

Illegal waste shipment - focus on transboundary movements of waste

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EU WASTE LEGISLATION AND COMBATTING WASTE CRIME
Webinar for judges and prosecutors
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European Union Agency
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[Home](#) > [Press releases and news](#) > [Crackdown on](#)

Crackdown on a criminal trafficking and money

16 February 2023 | PRESS RELEASE



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invoicing and money laundering in several

Eurojust coordinated the joint action throughout. The preventive seizure of assets was carried out by authorities in setting up and funding a joint

The OCG is believed to have illegally acquired 2000 tonnes of scrap iron through a network of companies operating in Italy and abroad. The network reintroduced the iron into the legal market directly into steel mills, claiming it had been sourced from Germany.

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News

News Release

Focus

Frontex coordinates large-scale operation against illicit waste trafficking across EU external borders

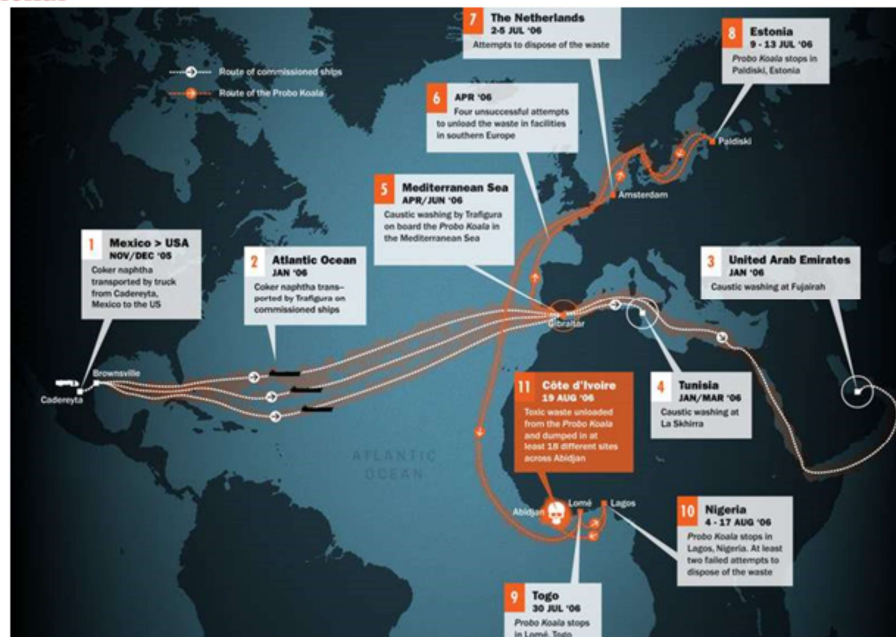
2022-12-16

- 2.500 controls, 100 cases of illicit waste trafficking
- 2000 tonnes of waste seized
- 43 arrests
- International effort: 25 countries, 5 EU bodies

The action was organised under EMPACT, the European Multidisciplinary Platform Against Criminal Threats.

Relevant national cases

Source Amnesty International



Speech

Crackdown on waste crime: Time to stop trashing our future

Environment Agency Chief Executive Sir James Bevan's speech on waste crime at a Let's Recycle and Environmental Services Association event on Tuesday 12 April.

From: [Environment Agency](#) and [Sir James Bevan](#)

Published 12 April 2022



One of the most unsettling things about waste crime is that nobody knows exactly its true scale. We do know that it is huge: our latest estimate is that some 18% of waste is currently managed illegally at some point in the waste stream. (...) And it's getting bigger. All the evidence suggests waste crime is on the rise.

Content

- **Waste shipment**
- **Waste trafficking**
- **Legal regulation: Basel Convention and Waste Shipment Regulation**
- **CJEU case law**



MOVEMENT OF WASTE ACROSS THE EU'S INTERNAL AND EXTERNAL BORDERS

EEA Report | No 7/2012

Movements of waste across the EU's internal and external borders

between 1999 and 2011

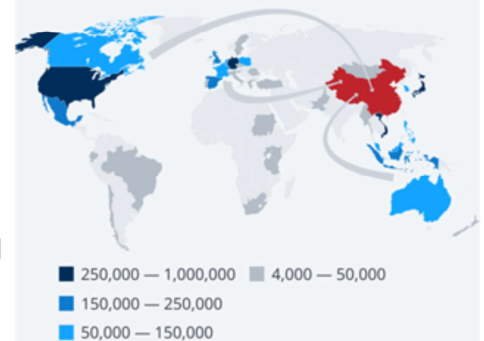
- exports of copper, iron, steel, aluminium, and nickel having doubled
- plastics increased by a factor of five



In 2018, China banned the import of most plastics and other materials headed for that nation's recycling processors

China was at the heart of the global waste business

Exports 2017 (metric tons)



Source: comtrade.un.org | China including Hong Kong ©DW

China has imported recyclable waste, such as iron scrap and waste plastics, from abroad to make up for a shortage of domestic resources. After China joined the World Trade Organization (WTO) in 2001, its demand for raw materials dramatically increased due to rapid industrial development.

However, the amount of smuggled recyclable waste has been estimated to be dozens of times the amount allowed by government regulations

WASTE TRAFFICKING

- **still a high-profit and low-risk crime - detection, investigations and prosecutions are rare, and penalties are low,**
- **est. profit USD 10–12 billion annually ≈ human trafficking,**
- **often committed with the contribution of a large number of actors**
- **convergence with other crimes (e.g. corruption, forgery, money laundering);**
- criminals – individuals or organised crime networks – often operate legitimate waste management companies = easy to hide the criminal origins of their funds,
- less sophisticated techniques than other criminals,
- typically falsifying documents to - mis-classify waste as recycling or second-hand goods or classify hazardous waste as non-hazardous (by changing the waste code, falsifying the destination, or under-/over-invoicing the shipment),
- requires cross-sector collaboration



The profit generated from illicit waste is estimated to amount to USD 10–12 billion annually, which puts profits on a par with other major crime areas such as human trafficking.

The fact that criminals – individuals or organised crime networks – often operate legitimate waste management companies makes it easy to hide the criminal origins of their funds. Those who engage in both legal and illegal waste trade can easily mix the payment across the two business lines.

Compared to other environmental crimes such as illegal logging, where criminals make use of complex corporate structures and offshore financial centres to launder their proceeds, those engaged in waste trafficking appear to use less sophisticated techniques.

A common technique mentioned by the panellists is falsifying documents to, for example, mis-classify waste as recycling or second-hand goods, or classify hazardous waste as non-hazardous. It can be as simple as changing the waste code from the European Waste Catalogue (commonly known as CER code), falsifying the destination, or under-/over-invoicing the shipment.

EU LEGAL FRAMEWORK

1975 Directive 75/442/EEC – no regulation of transboundary shipment

1983 - The Seveso Waste Shipment scandal

https://nucif.net/wp-content/uploads/2020/02/The_Story_of_EU_Waste_Policy.pdf

Dedicated regulation:

Directive 84/631/EEC

1989 Basel Convention - 190 parties to the treaty, which includes 187 UN member states

1982 OECD Decision

Regulation No. 259/93

Current: Waste Shipment Regulation No. 1013/2006 + Ship recycling regulation



Measures on the supervision and control of shipments of waste have been in place in the EU since 1984. In 1989, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) was adopted to address serious problems linked to deposits of toxic wastes imported from abroad to various parts of the developing world. In 1992, the OECD adopted a legally binding Decision [4](#) on the control of transboundary movements of wastes destined for recovery operations (OECD Decision).

Waste Shipment Regulation (WSR)) implements in EU law the provisions of both the Basel Convention and the OECD Decision. In certain aspects, the WSR contains stricter control measures than the Basel Convention. The WSR requires Member States to ensure that shipments of waste and their treatment operations are managed in a manner that protects the environment and human health against any adverse effects that might result from such wastes. The WSR sets out control mechanisms for the export and import of waste between the EU and third countries, and for shipments between Member States.

It is important to note that a regulation — rather than a directive — was deemed necessary at that time in order to ensure simultaneous and harmonised application in all Member States. The choice of a regulation remains justified as it sets direct requirements for all operators, thus providing the necessary legal certainty and enforcement possibility of a fully integrated market across the EU. A regulation also ensures that the obligations are implemented at the same time and in the same way in all 27 Member States.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

A definition of 'illegal traffic of waste' (Article 9(1)):

- *"For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes: (a) without notification pursuant to the provisions of this Convention to all States concerned; or (b) without the consent pursuant to the provisions of this Convention of a State concerned; or (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or (d) that does not conform in a material way with the documents; or (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic."*
- **"Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic (...)" (Article 9(5)).**



The objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. The scope of application of the Basel Convention covers a wide range of wastes defined as "hazardous wastes" based on their origin and/or composition and their characteristics, as well as household waste and incinerator ash. The Basel Convention is not the only piece of international law relevant for the EU waste policy. For example, the EU promotes adoption of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships and helps launch negotiations on landmark global agreement on plastic pollution.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

- **The Basel Convention states that the Parties “consider” illegal traffic in hazardous wastes or other wastes as criminal and requires each Party to take appropriate legal, administrative and other measures to prevent and punish such conducts and “Each party shall introduce appropriate national domestic legislation to prevent and punish illegal traffic”.**
- **Article 4(3) does not actually impose a clear obligation to make illegal traffic criminal. It simply says that parties “consider” it to be criminal.**



At the international level, waste trafficking is regulated by the Basel Convention of 1989 on the control of transboundary movements of hazardous waste and their disposal, with the Fourth ACP-EEC Convention signed at Lomé in 1989, and with several acts of the OECD Council. The Basel Convention applies when waste is transported from an area under the national jurisdiction of a State party thereto to an area under the national jurisdiction of another State party thereto. The latter classifies waste according to its possible adverse impact on health and the environment into three lists, green, orange and red; this classification determines the rules applicable to waste transfers within the EU as well as to third countries.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

- **Parties to the convention must honor import bans of other parties.**
- **Stringent requirements for notice, consent and tracking for movement of wastes across national boundaries**

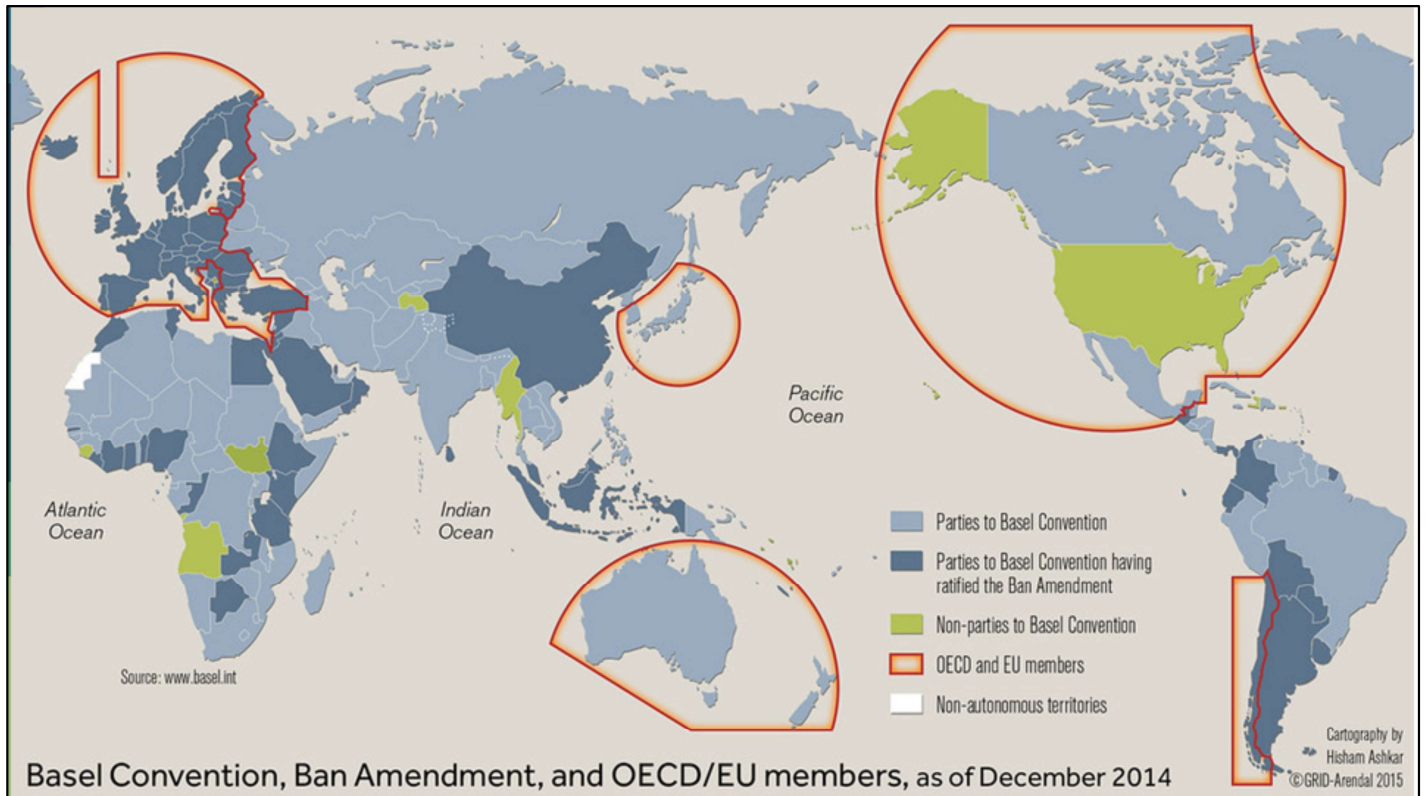
Basel Ban Amendment (1995, in force since 2019)

prohibits the export of hazardous waste from a list of developed (mostly OECD) countries to developing countries. The Basel Ban applies to export for any reason, including recycling.

In May 2019 most of the world's countries, but not the United States, agreed to amend the Basel Convention to include plastic waste as a regulated material. The Plastic Waste Amendments of the convention are now binding on 186 States.



The European Union fully implemented the Basel Ban in its Waste Shipment Regulation (EWSR), making it legally binding in all EU member states. Norway and Switzerland have similarly fully implemented the Basel Ban in their legislation.



Exports of waste from the EU to third-countries and for the purpose of the disposal of such waste are prohibited, except to EFTA countries which are also parties to the Basel Convention and which do not prevent such imports (Article 34). Exports of waste destined for recovery are generally possible if the concerned waste is on the “green list”, and subject to prior consultation with the country of destination (Article 37).

Exports of hazardous wastes on the “red” and “orange” lists destined to be recovered are prohibited, especially to countries which do not apply the OECD Decision C(2001)107/Final on control of transboundary movements of waste intended for the recovery operation. Exports to countries which do apply this OECD Decision are possible for particular wastes on the “green” and “orange” lists (Article 36). Exports of waste to the Antarctic are prohibited (Article 39), as well as to overseas countries or territories, with some derogations in the case of recovery (Article 40).

THE WASTE SHIPMENT REGULATION – WSR (1013/2006)

The WSR - scope:

- 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.

Exceptions:

- 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.



the WSR establishes procedures and control regimes for the shipment of waste, depending on criteria based fundamentally on the type of waste shipped, the exporting State and the type of treatment to be applied to the waste at its destination, whether it is to be disposed of or recovered. Under the WSR, the Member States are permitted to adopt measures restricting shipments of particular waste between the Member States by way of implementation of the principles of proximity, priority for recovery and self-sufficiency

THE WASTE SHIPMENT REGULATION – MAIN RULES

- The **types of controls** under the WSR depend on the characteristics of the waste, its destination, and its treatment as part of recovery or disposal operations.
- **Shipments of hazardous waste and waste destined for disposal** are prohibited to **non-OECD** countries outside the EU.
- **Shipments to OECD countries are generally subject to the prior notification and consent procedure** which requires the prior written consent of all relevant authorities of dispatch, transit and destination.
- To speed up the procedure, **Member States can designate 'pre-consented recovery facilities'** for which more lenient procedures apply and for which they will normally not raise objections as competent authority of destination.
- Shipments of **"green-listed"** non-hazardous wastes within the EU and OECD do not usually require the prior consent of the authorities, but information requirements apply.



The types of controls under the WSR depend on the characteristics of the waste (for example hazardous, non-hazardous), its destination, and its treatment as part of recovery (for example recycling) or disposal (for example landfilling) operations. The WSR also lays down export prohibitions for certain categories of waste and certain destinations: the most important example is the prohibition to export hazardous waste from the EU to non-OECD countries.

THE WASTE SHIPMENT REGULATION – MAIN RULES

Three categories of waste:

- **Annex III - green list**
- **Annex IV - the 'amber list' - subject to a more restrictive procedure of prior written notification and consent**
- **Annex - untitled list of the most hazardous wastes, which are subject to an export ban.**
- **The Member States are permitted to adopt measures restricting shipments of particular waste between the Member States by way of implementation of the principles of proximity, priority for recovery and self-sufficiency (*see Case C-292/12 Ragn-Sells, as regards mixed municipal waste*)**



Following the OECD classification, the WSR divides waste into three categories according to the degree of hazard and, consequently, the control procedure to be followed in relation to it. Thus, Annex III to the WSR contains the green list, which covers waste regarded as presenting only negligible risks to human health and the environment during shipment. Such waste is, in principle, subject only to an information procedure. Annex IV to the WSR, referred to as the 'amber list', lists wastes which, since they present a risk to human health and the environment, are subject to a more restrictive procedure of prior written notification and consent. Lastly, Annex V to that regulation comprises an untitled list of the most hazardous wastes, which are subject to an export ban.

THE WASTE SHIPMENT REGULATION – MAIN RULES

- Article 2(35)(a) and (g) of the WSR classifies as an 'illegal shipment', among other things, a shipment of waste effected without the appropriate notification or information.
- In the event of a shipment that is illegal on the grounds set out above, Article 24(2) of the WSR provides that the authority responsible for the execution of that regulation in the Member State of origin of the waste, referred to as 'the competent authority of dispatch', must ensure that, normally within 30 days from the day it is notified, the waste is taken back by the 'notifier de jure', namely the person on whom the obligation to notify or inform falls, or, failing that, must have the waste taken back or take it back itself.



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ENVIRONMENTAL CRIME DIRECTIVE

Article 3

Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

- (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽⁶⁾ and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;



THE WAS

New categories of criminal offences proposed in the revised Environmental Crime Directive are:

35. 'illegal shipment' is
- (a) without notification;
 - (b) without the consent of the competent authority;
 - (c) with consent of the competent authority, but in breach of the conditions of that consent;
 - (d) in a way which is contrary to the provisions of the Directive;
 - (e) in a way which is contrary to the provisions of the Directive;
 - (f) contrary to the provisions of the Directive;
 - (g) which, in relation to the waste, non-compliance with the provisions of the Directive, or the ship, is one of the following:
 - illegal timber trade;
 - illegal ship recycling;
 - illegal water abstraction from ground- or surface water;
 - serious breaches of EU chemicals legislation;
 - serious breaches related to dealing with fluorinated greenhouse gases;
 - serious breaches of legislation on invasive alien species with Union concern;
 - serious circumvention of requirements to get a development consent and to do environmental impact assessment causing substantial damage;
 - source discharge of polluting substances from ships.
- The proposal also clarifies undefined legal terms used to describe environmental crime in the current Directive, such as for instance 'substantial damage'. It suggests criteria that explain more precisely how to interpret these terms. This will lead to a more harmonised application of criminal law and understanding of environmental crime across the EU, and more legal certainty to duty-holders.



Here are the new categories of criminal offences proposed by the revised ECD.

ENVIRONMENTAL CRIME DIRECTIVE REVISION

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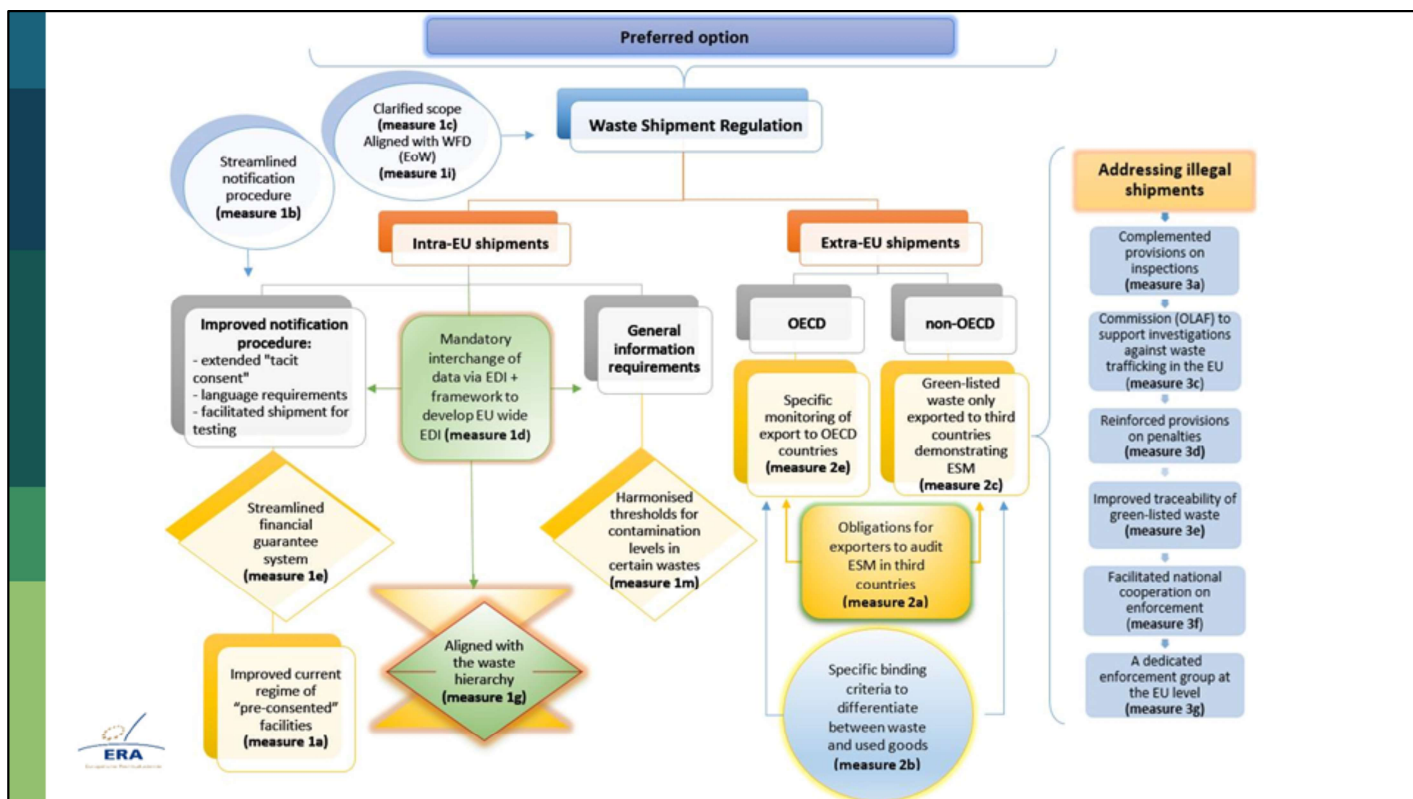


THE WASTE SHIPMENT REGULATION – REVISION

On 17 November 2021, the Commission adopted a proposal for a new Regulation on waste shipments. It aims to ensure that the EU does not export its waste challenges to third countries and support a clean and circular economy. The proposal plans to:

- establish new rules for EU waste exports
- make it easier to transport waste for recycling or re-use in the EU
- set out new measures to better tackle illegal waste shipments
- *When it comes to the export of wastes, especially non-hazardous wastes, from the EU, a major shortcoming is the insufficient supervision of the conditions under which these wastes are managed in destination countries, especially in developing countries. As a result, the export of some waste from the EU has created environmental and public health challenges in the countries of destination. It also represents a loss of resources for EU recycling industries.*
- *Illegal shipments of waste within and from and to the EU also remain a considerable problem due to the general nature of the WSR provisions. This relates in particular to the elements that need to be checked by the competent authorities, for example on the environmentally sound management of waste and on enforcement. However, it is also due to shortcomings in the implementation and enforcement of the WSR.*





Here is a schematic overview of the preferred option, and the measures that it contains, which also illustrates how sophisticated and complex the whole regulation is.

THE WASTE SHIPMENT REGULATION – REVISION

A proposal for a new Regulation on waste shipments:

Export of waste from the EU to third countries

- **Non-OECD:** conditional on an official request from the country to import non-hazardous waste from the EU and demonstration that it can recover it in a sound manner. A list of countries authorised to import waste from the EU will be set up.
- **OECD:** The Commission will monitor the levels of waste exports and suspend export of this waste if there is no guarantee that this treatment is sustainable.
- EU exporting companies would have to carry out **independent audits** for their waste exports outside the EU. These audits should demonstrate that the facilities treat this waste in an environmentally sound manner. EU companies would only be authorised to export to these facilities if this is the case.
- To address waste being illegally presented as “used goods”, specific **binding criteria will be developed to differentiate between waste and used goods for specific commodities** of a particular concern, such as used vehicles and batteries.



For countries that are not members of the OECD, exports of waste from the EU would be made conditional on an official request from the country to import non-hazardous waste from the EU and demonstration that it can recover it in a sound manner. A list of countries authorised to import waste from the EU will be set up.

The Commission will monitor the levels of waste exports from the EU to OECD countries. If there is a surge in waste exports to one of these countries, risking serious environmental or public health problems in that country, the Commission will seek information on the treatment of this waste in the country concerned. The Commission will suspend export of this waste if there is no guarantee that this treatment is sustainable.

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To address waste being illegally presented as “used goods”, specific binding criteria will be developed to differentiate between waste and used goods for specific commodities of a particular concern, such as used vehicles and batteries.

THE WASTE SHIPMENT REGULATION – REVISION

A proposal for a new Regulation on waste shipments:

Shipments of waste **between EU Member States**

- A **full digitalisation** of all procedures governing the shipments of waste between EU Member States, in particular for “green-listed” waste;
- New provisions to support the use of **fast-track procedures** for shipments of waste destined to recovery, when they are destined to facilities certified by the EU Member States (“pre-consented facilities”);
- **Harmonised classification of waste** at the EU level, to help overcome the current fragmentation of the EU market, where a shipment of waste can be subject to different interpretations and procedures when crossing borders in the EU;
- New provisions making it possible to **streamline at the EU level the calculation of financial guarantees** that operators have to establish before shipping “notified” waste abroad;
- New and **stricter conditions for shipments of waste for incineration or landfilling**, so that they are only authorised in limited and well-justified cases, as they are the least preferred options for the management of waste.



THE WASTE SHIPMENT REGULATION – REVISION

A proposal for a new Regulation on waste shipments:

Measures to tackle illegal shipments of waste

- The European Commission will support transnational investigations by EU Member States on waste trafficking, with the help of the European Anti-Fraud Office (OLAF).
- An EU 'waste shipment enforcement group' would be established to increase cooperation and coordination against illegal shipments of waste.
- Current rules on administrative penalties against illegal shipment of waste would be strengthened. Common criteria for determining the types and levels of penalties to be imposed for infringements would make penalties more deterrent and consistently applied across the EU.
- A revision of the Environmental Crime Directive



This group would comprise environmental, customs, police and other relevant national inspection authorities, as well as European and international law enforcement networks.

Financial support to projects designed to help enforcement agencies work together to tackle waste trafficking will be provided further on.

A revision of the Environmental Crime Directive will provide for dissuasive criminal sanction types.

CASE-LAW OF THE CJEU: ON PROPORTIONALITY

- C-69/15 (*Nutrivet*) - 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



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.

C-624/17 (*Tronex*)

'shipment of waste' - where that consignment contains appliances in the proper working condition of which has not been previously ascertained or which are not adequately protected from transport damage. Such goods which have become redundant in the seller's product range, and which are in their unopened original packaging, on the other hand, must not, without indications to the contrary, be regarded as waste.

AG questioned, *"whether the concept of waste is defined with sufficient precision to justify a criminal penalty in the main proceedings. In accordance with the first sentence of Article 49(1) of the Charter of Fundamental Rights, after all, much importance is attached, both in the EU legal order and in national legal systems, to the requirements which the principle of the legality of criminal offences and penalties (nullum crimen, nulla poena sine lege) imposes with respect to foreseeability and precision."* (para. 51)



According to the CJEU, such shipment is to be regarded as a 'shipment of waste' where that consignment contains appliances in the proper working condition of which has not been previously ascertained or which are not adequately protected from transport damage. Such goods which have become redundant in the seller's product range, and which are in their unopened original packaging, on the other hand, must not, without indications to the contrary, be regarded as waste.

As regards principles of criminal law, the Advocate General in his opinion to the *Tronex* case questions,

CLASSIFICATION OF THE SUBSTANCE

C-654/18 Interseroh

- a German courts requested for a preliminary ruling concerning classification of specific mixtures of paper, paperboard and paper product wastes ([general information requirements/the notification obligation](#))

Case C-634/17 ReFood: the CJEU ruled that shipments of animal by-products falling within the scope of Regulation No 1069/2009 (Animal by-products Regulation), are excluded from the scope of the WSR, unless the Animal by-products Regulation expressly provides for the application of the WSR. **C-23/19 P.F. Kamstra Recycling and Others**

- a Dutch courts requested for a preliminary ruling concerning classification of and a substance which is not a by-product within the meaning of the Waste Framework Directive and also not an animal by-product within the meaning of the Animal By-Products Regulation

C-399/17 Commission v Czech Republic

- At the end of 2010 and the beginning of 2011 a Czech operator shipped from Litvínov (Czech Republic) to Katowice (Poland) approximately 20 000 tonnes of [TPS-NOLO \(Geobal\), a mixture composed of tar acid derived from petroleum refining, carbon dust and calcium oxide](#).
- The mixture was deposited, in whole or in part, on a plot of land rented by the Polish importer in Katowice. Czech authorities refused to accept the waste back.

CJEU considerations? It was not proved the substance was waste, the relevant circumstances in the light of which that assessment should be made are those existing at the date of the shipment, and not the circumstances before or after that date



Frequently, the national authorities and criminal courts have to classify specific substance or materials under the regime of the WSR or the Waste Framework Directive. For example, some wastes, such as WEEE or tyres can be intentionally mislabelled and shipped as second-hand goods for reuse or be packed behind other well-packaged waste intended for reuse. In these circumstances, the exporter will not consider it necessary to declare the materials as waste. The difficulty in classification the substance may even result in the proceedings before the CJEU. For example, in two recent cases ([Case C-654/18 Interseroh](#), [Case C-23/19 P.F. Kamstra Recycling and Others](#)), a German and a Dutch courts requested for a preliminary ruling concerning classification of specific

mixtures of paper, paperboard and paper product wastes (C-654/18) and a substance which is not a by-product within the meaning of the Waste Framework Directive and also not an animal by-product within the meaning of the Animal By-Products Regulation 2009 (C-23/19).

C-399/17 Commission v Czech Republic

65 In the second place, the Commission draws attention to the hazardous nature of the tar acid from which TPS-NOLO (Geobal) is derived and of the mixture itself.

66 It should be noted, at the outset, that the concept of waste does not turn on the hazardous nature of a substance (judgment of 18 April 2002, *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus*, C-9/00, EU:C:2002:232, paragraph 48). As regards the conclusions to be drawn from the alleged hazardous nature of the tar acid in question, EU law does not, as a matter of principle, exclude the possibility that waste regarded as hazardous may cease to be waste if an operation enables it to be made usable without endangering human health or harming the environment and, also, if it is not found that the holder of the object at issue discards it or intends to discard it (judgment of 7 March 2013, *Lapin ELY-keskus, liikenne ja infrastruktuuri*, C-358/11, EU:C:2013:142, paragraph 60).

67 As regards the Commission's allegation that TPS-NOLO (Geobal) itself is a hazardous waste, that institution notes that a fine was imposed by a Polish court on one of the purchasers of that mixture on account of it being hazardous waste. However, an argument based on the classification as waste of a substance other than that at issue and in circumstances which are not specified is limited. As regards the mixture at issue, the Czech Republic acknowledged at the hearing that the unused quantity that has remained on the Katowice site for several years in storage conditions that have a negative impact on the environment and on public health should probably be considered waste. However, as has been stated in paragraph 61 above and as the Czech Republic maintains, the present circumstances are not relevant in the assessment of whether the mixture was waste at the date it was shipped.

Case C-315/20 Regione Veneto (Transfert de déchets municipaux en mélange): the CJEU confirmed that the legal regime applicable to shipments of waste depends on the material nature of the waste and not on its formal classification according to the Waste Catalogue.



C-689/17 Conti 11. Container Schiffahrt

- After a fire broke out and explosions occurred on board of a ship, the Conti company obtained authorisation to tow the vessel into German waters. According to the German authorities, however, the ship itself 'and the water on board used to extinguish the fire as well as the sludge and scrap metal [were] to be classified as waste'.
- The CJEU confirmed that **residues such as those at issue, attributable to damage occurring onboard a ship at sea, must be regarded as waste generated on board ships, which is excluded from the WSR's scope until it is offloaded in order to be recovered or disposed of.**

C-241/12 Shell Nederland:

- A huge amount of an oil product was returned by a buyer in Belgium to a Dutch company Shell. The buyer was unable to store or retain the oil product due to a fault in its composition caused, accidentally, at the loading of the initial transfer.
- CJEU: the client cannot be regarded as having intended to dispose of or recover the consignment at issue since it was returned based on the contract. To determine whether Shell intended to 'discard' the consignment at issue, at the time when its contamination was disclosed, **the CJEU took into account that the substance had commercial value and could be sold on the market without being processed. The decisive fact was that Shell took back the consignment with the intention of blending it and placing it back on the market. For that reason, it could not be considered waste under the WSR.**



In Case C-689/17 Conti 11. Container Schiffahrt, the CJEU once again had to deal with the definition of waste, this time in relation to a container ship which was transporting containers including some 'hazardous substance' from the United States to Belgium. After a fire broke out and explosions occurred on board that ship, the Conti company obtained authorisation to tow the vessel into German waters. According to the German authorities, however, the ship itself 'and the water on board used to extinguish the fire as well as the sludge and scrap metal [were] to be classified as waste'. The CJEU confirmed that residues such as those at issue, attributable to damage occurring onboard a ship at sea, must be regarded as waste generated on board ships, which is excluded from the WSR's scope until it is offloaded in order to be recovered or disposed of.

C-241/12 Shell Nederland, the CJEU had to classify over 333 000 kilograms of an oil product returned by a buyer in Belgium to a Dutch company Shell. The buyer was unable to store or retain the oil product due to a fault in its composition caused, accidentally, at the loading of the initial transfer of the product from the Netherlands to Belgium. Determining whether the oil-product was 'waste' was essential for the criminal proceedings instituted against Shell. According to the CJEU, the client cannot be regarded as having intended to dispose of or recover the consignment at issue since it was returned based on the contract. It was, however, much more challenging to assess the position of Shell and determine whether Shell intended to 'discard' the consignment at issue, at the time when its contamination was disclosed. The CJEU took into account that the substance

had commercial value and could be sold on the market without being processed. The decisive fact, however, was that Shell took back the consignment at issue with the intention of blending it and placing it back on the market. For that reason, it could not be considered waste under the WSR.

Further Guidance and Materials

Basel Convention Instruction Manual

The "[Instruction manual on the prosecution of illegal traffic of hazardous wastes or other wastes](#)" prepared by the Basel Convention Secretariat provides an understanding of the practice of prosecuting cases of illegal traffic in hazardous waste or other waste within the scope of the Basel Convention. The manual is available in English, French, Spanish, Arabic and Russian. There are more useful guidance documents under the Basel Convention related to waste crime, most notably the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Waste. See all manuals [here](#).

WasteForce Waste Crime Prosecution Guidance

In order to support prosecution of waste crime and increase the knowledge of prosecutors responsible for dealing with cases of waste crime, the WasteForce project announced the launch of the [Waste Crime Prosecution Guidance](#) in 2020. This Guidance is intended to provide guidance and practical information for authorities involved in the prosecution of cases of illegal traffic in hazardous or other waste. Whilst the scope of the illegal transboundary trade in waste is a focus of the Guidance, it is also intended to provide guidance in the prosecution of waste crime in general.





EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
The Director-General

**Frequently Asked Questions (FAQs) on
Regulation (EC) 1013/2006 on shipments of waste**

<https://ec.europa.eu/environment/pdf/waste/shipments/faq.pdf>



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