

EU waste legislation: current situation and future developments

[The European Union's policy on waste aims to make waste management more efficient throughout the Union, treating waste as a resource and moving towards a European recycling society in which the Member States can develop autonomous waste elimination systems.](#)

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The European Union wants to slash the amount of waste going to landfill.

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EU waste policy aims to make waste management more efficient for the Union as a whole by managing waste as a resource and moving towards a European recycling society in which Member States can develop self-sufficient waste disposal systems.

The current EU waste regulations are complex. The general framework is laid down in the Waste Framework Directive¹ and the Waste Shipment Regulation². The next legislative level consists of texts that cover waste treatment operations, such as the Industrial Emissions Directive (Waste Incineration)³ and the Landfill Directive⁴. Finally, there is a third level of legislation, with seven specific laws that deal with different waste streams: sewage sludge in agriculture; packaging and packaging waste; PCBs/PCTs; end-of-life vehicles; batteries and accumulators; restriction of hazardous substances in electrical and electronic equipment (RoHS 2); and waste electrical and electronic equipment.

Waste Framework Directive

The EU umbrella regulation is the Waste Framework Directive (WFD), which provides definitions of key concepts such as waste, end-of-waste status, re-use and recycling.

The Waste Framework Directive was adopted in 2008 and its main objectives are to move the EU closer to a 'recycling society', avoid waste generation, use waste as a resource, reduce the adverse environmental and health impacts of waste, and move Europe's energy and resource efficiency towards the creation of a 'circular economy'⁵. The WFD

takes into account the precautionary principle laid down in the Treaty on European Union and is based on three main principles.

Prevention: this refers to two aspects: prevention of waste and prevention of the harmful effects of waste. Taking a life-cycle approach, the Directive puts waste prevention at the top of the hierarchy of waste options to be applied by Member States when developing their national waste policies, followed by preparing for re-use, recycling, other recovery (notably energy recovery) and disposal.

The Directive also states that the Member States should establish waste prevention programmes by 12 December 2013. These should describe the existing prevention measures, determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures and establish indicators for waste prevention measures⁶. Progress should be reported to the Commission periodically.

Polluter-pays principle: this principle is laid down in the Treaty on the Functioning of the European Union and aims to prevent and remedy environmental damage. In accordance with this principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.

Extended producer responsibility: this aims to strengthen the re-use and the prevention, recycling and other recovery of waste. However, implementation is at the discretion of Member States.

It should be noted that often these principles are not translated into concrete policies as it is up to Member States to implement

1. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, Official Journal of the European Union, L 312, 22 November 2008.

2. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, Official Journal of the European Union, L 190, 12 July 2006.

3. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Official Journal of the European Union, L 334, 17 December 2010.

4. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, Official Journal of the European Communities, L 182, 16 July 1999.

5. The Ellen MacArthur Foundation describes the circular economy as a system that aims to 'design out' waste. It is a shift towards using renewable energy, eliminating the use of toxic chemicals, which impair re-use, and eradicating waste through the careful design of materials, products, systems and, consequently, business models.

6. As of 17 January 2014, 14 Member States plus parts of Belgium and the UK had adopted waste prevention plans. Only four of the plans include specific quantitative targets.

them, taking into account their specific national context and circumstances. The Court of Justice has even ruled that the Member States are free to transpose the polluter-pays principle as they see fit.

Waste Shipment Regulation

The movement of waste is an important international trade issue. The EU is the world's largest exporter and importer of non-hazardous waste destined for recovery (before the US and China). In 2011, it accounted for: 35.5% of the world's exports (US: 4.5%, China: 21.4%) and 44.5% of the world's imports (US: 18%, China: 1%)⁷. European paper and plastic are often recycled in Asia.

The Waste Shipment Regulation aims to supervise and control such shipments in order to protect both human health and the environment. It applies to all international waste shipments, for all purposes, within, into or out of the European Union.

The EU has basically transposed into its legislation the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal⁸, which is therefore binding on all EU states.

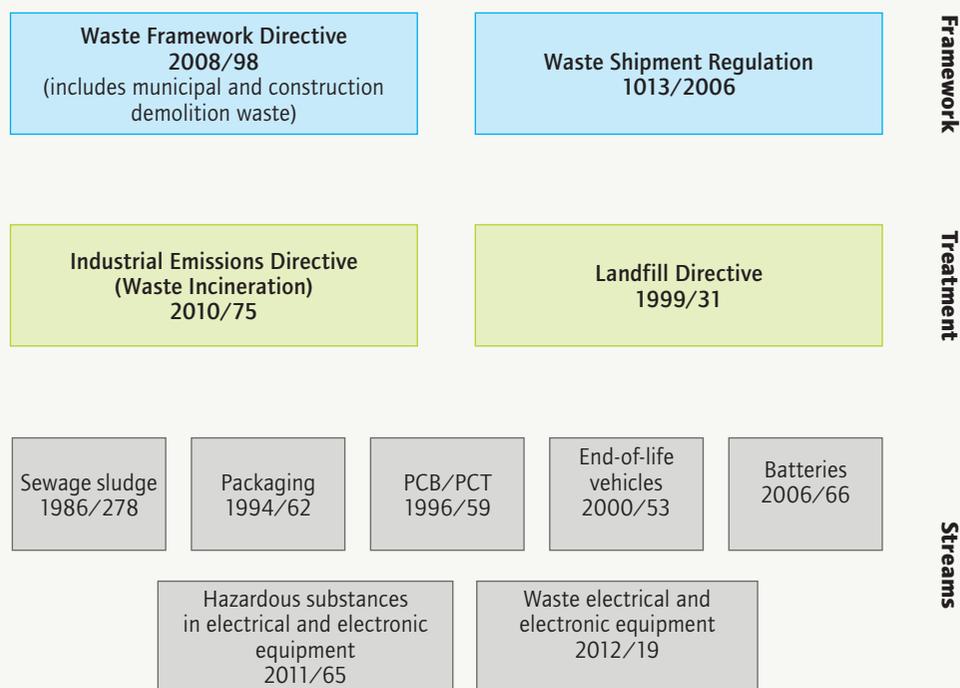
EU legislation also includes provisions on the shipment of waste between Member States, through a system of prior authorisation for the shipment of waste for disposal or recovery, a compulsory notification system and a standard consignment note for shipments of waste. Member States are obliged to take the necessary steps to inspect, sample and monitor waste shipments. They must carry out inspections, spot checks and physical checks of shipments.

Despite its binding nature, this legislation is enforced differently in the various Member States, as proven by a recent audit carried out in eight EU countries⁹.

The examples below highlight the complexity of the problem:

1. There are weaknesses in the information systems, with no clear policies and guidelines for tackling problems related to data collection and reporting. As a result, statistical data can be incomplete or unreliable and it is more difficult to pursue information-based enforcement, monitoring and review. The comparability of statistical data on inspections, infringements and sanctions is hampered by the lack of a protocol for the collection, registration and reporting of such data.

Figure 1 Main legal instruments forming the EU waste acquis



Source: European Commission (2013)

2. There are two different tariff code systems. The tariff codes that the Waste Shipment Regulation and the Basel Convention use differ from the international tariff codes used by customs authorities. So far, only one of the eight countries has developed a conversion table so that tariff codes can be used to select high-risk shipments for inspection by customs authorities that have to declare them.

3. The enforcement policy in several countries is not sufficiently based on an explicit risk assessment. For instance, the audit states that there is clear evidence in several countries that hazardous waste is imported or exported as 'goods' and/or as 'green-listed waste' (non-hazardous waste intended for recovery), which is a way of avoiding the procedures set out in the Regulation.

These aspects, combined with the limited number of inspections, the inability to trace different waste streams, the differences in how infringements are penalised and the low levels of sanction in some countries all constitute serious problems. This situation also increases the risk of waste being shipped illegally and results in improper treatment of waste.

The EU's legislative framework for waste is complex and will continue to be so, despite or because of the upcoming fitness checks and overall review of the legislation.

With regard to international trade, in the framework of the negotiations on the Transatlantic Trade and Investment Partnership between the EU and the United States, it is evident that further reflection is needed on the issue of waste shipment inspections and controls, and the other effects of such transport.

Directives on waste treatment operations

Two main Directives comprise this second level of EU waste legislation, focusing on waste treatment operations: the Industrial Emissions Directive (Waste Incineration)¹⁰ and the Landfill Directive¹¹.

The Industrial Emissions Directive (Waste Incineration) aims to achieve a high level of environmental and health protection. To this end, it imposes obligations on industrial activities with a major pollution potential, through permits and specific discharge requirements. These measures are designed to avoid or minimise polluting emissions in the atmosphere the air, water and soil, as well as waste from industrial and agricultural installations.

Various industrial sectors with a major pollution potential are targeted: energy industries, metal industry, mineral industry, chemical industry, waste management, rearing of animals, etc. Specific provisions are also included for specific facilities such as combustion plants and waste incineration or co-incineration plants, among others.

The Landfill Directive lays down strict requirements for landfills to prevent and minimise their negative effects on the environment (water, soil, air) and human health. It defines the different categories of waste (municipal waste, hazardous waste, non-hazardous waste and inert waste) and defines landfills as waste disposal sites for the deposit of waste onto or into land. Landfills are divided into three classes: landfills for hazardous waste, landfills for non-hazardous waste and landfills for inert waste.

The Directive lays down a standard waste acceptance procedure so as to avoid risks. In particular, it states that waste must be treated before being landfilled. It also lists certain types of waste that may not be accepted in a landfill (liquid waste, used tyres, etc.).

Finally, the Directive sets up a system of operating permits for landfill sites and states that the Member States must ensure that existing landfill sites do not continue to

Batteries, wet and dry, are the worst polluters because of the many heavy metals they contain.

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operate unless they comply with the provisions of the Directive.

Directives on waste streams

The Directives on waste streams deal with the management of specific waste categories. Their objective is to ensure the efficient and environmentally sound management of waste streams: sewage sludge; batteries and accumulators; packaging and packaging waste; PCBs and PCTs; end-of-life vehicles; hazardous substances (recast Directive); waste electrical and electronic equipment (recast Directive).

Sewage sludge: the Directive seeks to encourage the use of sewage sludge in agriculture and to regulate its use in such a way as to prevent harmful effects on soil, vegetation, animals and humans. To this end, it prohibits the use of untreated sludge on agricultural land unless it is injected or worked into the soil.

Batteries and accumulators: the Directive prohibits the placing on the market of most batteries and accumulators with a certain mercury or cadmium content. It establishes rules for their collection, recycling, treatment and disposal.

Packaging and packaging waste: the Directive focuses on preventing packaging waste and promoting re-use, recovery and recycling of packaging waste, with a view to preventing or reducing its impact on the environment.

7. See: <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/waste-shipment>

8. Downloadable on <http://www.basel.int>

9. Contact Committee of the Supreme Audit Institutions of the EU (2013) Coordinated audit on the enforcement of the European Waste Shipment Regulation: joint report based on eight national audits, The Hague. www.courtsofaudit.nl/english.

10. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Official Journal of the European Union, L 334, 17 December 2010.

11. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, Official Journal of the European Communities, L 182, 16 July 1999.

Disposal of polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs): polychlorinated biphenyls (PCBs) belong to a group of man-made chemicals known as persistent organic pollutants (POPs). PCBs are classified as probable human carcinogens and have numerous adverse effects in animals and humans. The Directive on the disposal of PCBs and PCTs lays down the requirements for environmentally sound disposal of PCBs, including inventories of equipment containing PCBs and plans for disposal.

Large volumes of illegal waste are shipped out, much of which is hazardous.

End-of-life vehicles: the Directive aims to limit the production of waste arising from end-of-life vehicles, organise waste collection and organise waste treatment. It also seeks to increase re-use, recycling and recovery of end-of-life vehicles and their components, and to facilitate dismantling through information on components and materials. It lays down numerous requirements for European vehicle manufacturers, which should design vehicles that are easy to recycle.

Electrical and electronic equipment: the Directive promotes the collection and recycling of electrical and electronic equipment. The recast of the Directive on waste electrical and electronic equipment (WEEE) lays down new collection targets (85% of WEEE generated, or 20 kg per capita from 2019 onwards). It also gives Member States the ability to fight illegal export of waste, in particular illegal shipments of WEEE disguised as legal shipments of used equipment. Finally, the recast Directive harmonises national registration and reporting requirements.

Restriction of hazardous substances (RoHS 2): the Directive restricts the use of hazardous substances in electrical and electronic equipment. The recast Directive seeks to increase the amount of e-waste that is appropriately treated and to reduce the volume that goes to disposal.

Future of EU waste legislation and 'Better regulation'

The European Union's 'Better Regulation' agenda was launched by the Barroso Commission in 2004. Its main aim is to reduce administrative costs for businesses by simplifying the existing legislation. It moves away

from the precautionary principle by extending the use of regulatory impact assessments and measuring administrative costs with a view to increasing competitiveness.

The 'Better Regulation' approach is being used for the critical assessment and scrutiny of many important pieces of sectoral legislation. In addition to health and safety legislation, it also covers the Strategy for Sustainable Development and the environmental programmes, thereby simplifying environmental policy.

In 2012, the Commission put SMEs at the core of the 'Better Regulation' agenda. Following a consultation, they identified the 10 most burdensome laws, including the legislation on shipments of waste, the waste framework legislation and the Waste Framework Directive.

To respond to this need for simpler legislation, the Commission is working on a review of waste policy. DG Environment has the task of improving implementation and cutting down on unnecessary reporting or other administrative procedures in waste legislation. Support for actions such as 'fitness checks' of legislation will help to identify burdens, gaps and inconsistencies, and how a sector should be adapted.

In its 2013 roadmap entitled 'Review of Waste Policy and Legislation', the Commission states it will carry out a review of waste policy and legislation, and present the results in 2014. Three elements will be covered: a review of key targets in EU waste legislation (in line with the review clauses in the Waste Framework Directive, the Landfill Directive and the Packaging Directive); a 'fitness check' of five of the Directives dealing with separate waste streams; and an assessment of how best to tackle plastic waste, following on from the 2013 Green Paper on Plastic Waste.

The review will be based on the objectives of the Resource Efficiency Roadmap, the need to ensure sustainable access to raw materials and the Thematic Strategy on the Prevention and Recycling of Waste, which highlights the need to modernise, simplify and ensure the consistency of waste legislation.

Review of targets

A legal obligation to review a number of waste management targets is laid down in the Waste Framework Directive, the Landfill Directive and the Packaging and Packaging Waste Directive.

The targets to be reviewed by 2014 are the following:

- the Waste Framework Directive lays down targets for the preparation for re-use and the recycling of waste materials from household and possibly from other origins, and targets on preparation for re-use, recycling and other material recovery, including backfilling operations, on non-hazardous construction and demolition waste to be achieved by 2020;
- the Landfill Directive lays down progressive targets for the reduction of landfilling of biodegradable waste, the last target to be achieved in 2016;
- the Packaging and Packaging Waste Directive lays down differentiated recycling and recovery targets for several categories of packaging waste.

The following targets are to be achieved by 2020, although there are no penalties if they are not achieved.

Waste Framework Directive targets:

- increase re-use and recycling of waste materials from households, e.g. at least paper, metal, plastic and glass, to 50%;
- increase re-use, recycle and other material recovery of non-hazardous construction and demolition waste to 70%.

Landfill Directive targets:

- reduce the amount of biodegradable municipal waste going to landfills to 35%.

Packaging and Packaging Waste Directive:

- 60% as a minimum by weight of packaging waste should be recovered or incinerated at waste incineration plants with energy recovery;
- 55% as a minimum and 80% as a maximum by weight of packaging waste should be recycled;
- The following minimum recycling targets for materials contained in packaging waste should be attained:
 - 60% by weight for glass;
 - 60% by weight for paper and board;
 - 50% by weight for metals;
 - 22.5% by weight for plastics, counting exclusively material recycled back into plastics;
 - 15% by weight for wood.

'Fitness check' of Directives on waste streams

The following five Directives will be covered by the 'fitness check':

- Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture;
- Directive 94/62/EC on packaging and packaging waste;
- Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT);
- Directive 2000/53/EC on end-of life vehicles;
- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators.

Green Paper on Plastic Waste

In March 2013, the European Commission launched a broad public consultation on how best to tackle plastic waste in the context of the current waste policy framework. The final report was published in November 2013 and identifies several important topics for the respondents: waste management, waste prevention, legislation, market and market-based instruments, awareness-raising and communication¹².

The EU's legislative framework for waste is complex and will continue to be so, despite or because of the upcoming fitness checks and overall review of the legislation. In addition to its complexity, the main issue is the way in which the Member States implement the legislation or fail to implement it. Added to this are the numerous illegal waste activities that affect all EU citizens and the long-term investment that is required in waste management and infrastructure.

Three challenges require investment and stricter rules in the EU and its Member States.

Illegal waste is increasing in the EU. Large volumes of illegal waste are shipped out, much of which is hazardous. These illegal shipments are a crime and disrupt proper waste treatment. Inspection authorities report a lack of information and an inability to gather and track information. The Member States need to ensure that are meeting their commitments under the corresponding EU Directives, including verification of the purpose of the shipment and the safety requirements¹³.

How to tackle plastic bags?

The negotiations on the ban on plastic bags in the EU have been controversial. The Commission estimates that every EU citizen uses around 200 plastic bags every year. Last November, a legislative proposal to reduce plastic waste was blocked by the Commission's Secretary-General, Catherine Day, who prevented it from going to an inter-service consultation. Instead, Environment Commissioner Janez Potocnik suggested a ban on or reduction in the number of plastic bags through the introduction of a charge. A political agreement between ministers is expected by June 2014, under the Greek Presidency. This 'weak' measure was criticised by Margrete Auken MEP (Group of the Greens/European Free Alliance), who highlighted the Commission's failure to set clear targets for reducing lightweight plastic bags and leaving it up to Member States to decide how and to what extent to reduce the number of plastic bags.

The second aspect relates to the incinerator plants in Europe and the waste they produce. Incinerators do not make waste disappear; they transform it into ash, gases, heavy metals and toxic compounds that can be hazardous to human health and the environment. Action must be taken to divert waste from incinerators and promote recycling instead.

The EU exports large volumes of waste to emerging or developing countries. Between 250 000 tonnes and 1.3 million tonnes of used electrical products, including computers, televisions and refrigerators, which contain hazardous substances, are shipped out of the EU to West Africa and Asia every year¹⁴. Household rubbish is even shipped to Latin America, labelled as clean plastic for recycling. There are also numerous shipments of waste between countries in Europe, including illegal shipments¹⁵.

The European Union therefore has an important role to play in supporting other countries, including West African states, to develop environmentally and socially sound recycling systems. ●

12. European Commission (2013) Analysis of the public consultation on the Green Paper "European Strategy on Plastic Waste in the Environment": final report. http://ec.europa.eu/environment/waste/studies/pdf/green_paper_plastic.pdf

13. Court of Justice of the European Union (2002) Judgment of the Court (Fifth Chamber) of 27 February 2002. *Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie*. Reference for a preliminary ruling: Verwaltungsgerichtshof - Austria. Case C-6/00.

14. EEA (2012) Movements of waste across the EU's internal and external borders, Report 7/2012, Copenhagen, European Environment Agency.

15. EEA (2009) Waste without borders in the EU? Transboundary shipments of waste, Report 1/2009, Copenhagen, European Environment Agency.