owner. According to Recital 10 of the Directive, vintage vehicles, historic vehicles and vehicles for collectors or museums are excluded from the scope of the Directive.

Don't forget that an ELV is a hazardous waste before its dismantling.

Scope (Article 3)

The Directive covers vehicles (because some provisions concern new vehicles) and end-of-life vehicles including their components and materials. But the Directive also covers waste used parts removed when a car is repaired.

Directive 2000/53/EC on end-of-life vehicles (ELV)

- Member States shall take the necessary measures to ensure that all end-of-life vehicles are stored (even temporarily) and treated in accordance with the waste hierarchy and the general requirements laid down in Article 4 of Directive 2008/98/EC
- Vehicle and equipment manufacturers must factor in the dismantling, reuse and recovery of the vehicles when designing and producing their products. They have to ensure that new vehicles are: reusable and/or recyclable to a minimum of 85% by weight per vehicle/ reusable and/or recoverable to a minimum of 95% by weight per vehicle.
- They cannot use hazardous substances such as lead, mercury, cadmium and hexavalent chromium.
- Manufacturers, importers and distributors must provide systems to collect ELVs and, where technically feasible, used parts from repaired passenger cars.
- Owners of ELVs delivered for waste treatment must receive a certificate of destruction. This is necessary to deregister the vehicle.
- Manufacturers must meet all, or a significant part, of the costs involved in the delivery of an ELV to a waste treatment facility. For a vehicle owner, they should incur no expenses when delivering an ELV to an authorised waste treatment facility, except in the rare cases where the engine is missing or the ELV is full of waste.
- Waste treatment facilities must apply for a permit or register with the competent authorities of the EU country where they are located.
- ELVs are first stripped before further treatment takes place. Hazardous substances and components are removed and separated. Attention is given to the potential reuse, recovery or recycling of the waste.

+ ELVs often classified as hazardous waste – obligation?



Development

Amending Directive (EU) 2018/849

- implementing acts (detailed rules necessary to control EU countries' compliance)
- delegated acts (exemptions, coding standards for components to reuse and recovery, requirements for the certificates of destruction and treatment of ELVs)



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End of life vehicles: Legal aspects, national practices and recommendations for future successful approach

End of life vehicles: Legal aspects, national practices and recommendations for future successful approach

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IS IT an ELV? IS IT WASTE? INSPECTIONS? OWNERSHIP?



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The absence of a clear risk to the environment from a material, does not prove that it is not a waste. In *Palin Granit*, the ECJ considered that even if it was proven that the material in question does not pose any real risk to human health and environment; this was not a relevant criterion in order to consider that a material was not waste. This is logical – inert industrial waste dumped in an inappropriate area may pose no risk to human health or to the

Directive 2006/66/EC on batteries and accumulators

- With some exceptions, it applies to all batteries and accumulators, no matter their chemical nature, size or design.
- prohibits the marketing of batteries containing some hazardous substances,
- defines measures to establish collecting schemes
- fixes targets for collection and recycling activities
- sets out provisions on labelling



Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

- fastest growing waste stream, separate collection
- obligation to minimise the disposal of WEEE in unsorted municipal waste;
- private households and distributors can return WEEE free of charge;
- bans the disposal of WEEE collected separately that has not been properly treated;



minimum annual WEEE collection rate – min. 45%

Collecting scheme

Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

- 9 million tonnes in 2005
- 12,3 million tonnes by 2020

Definitions (Art. 3)

EEE: dependent on electric currents or electromagnetic fields (needs electricity for its primary function) (max 1000 volts alternating current /1500 volts direct current)

WEEE: EEE (incl. all components) which is waste within the meaning of WFD

Producer:

Manufacturer, importer, seller or reseller who markets EEE

Irrespective of the selling technique (incl. by distance communication)

Established in the EU (except for distance communication)

Making available on the market: any supply of product for distribution, consumption or use, also free of charge

Placing on the market: first making available on a professional basis



Preamble

The problem of waste electrical and electronic equipment (WEEE) is huge.

Quantitatively, it represents in the EU:

9 million tonnes in 2005

Probably 12.3 million tonnes in 2020

Qualitatively, waste of electrical and electronic equipment (WEEE) is a source of negative impact for human health protection and environment protection because its components involve hazardous substances. But components of waste electrical and electronic equipment are valuable resource to recycle.

“Making available on the market”: any supply of product for distribution, consumption or use, also free of charge

“Placing on the market”: first making available on a professional basis.

Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

Scope (Art. 2)

Since 15/8/2018:

all EEE with the exception of specific equipment listed in Art. 2(3) + (4), eg

- specifically designed and installed as part of another type of equipment that is excluded from or does not fall within the scope of this Directive (Art. 2(3)(b))
- filament bulbs (Art. 2(3)(c))
- large-scale stationary industrial tools (Art. 2(4)(b))
- means of transport (Art. 2(4)(d))

C-369/14 (*Sommer Antriebs- und Funktechnik*)

Is a garage-door operating device
in the scope of the Directive EEE?

- A – Yes
- B – No



Interpretation

Globally, Member States have correctly and completely implemented the Directive and its annexes. So in domestic law of the 27 MS, there is no real non-compliance with the Directive WEEE.

But we could/can have some problems in the interpretation of some concepts in the scope of the Directive. An interesting example is given to us by a case submitted to the Court of Justice of the European Union.

CJEU, 16 July 2015, C-369/14, Sommer Antriebs-und Funktechnik GmbH v. Rademacher Geräte-Electronick GmbH

On a request for a preliminary ruling in proceedings between Sommer and Rademacher based on the German law against unfair competition.

Sommer and Rademacher produce and manufacture garage-door operating devices. So they are in competition.

Sommer is registered with the competent authority as a producer of electrical and electronic equipment (EEE). Rademacher is not registered.

Sommer claims that therefore Rademacher is not allowed to place its products on the market. Rademacher disputes this view because, according to the company, garage-door operating devices are not in the scope of the Directive.

What is the solution of the Court of Justice of the European Union?

1. Garage-door operating devices are dependent on electric currents of a voltage rating of approximately 220 to 240 volts. So these devices are likely to constitute electrical and electronic equipment (EEE) within the meaning of the Directive.

2. The second point is to know in which category of Annex I or Annex II garage-door operating devices fall. This kind of equipment is not in the list but the list of Annex II is purely indicative.

For the Court of Justice, this kind of device can be “*electrical and electronic tools (with the exception of large-scale stationary industrial tools)*” within the meaning of Annex I, point 6.

“Tools” is not defined by the Directive. Its usual meaning is “*any article used to carry out particular work or a particular task*”. For the Court, that is the case of garage-door operating device which is an electrical tool.

And clearly, those devices are not large-scale stationary industrial tools.

The last argument presented by Rademacher: its devices do not fulfil an independent function but form part of the components permanently installed in the home automation system of the building concerned. For Rademacher, pursuant to Article 2, § 3, (b), “*the Directive shall not apply to **equipment which is specifically designed and installed as part of an another type of equipment that is excluded from or does not fall within the scope of the Directive which can fulfil its function only if it is a part of that equipment***”.

The CJEU does not accept that interpretation because the objectives of the Directive need to include these kinds of devices. And the Court makes a comparison with lighting equipment and photovoltaic panels which are included in buildings without losing their qualification as electrical and electronic equipment within the meaning of the Directive.

Findings: garage-door operating devices are in the scope of waste electrical and electronic equipment Directive and Rademacher had to be registered as a producer of electrical and electronic equipment (EEE).

Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

C-624/17 (*Tronex*)

- Intended to ship a consignment of electrical or electronic appliances to buyer in Tanzania
- Electric kettles, steam irons, fans and shavers
- Mainly original boxes, some unpacked
- Returned by consumers, product line abandoned, some defective

Waste definition: to discard

- Unopened original packaging?
- Opened original packaging?
- Noted as defective or manifestly defective?
- Without packaging?



Tronex did not comply with the waste shipments regulation, but contested that the shipment was waste. Therefore, the Court was asked whether it was in fact waste.

Return under guarantee cannot be considered discarding because the consumer (or trader) because consumer is reimbursed.

The sale of the shipment does not exclude discarding.

EEE in unopened original packaging should normally not be considered waste, while defective EEE must be considered waste.

Opened products must be verified whether they are still fit for sale and if necessary they must be repaired. Otherwise their reuse is uncertain and discarding must be assumed.

COMMON PRINCIPLES OF ELV and WEEE

Encourage producers to design Veh & EEE to minimise waste, in particular hazardous waste and facilitate

- reuse
- recycling
- recovery
- disposal

Prevention

- Specific measures in the field of the directives
- Limit the use of hazardous substances (lead, cadmium, mercury, hexavalent chromium)
- Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).
- ELVs Directive (Article 4 (2))
- WEEE Directive (Article 4 (1) + Annex III)
- Improve the components, reduce the quantity of waste



We have some **specific measures** in the field of the three directives.

That is obviously the case with the Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).

Article 4 of the ELVs Directive pursues prevention objectives. This article imposes, *i.a.*, that the new vehicles put on the market after 1st July 2003 do not contain lead, cadmium, mercury or hexavalent chromium (used in textile dyes but also as anticorrosion product). There are some exceptions under conditions, listed in Annex II which is regularly amended by the Commission decisions on the basis of technical and scientific progress.

We have exactly the same approach in the waste electrical and electronic equipment (WEEE) Directive. Annex II lists the restricted substances referred to in Article 4.1 and the maximum concentration values tolerated by weight in homogeneous materials. We again find, among other substances, lead, cadmium, mercury and hexavalent chromium. And Annex III lists certain exceptions.

COMMON PRINCIPLES OF ELV and WEEE

Preparing for re-use

ELVs Directive (Article 4)

Design and produce new vehicles facilitating

- Dismantling
- Re-use
- Recovery

Integrate in the new vehicles more recycled material

Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability

ELVs Directive (Article 8) about coding standards and dismantling information and information on components

- Consumer shall dispose of ELV & WEEE separately
- Special operators treat ELV & WEEE
- Operators must be licenced and respect certain obligations with regard to waste treatment
- Collection shall be free of charge for consumer (implies a system to cover the costs, possibly with participation of the producers)



The second objective of waste management policy is the preparing for reuse of the products or of all or a part of their components.

ELVs Directive

Article 4 (1) (b) of the ELVs Directive encourages the design and production of new vehicles which take into full account and facilitate dismantling, reuse and recovery, in particular the recycling.

And Article 4 (1) (c) encourages vehicle manufacturers to integrate quantity of recycled material in vehicles.

In this context, we have to mention Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability. The goal of this Directive is to guarantee the reuse, the recycling and the other forms of recovery of components and materials when the new car will become an ELV.

Article 8 of the ELVs Directive also imposes:

- Coding standards to facilitate the identification of components and materials
- Dismantling information from producers for the treatment facilities
- Appropriate information by manufacturers of components used in vehicles.

Re-use, recycling and recovery

1. Collection

First step: collection of ELVs and WEEE

ELVs Directive (Article 5)

- Obligation of collection of ELVs: all end-of life vehicles must be transferred to authorized treatment facilities
- Facilities must be available
- Free of cost delivery but exceptions
- Certificate of destruction

WEEE Directive

- Separate collection (out of unsorted municipal waste)
- For WEEE from private households :
- Systems allowing final holders and distributors to return them at least free of charge
- Distributors have to accept when supplying a new product that the WEEE of equivalent type can be returned at least free of charge on a one-to-one basis
- Distributors at retail shops (min. 400 m²) have to accept free of charge very small WEEE (max. 25 cm)



1. Collection

The first step, before reuse, recycling or other forms of recovery, is to collect end-of-life vehicles, waste electrical and electronic equipment and packaging waste.

Pursuant to the **ELVs Directive** (Article 5(1)), economic operators have an obligation of setting up system for the collection of ELVs and, if it is technically feasible, waste parts removed when cars are repaired.

It implies that there is an adequate availability within the territory.

The delivery of ELVs to an authorized facility must be without cost for the last holder or owner even if the ELVs has no or a negative market value. Except if the ELV doesn't contain the essential components (in particular the engine or the coachwork) or contains waste which has been added in the ELV.

Concretely, the usual system of trade-in is the following. In a majority of cases, when you buy a new car, the sales company purchases your old car. And the price of your old car is not only related to its objective value; it is also a commercial/incentive gesture from the manufacturer.

You sign a contract with the car company which becomes the new owner of your old car. There are some possibilities:

- the old car becomes a second-hand car;
- it is reused
- the old car is sold for some euro to a demolisher (components and materials have a certain value) and a certificate of destruction is granted.

Case-law : CJEU 15th April 2010, C-64/09, Commission v. France

The European Commission puts forward seven pleas in law about the incompatibility of the French legislation with some articles of the ELV Directive concerning, without being exhaustive:

- The definition of dismantling information,

- The date fixing the prohibition of hazardous substances

- The French system of cancellation of the registration upon presentation of a certificate of destruction

- Some interpretation or the lack of certain precisions

- The system of acceptance of ELV, which is, for us, the main point.

Pursuant to the previous French legislation, it was possible for a demolisher to refuse to accept an ELV for destruction if the manufacturer doesn't bear the cost of the destruction.

If a demolisher had accepted an ELV for destruction without an agreement from the producer of the car, he had to take the cost of the destruction in charge.

For the French Republic, its legislation was in compliance with the ELVs Directive:

- Because the objective of the ELV Directive doesn't impose free-of-charge acceptances; it is just an incentive, only one of a number possible means by which that objective may be attained

- Payment by the owner of an ELV is a punitive measure to penalize the abandonment of ELV.

It is not the Court of Justice's findings.

For the Court, article 5(4) is clear: the delivery of an ELV to an authorized treatment facility must be free of charge and the related costs must be borne by the manufacturer.

But, the Court recognizes that it is possible for a demolisher to refuse to accept an ELV. It supposes, that on the territory there are enough treatment facilities that could accept the delivery.

If a demolisher has accepted an ELV to destroy it, the producer concerned has to bear the cost of destruction.

What about the rate of collection? The rate of collection of ELVs is normally 100%.

The **WEEE Directive** also imposes the collection of WEEE. It is a separate collection, out of unsorted municipal waste. Pursuant to Article 6, disposal of separated WEEE is prohibited before specific treatment described in Article 8

For WEEE from private households, the Directive imposes:

- Systems allowing final holders and distributors to return them at least free of charge

- Distributors have to accept when supplying a new product that the WEEE of equivalent type can be returned at least free of charge on a one-to-one basis (I buy a new wash machine; the seller has to accept my old machine free of charge)

- Distributors at retail shops (min. 400 m²) have to accept free of charge very

small WEEE (max. 25 cm)

The Directive imposes the transport of WEEE in optimal conditions for reuse, recycling and confinement of hazardous substances (Article 6).

Re-use, recycling and recovery

2. Storage and treatment facilities

Permit or registration

Directive ELVs Article 6(2); WEEE Directive Article 9

Treatment facilities must be

- Granted a permit
- Or registered in compliance with Directive 2008/98/EC on waste (Art. 23)

Permit or registration must contain all conditions necessary for adequate treatment



Permit or registration

In accordance to Article 23 of Directive 2008/98/EC on waste which submits any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority, the specific Directives impose such an obligation.

Article 6(2) of the **ELVs Directive** says that treatment facilities must be granted a permit or registered with all conditions necessary for adequate treatment. We have the same rule in Article 9 of the **WEEE Directive**.

For the **PPW Directive**, considering the large diversity of types of treatment facilities, it is the general rule of the Directive 2008/98/EC which applies.

Landfilling and incineration

- Directive 99/31/EC on the landfill of waste
- Directive 2010/75/EU on industrial emissions: for waste incineration

Art. 2(f): 'landfill' means a waste disposal site for the deposit of the waste onto or into land...

Waste recovery is excluded from the landfill directive
(C-147/15 – *Edilizia Mastrodonato*)



Landfill Directive (1999/31) - Application in Time

C-15/19 (*Azienda Municipale*)

- Malagrotta landfill near Rome was operated until from 1996 – 2005 with fees to cover 10 years after-care
- Landfill Directive requires 30 years after-care + corresponding fees
- Operator wants additional fees from the waste collector

Transposition period ends July 2001

Existing landfills, still operating at this time fall under the directive (Art. 14)

Old and new waste cannot be separated for after-care

Polluter pays requires full fees, including for past periods (no legitimate expectations)



- landfilling is the worst waste management option
- greenhouse gas – loss of resources – soil and water pollution

Landfill Directive (1999/31) – Operation of landfill

Art. 7 – application for permit

Art. 8 – conditions of permit

Art. 9 – content of permit

Art. 11 – waste acceptance procedures

Art. 12 – control and monitoring

Art. 13 – closure and after-care

Art. 3 (2) – (4) allows for the exclusion of certain waste treatments, mostly because of more specific rules.

Art. 4 provides for classes of landfills:

hazardous waste,
non-hazardous waste,
inert waste



Overview of requirements for the operation of a landfill.

Landfilling of waste

landfill **classes** (hazardous – non-hazardous – inert waste)

The following wastes may **not be accepted in a landfill**: liquid waste; flammable waste; explosive or oxidising waste; hospital and other clinical waste which is infectious; used tyres, with certain exceptions; any other type of waste which does not meet the acceptance criteria laid down in Annex II.

closing and after-care

- closed after the final on site inspection carried out by the competent authority
- the operator remains responsible for maintenance and control of the site

targets – 2020/30

new targets (Circular economy package directives 2018/849-852)

- increase of the preparing for re-use and recycling target for municipal waste to 55 % by 2025; 60 % by 2030; 65 % by 2035
- gradual limitation of the landfilling of municipal waste to 10% by 2035
- food waste should be reduced by 30% by 2025; 50% by 2030



- landfilling is the worst waste management option
- greenhouse gas – loss of resources – soil and water pollution

Landfilling of waste

- **Member States have a duty to ascertain and implement the most appropriate treatment, including the stabilisation of the waste's organic content, so as to reduce as much as possible the adverse impact of waste on the environment and, therefore, on human health (C-323/13 Commission v Italy).**
- **The CJEU rules that, as a consequence, a Member State is required to determine whether it is necessary to clean up old illegal sites and, if so, to clean them up, and that it cannot limit itself to take administrative measures to close down and make secure these sites, nor even to effectively ensure that they are indeed closed and secured (C-196/13 Commission v Italy C-378/13 Commission v Greece).**

Also see:

- C-140/14 Commission v Slovenia
- C-454/14 Commission v Spain
- C-147/15 Edilizia Mastrodonato: Backfilling of excavation voids using waste other than extractive waste – Landfill or recovery of such waste.
- C-202/16 Commission v Greece
- C-498/17 Commission v Italy: Failure of a Member State to fulfil obligations - Existing landfill sites.
- C-506/17 Commission v Slovenia



Landfilling of waste – case study

- A landfill operator accepts hazardous waste that is not covered by their licence.
- When this is discovered the competent authority immediately orders them to remove this waste and have it disposed of legally. The operator complies at great costs.
- Subsequently operator is also ordered to pay a substantial fine.
- Finally, the authority revokes the operator's licence because they consider them unreliable.
- The operator opposes the withdrawal and the fine in court, claiming an infringement of *ne bis in idem*. These measures, combined with the removal of the waste would amount to a triple sanction for one infraction. Moreover, in combination they would be excessive in comparison to the breach.

Question to the participants:

- A – all three measures are legal
- B – fine and revocation of the licence go too far
- C – fine is ok, but revocation of the licence goes too far
- D – the fine goes too far, but revocation is ok



These three measures are not a triple fine, but of a different nature:

- Removal of waste only aims to ensure compliance
- Revocation of the licence is the consequence of the lack of reliability they have demonstrated
- Therefore *ne bis in idem* should not affect the fine. However, it cannot be excluded that in view of the administrative consequences of the breach the fine is disproportionate.

Waste incineration

Directive 2000/76/ES – no longer in force

IED Directive (2010/75/EU)

- **permitting procedure**
- **best available technologies (BAT)**
 - the facilities are required to have flue gas cleaning plants to 'scrub' the gases generated and reduce emissions of the above parameters as far as practically possible
 - requirements for combustion conditions

Commission Implementing Decision (EU) 2019/2010 of 12 November 2019 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for waste incineration

For certain activities, i.e. large combustion plants, **waste incineration and co-incineration plants**, solvent using activities and titanium dioxide production, the IED also sets EU wide emission limit values for selected pollutants.

- **public participation**



The Waste Incineration Directive (WID) has been recast within the Industrial Emissions Directive (IED) as of December 2010. The purpose of this was to transpose several pre-existing directives on the control of emissions from industrial processes into one directive on industrial emissions.

As such, WID facilities are required to have flue gas cleaning plants to 'scrub' the gases generated and reduce emissions of the above parameters as far as practically possible. Such systems must be detailed within the EP application process and supported by a technical review of the systems selected on a site by site basis. Further to the above, WID introduced minimum requirements for combustion conditions at such facilities, including a requirement for combustion gases to be heated to 850°C⁴ for a minimum of 2 seconds in the secondary combustion chamber to ensure complete combustion of all potentially polluting substances

NEED MORE INFORMATION?

- *e-learning of the course*
- *website of the EU Commission*
- *Case-law of the CJEU (Curia)*
- *eur-lex*
- *Guidelines*
- *Eurostat*

Subject-matter

Search for subject-matter:

Chosen values:

- ☐ Competition
- ☐ Conjunctural policy
- ☐ Consumer protection
- ☐ Culture
- ☐ Data protection
- ☐ Economic and monetary policy
- ☐ Economic, social and territorial cohesion
- ☐ ECSC matters
- ☐ Education, vocational training and youth
- ☐ Employment
- ☐ Energy
- ☐ Environment
- ☒ Waste
- ☐ Euratom matters
- ☐ European Investment Bank (EIB)

Environment

Waste

THANK YOU FOR YOUR ATTENTION!

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