

2021 Proposal for a Regulation on shipments of waste: A significant step forward in updating the EU legislative framework?

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Keywords: waste shipment, export of waste, illegal shipments, European Green Deal, application of EU law
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“Waste can be a valuable resource but it has to be used with care. When waste shipped across borders is not properly controlled and sustainably managed in the destination countries, it can harm human health and the environment. On the other hand, such waste can have a positive economic value and also bring environmental benefits. This is the case when it is recycled and used as secondary materials, therefore replacing virgin materials and contributing to a more circular economy”.¹

Currently, at European Union (EU) level, the transboundary movement of waste is being regulated by Regulation (EC) 1013/2006 on shipments of waste,² (Regulation or WSR). Implementing the obligations of the 1989 Basel Convention on the control of transboundary movements of hazardous wastes as well as the 2001 OECD decision establishing a control system for waste recovery within the OECD area, the WSR introduced a strict control regime for the shipment of waste between member states and non-EU countries, as well as the transport of waste within the EU. Yet, “since the adoption of the WSR, exports of waste from the EU to third countries have considerably increased, notably to countries that are not members of the OECD. In 2020, the EU exported around 33 million tonnes of waste to non-EU countries and imported around 16 million tonnes [See Figure 1 below]. Between EU countries, nearly 70 million tonnes of waste are shipped each year.”³

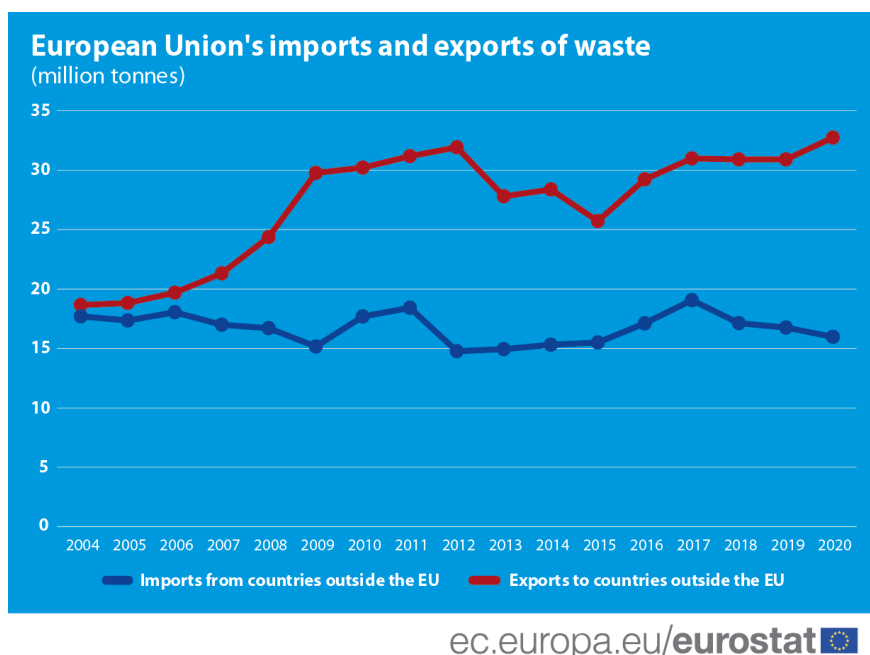


Figure 1

In 2020, in accordance with the policy objectives of both the European Green Deal and the new EU Circular Economy Action Plan, the European Commission (Commission) proceeded to a review of the WSR. Based on this review, three main problems were identified with regard to the implementation of the Regulation in practice. More specifically, it became clear that significant volumes of waste are exported outside the EU and no detailed

¹ https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5918

² Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, OJ L 190

³ https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5918

provisions can be found within the WSR ensuring that waste is managed sustainably in these third countries, especially in developing countries. Furthermore, national administrative procedures and inconsistent implementation of the WSR provisions at national level do not facilitate the transboundary movements of waste for recycling within the EU. Lastly as illegal traders bypass WSR provisions a high amount of illegal shipments of waste occurs both within the EU, as well as from the EU to third countries. To address these problems the Commission presented in November 2021 a Proposal for a new regulation on waste shipments (the Proposal).⁴ Through the Proposal the Commission aims to introduce stronger rules on waste exports, a more efficient system for the circulation of waste for recycling or re-use in the EU, and determined action against illegal waste shipments.

The aim of this paper is twofold. Initially, this paper aims to bring forward, as well as discuss in detail, the key measures of the Proposal on the export of waste to third countries, on shipments of waste between EU member states and finally on illegal shipments of waste. One can refer, *inter alia*, to the proposal made by the Commission in defining a procedure for verifying whether a transported object or substance is waste and if substances or objects that have not been classified as waste by the participants in such trade are transported. Further, the obligation that member states should take into account additional criteria to determine the nature and amount of the fines for possible infringement such as the type, nature and duration of the infringement, the culpability and financial situation of the infringer, the environmental damage caused, previous infringements, and the economic benefit derived from the infringement. Moreover, one shall note the creation of a new Waste Shipment Enforcement Group is proposed, which would be responsible for identifying further actions and measures that shall be undertaken at EU level to increase the future effectiveness of the Regulation. Lastly, from a practical perspective the potential of digitalisation of current procedures to reduce administrative costs is a significant change that shall not be missed.

Secondly and most importantly, this paper aims to assess whether the content of this Proposal appears to be a welcome step forward in tackling in practice the problems currently existing regarding the implementation and the application of the WSR in practice. In detail, this paper will shed light on problematic provisions or gaps found in the Proposal such as the failure to distinguish between shipments for reuse and recycling, and shipments for lower forms of recovery, including incineration. Furthermore, one can mention the failure of the Proposal to regulate how materials and products, shipped for reuse, will be managed in the receiving country when they reach their end of life.⁵

In order to reach its conclusions this paper will mainly follow a library-based research methodology examining and commenting on primary legislation and legislative proposals in the area of EU and national waste policy as well as various other secondary sources such as academic articles and books. Various discussions and interviews with local actors, at national level will furthermore be attempted. Special attention will additionally be drawn to statistical data from the European Environmental Agency website.

Based on the above analysis, this paper will conclude that the Proposal appears to be a welcome step forward in boosting the circular economy and aligning the EU policy on waste shipments with the waste treatment hierarchy found in the Waste Framework Directive.⁶ Yet certain of its provisions need to be rethought before its final adoption in order to be able to achieve, in practice, a well-functioning market of secondary raw materials in the EU.

⁴ Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM(2021) 709 final

⁵ <https://eeb.org/eu-waste-shipment-regulation-falls-short-of-fixing-europes-waste-export-crisis/>

⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312/3.