

# Public Consultation on the Functioning of Waste Markets

## **Public Consultation on the functioning of Waste Markets in the European Union**

### Part 1 - Identification of stakeholder or expert

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Please enter your country of residence/establishment

- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
- LIETUVA
- LUXEMBOURG
- MAGYARORSZÁG
- MALTA
- NEDERLAND
- OTHER COUNTRY (non-EU)
- POLSKA
- PORTUGAL
- ROMÂNIA
- SLOVENIJA
- SLOVENSKO
- SUOMI / FINLAND
- SVERIGE
- UNITED KINGDOM
- ÖSTERREICH
- ČESKÁ REPUBLIKA
- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country of your residence/establishment:

Your name or organisation:

FEAD - European Federation of Waste Management and Environmental Services

Please provide your EU Transparency Register ID number (if you have one)

2157643512-49

If your organisation is not registered, you can register now (please see the introduction to this consultation under 'How to submit your contribution').

Can your reply be published? Please tick the box of your choice.

- With your name or that of your organisation
- Anonymously

For information on how your personal data and contribution will be dealt with, please refer to the privacy statement in the introduction to this consultation.

I am replying to this consultation as...

- an individual
- a private enterprise
- a non-governmental organisation (NGO)
- an organisation or association (other than NGO)
- a government or public authority
- a European institution or agency
- an academic/research institute
- other

If you are replying on behalf of a company, please specify in which of the following markets you predominantly operate:

- The whole EU market
- In one or several Member States, please indicate which one in the list below:
- BELGIQUE-BELGIË
- DANMARK
- DEUTSCHLAND
- EESTI
- ESPAÑA
- FRANCE
- HRVATSKA
- IRELAND
- ITALIA
- LATVIJA
- LIETUVA
- LUXEMBOURG
- MAGYARORSZÁG
- MALTA
- NEDERLAND
- OTHER COUNTRY (non-EU)
- POLSKA
- PORTUGAL
- ROMÂNIA
- SLOVENIJA
- SLOVENSKO
- SUOMI / FINLAND
- SVERIGE
- UNITED KINGDOM
- ÖSTERREICH
- ČESKÁ REPUBLIKA
- ΕΛΛΑΔΑ (ELLADA)
- ΚΥΠΡΟΣ (ΚΥΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

If relevant, please specify the non-EU country in which you predominantly operate:

Serbia and Norway

If you are replying on behalf of a company, please indicate the number of its employees:

- Between 1 and 49
- Between 50 and 249
- 250 and more

## Part 2 - Questions

### A. Identification of the main perceived regulatory failures

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For the purpose of this consultation, regulatory failures are defined as situations in which the regulatory environment hampers the efficient functioning of the waste markets (i.e. where waste meant to be recycled or recovered can move freely within the EU, without unjustified restrictions) and fails to ensure optimal implementation of the waste hierarchy (according to Article 4(1) of the EU waste framework directive, the following waste hierarchy shall apply as a priority order: prevention; preparing for re-use; recycling; other recovery, e.g. energy recovery; and disposal).

1. Do you think there are any regulatory failures or obstacles currently affecting the functioning of EU waste markets?

- Yes, a large amount
- Yes, but limited
- No (go to Section B)
- Don't know (go to Section B)

**2. What do you think is the most important aspect of policy and/or legislation that creates distortions in the waste markets or creates unjustified obstacles to the proper functioning of waste markets in the EU?**

In FEAD's view, the most important aspects of policy and/or legislation creating distortions in the waste market are (1) the lack of fair competition and (2) the lack of a level playing field due to differences in the implementation and enforcement of legislation across Member States.

The specific items related to (1) are as follows:

- A. separately collected fractions from households being considered as a service of general economic interest (SGEI);
- B. cross-subsidisation and abuse of dominant position by municipalities operating in the waste market;
- C. abuse of in-house and public-public cooperation exclusions (Public Procurement rules);
- D. unequal VAT treatment between public and private companies;
- E. misuse of EU funds (not in line with the waste hierarchy).

Examples for each of these items are given in reply to question 3. For (2) differences in implementation and enforcement, please refer to question 8.

3. Could you provide an example of such a regulatory failure/obstacle? Please describe it briefly.

Due to the lack of space, and under the agreement with the Commission services, examples are provided in a separate document and can be found online on the FEAD website ([www.fead.be](http://www.fead.be)).

4. What do you think this regulatory failure/obstacle is linked to? (multiple answers possible)

- EU legislation or policy
- National policy, legislation or administrative decisions
- Regional policy, legislation or administrative decisions
- Local policy, legislation or administrative decisions

Please briefly describe which specific policy/policies, legislation(s) or decision(s) is/are to blame for this:

Although the five-step hierarchy enshrined in the waste framework directive has now been transposed in the national law of the 28 EU Member States, its application is extremely unsatisfactory in many cases. An improvement is not being carried out with the necessary consistency. Even seven years after the waste framework directive entered into force, unsatisfactory landfill situations and the absence of an efficient secondary raw materials sector with the associated installation infrastructure dominate in many parts of Europe. This is due to an implementation and enforcement problem.

The national level often contents itself with the available processing service offer, which is being developed only very slowly, instead of consistently creating a coherent infrastructure which ranges from separate collection through treatment to increased recycling.

On the one side, municipalities very often have no interest in developing a secondary raw materials sector because too often they are structured on too small a scale to be able to deploy required investments, and even larger co-operations between municipalities cannot guarantee economic operation of installations. Rather, municipalities are concerned to assert monopoly interests precisely for waste flows with a monetary value. On the other side, the private sector is not given the opportunity to develop efficient installations.

It is not uncommon that municipalities' revenues via the waste sector are a pillar for financing municipal activities in general. Since there can be no doubt that many municipalities face considerable financial problems. National authorities and enforcement structures are often not minded to force a paradigm shift at municipal level towards a circular economy.

Examples given when answering Question 3, link to the following:

A. separately collected fractions from households being considered as a SGEI; - national or regional or local policy, legislation or administrative decisions

B. cross-subsidisation and abuse of dominant position by municipalities operating in the waste market; - national or regional or local policy, legislation or administrative decisions

C. abuse of in-house and public-public cooperation exclusions (Public Procurement rules) national or regional or local policy, legislation or administrative decisions

D. unequal VAT treatment between public and private companies, national or regional or local policy, legislation or administrative decisions

E. misuse of EU funds (not in line with the waste hierarchy) national or regional or local policy, legislation or administrative decisions

5. Which of the following impacts do you think such regulatory failure/obstacle has within the EU? (multiple answers possible)

- Reduces reuse or recycling
- Reduces recovery, including energy recovery
- Increases waste generation
- Leads to increased environmental impacts
- Leads to reduced resource efficiency
- Other
- None

If relevant, please provide additional information in relation to your above reply.

Taken together, the problems outlined above lead to large volumes of recyclable materials being landfilled in many parts of Europe and being channelled not into material recovery but into energy recovery in other parts. There are high recycling rates in the more industrialised countries only in areas where the sustainability of recycling is a given or appears feasible (e.g. metals, paper, glass). But here, too, the fact that the private sector in many places is being eliminated by authorities' monopoly interests stands in the way of optimal volume development (see above). As a result, the situation regarding CO2 emissions can clearly be improved and very many more secondary raw materials could be channelled back to manufacturing industry instead of being incinerated or landfilled.

Reduces reuse or recycling

Municipal monopolies and mixing of non-economic activity and commercial activity in the same company or corporate is related to local overcapacities (e.g. incineration) and inefficient use of capacity in neighbouring countries. There is a high risk that local overcapacities make recycling less interesting from an economic viewpoint. Incineration overcapacity leads to lower prices, which makes recycling of waste a less competitive alternative.

Leads to increased environmental impacts

Re-use/recycling of waste provides higher environmental benefits than incineration/landfilling. Incineration/landfilling, at the expense of reuse/recycling, leads to increased environmental impacts.

Illegal activities such as treatment in non-authorized facilities (without waste permit) and sham recovery (where waste destined for a recovery operation is disposed of) results in the release of dangerous substances to the environment and puts health at risk.

Leads to reduced resource efficiency

The regulatory failure/obstacle in general reduces the resource

efficiency in the waste chain with social, environmental and economic consequences and leads to increasing additional costs for both, companies that produce waste, and for consumers.

Waste market distortions cause less efficient markets. For instance, use of monopolies and lock-in of waste resources to local/municipal operators, creates a situation where the most efficient actor does not necessarily execute recycling and recovery. On the other hand, in an open, well-functioning waste market, waste resources are exploited as raw material in the most efficient facilities. We believe that fair competition is a condition for creating efficient EU recycling markets.

Other

Hinders and reduces innovation and investments by the private sector (or any sector for that matter). Lack of free markets lead to deadweight loss in the economy.

Closed waste markets (municipality monopoly) lead to less customer oriented waste management services and innovative recycling solutions. It is a hinder especially to develop the market in the commercial sector where private companies cannot offer full waste management services since so-called similar waste is a municipal monopoly.

Municipalities as dominating market actors lead to less competition and less opportunities for SMEs. For example, in Sweden, SME's can today only start up business in the commercial waste market, not in areas where the municipalities have monopolies or are a strong competitor. Municipalities' in-house services are increasing and investments have also increased in the core business areas in which the private recycling industries have been active since long, e.g. sorting plants, treatment plants for WEEE, construction and demolitions waste etc.

If the definition of municipal waste is broadened in an extensive way, this will most likely cause more competition from municipal companies since there is huge risk that the municipalities are targeting more of core business areas in their business plans which have been traditionally done by private recycling companies' e.g., production and supply of secondary raw materials to the industry.

High ambitions in the municipalities lead to investments in stimulating the reuse market, financed by the municipalities. There should be clear regulation for the reuse market thereby also incentivising private companies to develop these services.

6. How did you become aware of this regulatory failure/obstacle? (multiple answers possible)

- Reported by members of your organisation
- Through complaints reported to the authority
- From literature
- From own market analyses
- Own experience
- Other

If relevant, please provide additional information in relation to your above reply.

Please see the examples, reported by our members, of regulatory failures and obstacles in the answers above.

7. What actions are you aware of that could solve or mitigate this problem? (multiple answers possible)

- Not aware of any actions
- Legislative changes
- Changes in the policy or decision-making by authorities
- EU guidance on waste legislation or policy
- Co-operation between authorities in different Member States
- Co-operation between authorities in the same Member States
- Other

If relevant, please provide additional information in relation to your above reply.

Due to the lack of space, and under the agreement with the Commission services, additional information is provided in a separate document and can be found online on the FEAD website ([www.fead.be](http://www.fead.be)).

8. Are there other important aspects of policy and legislation that distort the waste market or create obstacles to the functioning of waste markets? If yes, please describe these taking into account the previous questions.

Due to the lack of space, and under the agreement with the Commission services, additional information is provided in a separate document and can be found online on the FEAD website ([www.fead.be](http://www.fead.be)).

## B. Obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation

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9. Do you consider that there are any obstacles to the functioning of waste markets connected to the application of EU waste legislation or other EU legislation?

- Yes, many
- Yes, but limited
- No (go to part C of the questionnaire)
- Don't know (go to part C of the questionnaire)

10. What are the drivers/causes of these regulatory failures or obstacles to the efficient functioning of waste markets?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Application of the system of notification- and consent requirements under the Waste Shipment Regulation (Articles 4-17 and 26-33 of the Waste Shipment Regulation).

*between 0 and 5*

b. Application by national authorities of the provisions concerning waste shipments through transit countries (Waste Shipment Regulation).

*between 0 and 5*

c. Other controls imposed on waste or waste shipments by application of EU waste legislation.

*between 0 and 5*

d. Different interpretations of the definition of 'waste' according to the Waste Framework Directive.

*between 0 and 5*

e. Diverging classifications of waste as 'hazardous' or 'non-hazardous' (Waste Framework Directive).

*between 0 and 5*

f. The distinction between 'recovery' and 'disposal' (Waste Framework Directive).

*between 0 and 5*

g. Application of the 'proximity principle' resulting in an outcome which is inconsistent with the waste hierarchy (Waste Framework Directive and Waste Shipment Regulation).

*between 0 and 5*

h. Divergent application of the so-called 'R-codes', i.e. the recovery operations listed in Annex II to the Waste Framework Directive.

*between 0 and 5*

i. Application of national end-of-waste criteria established in accordance with the Waste Framework Directive, see further Article 6(4) of the directive.

*between 0 and 5*

i. Application of national end-of-waste criteria established in accordance with the Waste Framework Directive, see further Article 6(4) of the directive.

j. Application of the grounds for reasoned objections to shipments of waste for recovery, as listed in Article 12 of the Waste Shipment Regulation, or the requirement for environmentally sound management (ESM), see further Article 49(1) of the regulation.

*between 0 and 5*

k. Other obstacles not listed above.

*between 0 and 5*

If relevant, please provide additional information in relation to your above reply.

Please note that we decided to choose the items that are of greatest concern to our members (a, c, g, i and k) and to rate these with a 5. We deliberately chose not to rate the other items, hence, taking a neutral position on them.

Due to the lack of space, and under the agreement with the Commission services, additional information is provided in a separate document and can be found online on the FEAD website ([www.fead.be](http://www.fead.be)).

11. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)



### C. Obstacles to the functioning of waste markets arising from national, regional or local rules or requirements and decisions which are not directly linked to EU legislation

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12. Do you consider that there are any distortions created by waste policy, requirements or decisions taken at national, regional or local levels?

- Yes, many
- Yes, but limited
- No (go to question 15)
- Don't know (go to question 15)

13. What are the drivers/ causes of these market distortions?

(Rate in a scale of 0–5, with 0 not important, 5 very important)

a. Differing taxes or fees leading to internal or cross border 'shopping behaviour', i.e. waste is transported to locations where it is cheaper to manage to the detriment of more environmentally sound management options which are locally available.

*between 0 and 5*

b. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

*between 0 and 5*

c. Development of waste treatment networks leading to local overcapacities or under-capacities for different types of waste treatment (e.g. incineration) to the detriment of higher positioned treatment steps in the EU waste hierarchy.

*between 0 and 5*

d. Inefficient use of available capacity in recycling or energy recovery in a neighbouring country or within the country itself.

*between 0 and 5*

e. Regulatory barriers that lead to shipments of waste in spite of facilities existing nearer to the source that could treat the waste in an equivalent or better manner in terms of environmentally sound management and the waste hierarchy.

*between 0 and 5*

f. Design and implementation of extended producer responsibility schemes leading to competition distortions or market access problems for producers and waste operators.

*between 0 and 5*

g. Permits and registrations which are not linked with EU legislation, requested from companies established in other Member States, even if they have fulfilled similar requirements in their home Member State.

*between 0 and 5*

h. Excessive controls on waste or waste shipments by national/regional/local policy, decisions and legislation that go beyond EU requirements ('gold plating').

*between 0 and 5*

i. Distribution of roles and responsibilities for municipal authorities and private companies in waste management.

*between 0 and 5*

j. Other obstacles not listed above.

*between 0 and 5*

If relevant, please provide additional information in relation to your above reply.

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14. Please provide qualitative or quantitative evidence of the impacts of these distortions (e.g. in terms of additional costs for businesses, missed new job opportunities, environmental impacts etc.)

15 a. Please rank the three most important drivers of market distortions and obstacles according to their importance with respect to being tackled first to improve the efficient function of waste markets. Please indicate the relevant number and sub-letter from 10a)-k), 13 a)-j).

15 b-c.

- 15 b. Cannot rank them. They are all equally important.
- 15 c. Not enough knowledge to rank them.

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

a. Increased waste generation or less reuse

*between 0 and 3*

16. What do you feel are the negative impacts within the EU of such obstacles? Please rank them between 0 (no impact) to 3 (high impact).

b. Less recycling

*between 0 and 3*

c. Less recovery, including energy recovery

*between 0 and 3*

d. Less environmentally sound management of waste

*between 0 and 3*

e. Less resource efficiency

*between 0 and 3*

f. Lack of market access

*between 0 and 3*

g. Other

*between 0 and 3*

If relevant, please provide additional information in relation to your above reply.

## D. Final questions

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17. Do you consider that there are large differences between the Member States in the way their waste markets function?

- Yes, very large differences.
- Yes, but the differences are small.
- No differences.
- Don't know.

**18. Please briefly describe the differences between Member States, perceived as obstacles to the functioning of waste markets:**

The EU has made substantial progress in turning waste into a resource and promoting sustainable ways of waste management, but performance varies considerably between Member States. There is significant potential to further improve the implementation of waste legislation at national level and to reduce the current disparities.

To ensure better implementation, FEAD welcomes the new instrument proposed by the European Commission - an early warning system, which we see as designed to strengthen regulatory enforcement in those Member States which are having most difficulty in reaching the EU recycling and landfill diversion targets. We believe that the early warning system will contribute to narrowing the gap between the worst and best performing Member States. However, keeping in mind that there is no "one-size-fits-all" solution, it is important that the measures listed in Annex VIII of the Commission's proposal remain at the discretion of the Member State concerned. In addition, FEAD, as the industry, will play its part, supporting national and European regulators by disseminating environmentally responsible management practices across the sector.

It is also vitally important that EU rules on fair and equal competition and the internal market are properly upheld. Waste management is a modern business sector where investments and innovation can only flourish when competition creates incentives for economic efficiency. In some Member States this is impeded by preferential treatment and subsidisation of publicly controlled market participants, preventing better and more cost-effective suppliers from prevailing. FEAD expressly calls for a level playing field for private and public waste management undertakings and facilities in the market. This includes in particular fair public procurement legislation without loopholes and without privileges for cooperative ventures between public authorities, equal VAT treatment between public and private enterprises, and consistent application of competition rules.

19. What solutions would you propose in order to address the regulatory failures or obstacles you have identified above?

Due to the lack of space, and under the agreement with the Commission services, additional information is provided in a separate document and can be found online on the FEAD website ([www.fead.be](http://www.fead.be)).

### Part 3 – Follow-up activities

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20. Would you be interested in participating in a stakeholder meeting on these issues that will be held on 12th November 2015?

- Yes, I would like to attend.
- No, I'm not interested.

My contact details are (optional):

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## Contact

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