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# Waste Shipment Regulation proposal

## Comments from the European metals industry

### Introduction

In November 2021, the European Commission presented the legislative proposal to update the rules on waste shipment of the current Waste Shipment Regulation (WSR, 1013/2006). The proposal has three objectives. On the intra-EU shipments, it aims to facilitate procedures within the EU. On the extra-EU waste shipments, it introduces stricter requirements and restrictions on exports of waste to third countries. Regarding the illegal shipments, it provides a stronger response to illicit activities.

Eurometaux, representing the EU metals producers and recyclers, recognises the publication of the WSR draft as a very important delivery of the EU Green Deal, connecting to the EU Circular Economy by securing the availability of the secondary raw materials and to the Zero Pollution Action Plan by ensuring that waste are treated in an Environmentally Sound Manner.

Non-ferrous metals recycling plays key role in the EU and world-wide market. Securing the right rules for importing and exporting waste in the years to come will support our competitiveness. Eurometaux members performing recycling activities need less administrative burden for shipping waste metals for recycling intra-EU and an establishment of a level playing field when metals scrap goes for treatment extra-EU. They also look to favourable conditions for importing metal-containing waste to the EU where recycling operations can take place according to the highest technical and environmental standards and contribute to the EU Circular Economy. Finally, non-ferrous metals recyclers are strongly in favour of addressing the illegal shipments to prevent that end-of-life products and waste are improperly treated in countries with low environmental, health and social standards.

### Key recommendations

- **Intra-EU shipments** – Simplify and slim down the rules as much as possible. Strengthen the status of pre-consented facilities to achieve an effective fast-track procedure. Effectively implement the EU electronic system for the exchange of documents and waste flow documentation with the lowest possible additional bureaucracy for intra-EU shipments.
- **Extra-EU shipments** – Optimise the rules to secure the level playing field for European recyclers and enforce that waste sent for treatment outside the EU is treated according to the Environmentally Sound Management conditions, provenly equivalent to the EU ones.
- **Import of waste to the EU** – Facilitate conditions for importing waste, in particular spent batteries and WEEE for recycling in the EU.



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## Intra-EU waste shipments

### Electronic submission and exchange of information

- *Art. 26 of the WSR proposal establishes the Electronic Data Interchange (EDI) system where the information and documents are submitted and exchanged via electronic means, either via the central system operated the Commission, or via a national system that must be interoperable with the central system.*

Electronic exchange is highly desirable to facilitate the procedures and to allow better register of waste shipments (type of waste, amount, destinations, etc.). We understand that the preparatory work with Member States is ongoing to get ready for this new regime. An important aspect to secure is the interoperability between the central and national systems. Moreover, a careful consideration needs to take place on the data security and governance.

#### Our recommendations:

- Involve the actual waste market actors to develop and test the system together with the Member States authorities to make it as much effective and workable as possible.
- Timely prepare and adopt the implementing act foreseen in Art. 26 establishing technical and organisational EDI system requirements.

### General information requirements

- *Art. 18 of the WSR proposal contains a series of strict procedural timing requirements for the shipments of Green List waste (Annex III) and waste for laboratory analysis or experimental treatment. It also increases the period of keeping documentation.*

The WSR proposal speaks about submitting electronically a completed Annex VII no later than 1 day before the shipment of the Green List waste and waste for laboratory analysis or experimental treatment. It also foresees that the recovery facility or laboratory confirms arrival of waste within 1 day after the receipt of the shipment. Subsequently, waste recovery has to be certified no later than 30 days after completing that operation. Finally, information on the shipment has to be kept at least 5, instead of 3, years as it is currently.

Intra-EU shipment of green listed/laboratory destined waste should be facilitated and bureaucratic burden should be lowered. Regarding information requirements, the obligation to get the confirmation of receiving a shipment after 1 day is too short. Moreover, there are cases when a shipment is rejected by a recovery facility but for some reasons the material cannot be returned with the same means of transport and has to be stored even for a week or longer before it is collected back by the supplier.

#### Our recommendations:

- Avoid adding too strict procedural timing obligations before the EDI system is in place.



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- Extend the time to confirm the receipt of waste from 1 to 5 working days.

### Notifications

- *Art. 5 of the WSR proposal introduces a provision that only notifiers that have received a permit or are registered in accordance with the Waste Framework Directive (2008/98/EC) Chapter IV on Permits and Registrations may submit a prior written notification.*

This new provision could mean that only companies having a waste treatment licence may issue notifications. This could apply to some Eurometaux members companies having a waste treatment licence, but definitely not to all of them. Art. 5(1) would be in direct contradiction to the definition of a notifier in Art. 3(6) which specifically includes waste producers.

### Our recommendation:

- Notifications for industrial companies must be kept possible.

### Pre-consented recovery facilities

- *Art. 14 of the WSR proposal continues the pre-consented facilities concept present in the WSR 1013/2006. Validity of the pre-consented facility status is extended to 7 years, while the validity of a general notification consent covering several waste shipments to such a facility is maintained at 3 years.*

The proposed provisions for the pre-consented recovery facility will neither facilitate nor strengthen the current rules. In fact, the list of information requirements to be provided with the application request is even extended of a few additional requirements. However, a positive development is the extension of the pre-consented facility status to 7 years. In that spirit, there is a need to harmonise the validity of general notifications (submitted in accordance with Art. 13 of the proposal) covering several shipments designed to a pre-consented facility and extend it also to 7 years.

Moreover, Art. 14(10) allows for the pre-consented facilities status to be revoked, without clearly detailing under which conditions this is possible. The text states only that a decision must be duly motivated which provides too much leeway for competent authorities and doesn't give the possibility for the facility to oppose the judgement.

### Our recommendations:

- Effectively strengthen the pre-consented facilities concept giving real benefit for actors to apply for this status in order to increase number of these facilities allowing waste market actors to benefit from a fast-track procedure for shipment and recovery of certain waste.



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- Extend, from 3 to 7 years, the validity of the general notification covering several shipments designed to a recovery in a pre-consented facility.
- Provide detailed information on conditions under which the status of pre-consented facilities might be revoked, limiting this possibility to real, serious concerns.

### Multiple shipments

- *Art. 13 of the WSR proposal establishes three conditions to be fulfilled for the general notification covering several waste shipments adding a new requirement that the points of exit from and entry, into each country concerned, is the same.*

The two first conditions of Art. 13 requiring that a similar type of waste (physically and chemically) is contained in several different shipments destined to the same, pre-consented, facility are logic and easy to fulfil. However, the new requirement to keep the same routing, especially for the points of exit and entry, goes against the spirit of facilitating the intra-EU shipments. In day-to-day operations, conditions can easily change due to unforeseen circumstances and transport means/conditions. As a result, to secure timely and flexible delivery of waste to the recovery facility, a different border crossing may take place.

### Our recommendation:

- Remove the obligation to keep the same entry and exit points into each country concerned as it adds a bureaucratic burden to the intra-EU shipment of waste.

### Disagreement on classification

- *Art. 28 of the WSR proposal contains a provision that in case of doubt on waste classification, opinion of the country of destination is superior to the view of the dispatch country. The article announces also delegated acts to: i) harmonise classification of hazardous (Amber List) and non-hazardous (Green List) waste as well as ii) distinguish between waste and used goods.*

Harmonisation of provisions is key for an effective enforcement of rules. Reference to the Waste Framework Directive Art. 5 (by-products) and 6 (end-of-waste) to establish a basis for classification as waste and non-waste is welcomed. It is important to set up a robust monitoring and enforcement system at EU level to avoid possible circumvention practices that could occur when more stringent requirements on the export of waste would lead to anomalous amount of material exported as EoW, especially when harmonized EoW criteria are missing.

However, the proposal on determining contamination levels in the context of classifying waste as hazardous or non-hazardous (Annex IV Amber List and Annex III Green List) brings serious reservations. As waste streams come not only from the EU but also from all over the world, it is imperative that economies of scale are utilized to their maximum. Establishing concentration thresholds for Green List waste, as it is currently practiced in Austria,



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would be counterproductive and would undermine the meaning of the Green List. In consequence, waste that was previously not subject to notification would only reach the recycling plants after fulfilling a complex notification procedure.

To further boost EU Circular Economy, a new entry in the Annex IIIB should be added to include windows, doors, curtain walls, framing profiles and other aluminum elements also if coated.

Moreover, a provision to define a clear set of rules to distinguish between used goods and waste, taking example from the provisions of Annex VI WEEE-Directive, is paramount for the EU Circular Economy.

**Our recommendations:**

- Abstain from establishing thresholds for the Green List waste to prevent that their treatment will require complex notification procedure.
- Harmonise waste classification across Member States to facilitate intra-EU shipments (e.g. for waste batteries, electronic scrap or anode slimes).
- Extend Annex IIIB to windows, doors, curtain walls, framing profiles and other aluminum elements to facilitate their recycling and to enhance the EU Circular Economy.
- Set clear rules to distinguish between used goods and waste.

**Waste for laboratory analysis and experimental treatment**

- *Art. 4 of the WSR proposal grants that a shipment of waste explicitly destined for laboratory analysis or experimental treatment trials doesn't require notification and is subject to the general information requirements of Art. 18. Allowed quantity is limited to 150 kg and it can be higher on a case-by-case basis.*

Research and innovation are important activities in which metals recyclers take part regularly via the EU and nationally funded projects. The proposal of increasing the threshold for waste for laboratory analysis and experimental treatment, from the current 25 kg to 150 kg and allowing higher levels on individual cases, is a step in a good direction. However, as the WSR is covering a variety of heterogeneous waste streams, one-size-fits all might not be universally applicable. For metallurgical test purposes a range of 2 tonnes, is needed to explore innovative pilot technologies and to move them from the laboratory to an industrial facility level to test for a technical and economic feasibility.

**Our recommendation:**

- Acknowledge that the proposed threshold may vary depending on the waste stream type.
- Increase the limit from the proposed 150 kg to 2 tonnes.



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## Waste hierarchy and prohibition of waste disposal

- *Art. 2 of the WSR proposal refers to the waste hierarchy established under the Waste Framework Directive (2008/98/EC). Art. 11 is severely restricting and linking to several conditions' shipment of wastes for disposal within the EU.*

The WSR legislative proposal supports the objectives of waste management that requires waste to be recycled and recovered which is the core activity of the EU metals recyclers represented by Eurometaux. Efficiency of activities is though dependent on an efficient collection and proper sorting that require support and investments at the national level.

Looking at the lowest level of waste management hierarchy, which is waste disposal, it needs to be reminded that certain metallurgical operations will result in some final waste fractions that cannot and should not be recovered (e.g. flue dust captured in off-gas filtering that contains mercury). Such a specific waste may sometimes not be disposed of within a given Members State territory and needs to be sent to secure depots (e.g. a salt mine) following the proximity rule.

### Our recommendations:

- Apply the waste hierarchy in such a way that waste destined for disposal may be still shipped within Europe in clearly defined cases.
- Promote efficient collection and proper sorting of waste to make sure that waste fractions reaching recovery facilities are as 'clean' as possible.

## Financial guarantee

- *Art. 7 of the WSR proposal establishes mandatory financial guarantee for all waste shipments requiring notification. Moreover, it foresees the Commission to assess the feasibility of establishing a harmonised calculation method to determine the amount of financial guarantee or equivalent insurances. If appropriate, an implementing act will be adopted.*

Financial guarantee is an important tool as it significantly restricts the presence of dubious and illegal players in waste shipments. Unfortunately, the guarantee amounts often to large sums of money and blocks them for a long time. Moreover, the calculation method differs across Member States.

Harmonisation of a financial guarantee calculation is desirable, at least for shipments within Europe. However, trying to create a method embracing all the national systems might mean that harmonisation could happen at the highest level and thus may not bring so much expected relief after all. In addition, the legislative proposal states that an implementing act establishing harmonised calculation method will be dependent on the feasibility assessment result and would be adopted only if appropriate.



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**Our recommendations:**

- Streamline the financial guarantee calculation by introducing a single EU calculation method that would result in reducing fees and admin burden.
- Assign feasible timeline to the publication on an implementing act, not only to the feasibility assessment step.
- Involve industry stakeholders in the process.

## Extra-EU waste shipments

### Level playing field and equivalent conditions

- *Art. 37 of the WSR proposal prohibits exports of non-hazardous (Green List) waste to non-OECD countries unless the non-OECD country will notify its willingness to receive waste and demonstrate its ability to manage certain waste in an Environmentally Sound Manner (ESM). Art. 38 establishes a list of non-OECD countries willing to receive EU waste for recovery.*
- *Art. 56 on the Environmentally Sound Management (ESM) confirms broad equivalence with meeting EU conditions for waste treatment operations.*
- *Art. 43 introduces an obligation on the waste exporter to ensure an audit by an independent and accredited third party to verify compliance of the waste receiving facility with the Annex X criteria.*

A level-playing field and clearly defined equivalent conditions for the treatment of exported waste are vital for avoiding harm to human and environment in developing countries, and for maintaining the competitiveness of the European industry.

Since 2002, the EU has been a net exporter of aluminium and copper scrap, with approximately 1,000,000 t each of aluminium and copper scrap departing from Europe to other parts of the world every year. These are quantities which could be absorbed in Europe, as the main reasons for their exports are higher prices paid due to the lower environmental, safety and labour standards in many importing destinations. The same applies to waste electronics, batteries, vehicles, and other complex metals-containing products that leave Europe while recycling it here, according to the high environmental and social standards, would contribute to increasing EU resource autonomy, safeguarding resources and thus maximising social and economic benefits.

For the above reasons, it is important that the EU export of waste only occurs when the equivalent European standards in receiving countries outside the EU and efficient material recovery are guaranteed. In other words, extra-EU exports of waste must be strictly controlled and require a proof that they will be processed at the destination at least with standards and techniques equivalent to those at the European country of origin. To this end, an obligation is welcomed to require exporters of waste to ensure that the facility which receives the waste in the third country undergoes an independent third-party audit.



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**Our recommendations:**

- Secure that procedures and checks of an effective equivalence at the extra-EU destination consider industrial emissions (BAT AELs<sup>1</sup>), climate change, waste legislation and the respect of the fundamental international rights on human, social and labour aspects.
- Delete from the text of Art. 56 word “broadly” when speaking of equivalence with the EU conditions for waste treatment extra-EU.

## Import of waste to the EU

- *Art. 49 of the WSR proposal prohibits imports of waste to the EU except from an OECD Decision, Basel Convention or other countries with which the EU has concluded an agreement with.*
- *Art. 50 establishes conditions for imports from a country to which the OECD Decision applies.*

As the EU wants to position itself a central player in the Circular Economy import of waste into the EU for recovery should be facilitated to avoid additional red tape and other limitations that a stricter import regime may bring.

Waste metals and end-of-life metal-containing products are an important world-wide commodity. The European metals recyclers search for material also on the extra-EU markets and bring it for recycling to their EU facilities. This is particularly applicable for waste streams such as batteries or WEEE that contain technology metals so much needed for meeting the raw materials demand of the EU Green Deal.

Back in 2018, one of the Eurometaux members, a recycling company reported a case when a load of the end-of-life Li-ion portable batteries, containing cobalt with a price level of about 70000 EUR/ton, has been stuck for more than 1 year in the US before it could go to Belgium. The main reason for delay was a long time to have the notification approved and, in the meantime, the initially agreed sea carrier has changed routings. As a result, the company had to spend more on transport costs and was not able to continue its activities in the planned timeframe.

**Our recommendation:**

- Make the conditions for importing waste to the EU easier to avoid admin and financial burden due to delays and/or redundant legal provisions.

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About Eurometaux: Eurometaux is an industry association representing the collective European non-ferrous metals industry, including smelters, refiners, fabricators and recyclers of all non-ferrous metals produced industrially in Europe. In total the industry employs 500,000 people across over 900 facilities, with an annual turnover of €120bn.

<sup>1</sup> Best Available Techniques Associated Emission Levels