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A Circular Economy Card for the Waste Shipment Regulation

and other DIGITALEUROPE reflections on how to mainstream circular economy into Waste Shipments Regulation



Executive Summary

DIGITALEUROPE has anticipated the upcoming revision of the Waste Shipment Regulation (WSR) with interest¹. DIGITALEUROPE believes that the WSR is the last centrepiece of EU waste legislation that has not been aligned with the new circular economy ambitions.

As demonstrated in earlier publications², DIGITALEUROPE member companies are actively shaping the circular economy through their repair, reuse and refurbishment practices. Many member companies additionally have internal or publicly announced ambitions to close the loop on priority materials and increase recycled content in products. The regulatory framework can support the success and scalability of all of these practices.

DIGITALEUROPE fully subscribes to the initial objective of the WSR of protecting the environment from unsound waste management practices. Nothing in this paper is intended to reduce the level of environmental protection. Instead, DIGITALEUROPE would like to set out its thoughts on how to further increase the level of environmental protection by achieving more circularity for the EU.

The EU has been successful in creating a Single Market for Goods and Services. Consequently, primary materials and products can flow easily and without controls across intra-EU borders. However, the Single Market for the Circular Economy is unfinished³. Used products for repair, reuse or refurbishment can

¹ DIGITALEUROPE response to Public Consultation on the Evaluation of the Waste Shipment Regulation: https://ec.europa.eu/info/consultations/public-consultation-evaluation-waste-shipment-regulation_en

² DIGITALEUROPE: Recycled Plastics in your ICT Products: The State-of-Play: <https://www.digitaleurope.org/resources/best-practices-recycled-plastics-paper/>

³ CJEU case C-2/90 has ruled that "waste, whether recyclable or not, is to be regarded as 'goods the movement of which, in accordance with Art. 30 of the Treaty must in principle not be

only be shipped with additional proof that they are not waste. Further, secondary raw materials are treated as waste and hence need to be assessed for their hazard characteristics. If hazardous, they can only be shipped with prior consent of all affected import, export and transit countries. This puts secondary raw materials at a disadvantage in terms of ease of being integrated into a supply chain.

The free movement of primary, but not secondary raw materials, was very justified when the traditional method of waste treatment was disposal. Today, the Circular Economy promotes the principle that waste is a resource. It should be re-introduced into the economy to prevent the environmental damage of mining and the release of embedded carbon.⁴ The WSR does not yet reflect the new ambitions on waste treatment, which provides a major opportunity to support the uptake of Circular Economy.

prevented", but circulation can of course be restricted for good environmental reasons.
<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=C-2/90&id=ALL>,

⁴ E.g. aluminium is produced by dissolving alumina obtained from bauxite in molten cryolite and electrolysing the molten salt bath in a very energy- (and carbon-) intensive process. The Bayer process of obtaining alumina from bauxite creates hazardous alkaline red mud. Recycled aluminium does not create nearly as much carbon nor does it create new red mud. From an environmental perspective, shipping secondary raw material for aluminium recovery, for instance from WEEE sources, is far-preferable than shipping primary raw material for aluminium production.



Circular Economy Card

The EU has developed a comprehensive acquis of waste legislation, which spans from the Waste Framework Directive to special regimes for wastes of particular importance to the community's environmental ambitions. WEEE, packaging, batteries and end-of-life vehicles have dedicated waste legislations imposing Extended Producer Responsibilities (EPR) for manufacturers and collection and recycling targets for Member States.

DIGITALEUROPE suggests creating a new fast-track procedure in the WSR for wastes destined for a re-introduction into the Circular Economy. Such a fast-track procedure takes inspiration from WSR Art 14⁵ and could be subject to the following restrictions to ensure environmentally sound management and avoiding the creation of a loophole with unintended negative consequences:

1. The regime should **only apply to intra-EU shipments** to ensure that it cannot be leveraged to ship waste illegally outside of the community.
2. **Only waste that is turned into a resource for re-introduction into the Circular Economy** should qualify for the fast-track procedure. Such established systems are made with a clear business interest in a controlled supply chain.
3. Waste shipped to a recovery facility that has been validly authorised (in accordance with Art. 23, 24 of Directive 2008/98/EC on waste) by the competent authority of the destination to treat, sort or otherwise handle the waste in order to re-introduce it into the Circular Economy.
4. The regime could be tested on **wastes subject to EPR laws**, as they require the tracking of put-on-the-market and collected volumes. Doing so would have the positive side-effect of creating more visibility for Member States in quantifying the amount of EPR waste moving across the EU, closing a gap in the current collection data. The regime should however not be limited to EPR waste.

DIGITALEUROPE suggests, under the above conditions, the creation of a pre-approved **Circular Economy Card procedure**, either under a new Art. 14 or Art. 3(2). The new procedure would replace Art. 4 Notification or Art. 18 General Information requirements with a new distinct set of controls for wastes shipped

⁵ Art. 14 on pre-approved facilities to our knowledge is a largely dormant provision that is not used. DIGITALEUROPE suspects it is because the strain on the authorities is too high to organize the authorization process for facilities. Some aspects of the CE Card idea may be able to overcome this issue. The current Art. 14 pre-approved facilities is – to our knowledge – only available to an insignificantly small amount of facilities, if any.

within the EU with the aim of being re-introduced into the economy after recovery operations. This new set of controls could encompass the following safeguards:

- ▶ Shipped to a recovery facility that, in addition, holds appropriate certification that it operates on a high European standard e.g., WEEE Labex certified, EMAS certified, ISO 14001 certified, or others.
- ▶ Presence of a contract in accordance with Art. 5 WSR, including the obligation of the person arranging the shipment to take back the consignment to ensure environmentally sound treatment in case the shipment cannot be completed as intended.
- ▶ Presence of a Circular Economy Card, allowing competent authorities and customs to audit and enforce
 - modelled on Annex IB WSR, which would also include information on the quantities sent/received and recycling yields, as well as technical specifications for re-introduction into the economy
 - Submitted in advance to the competent authorities via a digital EU-wide system (see below) 5 days before the shipment
 - Shipped with the consignment like other movement documents
 - Updated after completion of the treatment with information on the recycling yield and quantities treated on said EU system
- ▶ Establishment of either an EU Shipment Platform or a EU-wide interoperability and digitalisation of national systems (such as EVOA) in accordance with Art. 26(4) and 59(f) to create a repository of Circular Economy Card shipments. Circular Economy Card would be recorded, receive unique serial identification codes and could provide access to the information to Member States' national competent authorities for inspection, enforcement and statistical purposes such as waste collection reporting and EPR flows between Member States.

Enforcement authorities currently spend significant time approving notifications that are literally unchanged from the previous year. In some countries this can represent up to 70% of the approval work. Additionally, notifications in a majority of cases are expected to be for movements within Europe.⁶ Given that we should have a Single Market for Resources to facilitate the shift towards a Circular

⁶ One should also point out that Member States today approve the transit of waste through their countries. One may consider excluding transit states from the control system. To our knowledge many member states

already manage these transits notification approvals in a very light-touch way.

Economy, it seems that this is a waste of enforcement time and resources. It would be better for the environment if more enforcement officials could be deployed in the field rather than dealing with repeat notifications. These officials would have more time to inspect shipments leaving the European Union to crack down on illegal waste exports, rather than focusing on shipments between EU Member States. The Circular Economy Card proposal would likely have this consequence.

Additionally, DIGITALEUROPE would like to invite the European Commission to consider the following changes to streamline Circular Economy into the WSR

Introduce recycling innovation and R&D into Art. 3(4)

Art 3(4) currently foresees a 25kg exemption for laboratory assessments to determine suitability for recycling processes. This may be a very helpful exemption to determine whether a certain existing recycling facility can treat a specific waste consignment. However, it is not sufficient to enable shipments to test whether a new, emerging recycling technology can treat a specific waste stream. DIGITALEUROPE suggests to additionally allow for small-scale proof-of-concept shipments for recycling technology innovation under Art 3(4).

DIGITALEUROPE suggests a small but powerful change: *include an exemption for 1-2 tons for waste shipments with the intent of R&D for better recycling yields.*

Harmonization of Waste Codes through Art. 58

Art 58 gives the European Commission the authority to amend the annexes, including the waste classifications, by delegated acts. To our knowledge, this has not happened often. At the same time, Art 28, 50, 53 give Member States the authority to interpret and enforce the WSR, which leads to inconsistent waste classifications throughout the EU. For instance, The Netherlands in practice often consider WEEE as hazardous due to a national guideline on mixed shipments – but other Member States do not take the same interpretation on mixed shipments. Lithium-ion batteries – which currently do not have an entry in the WSR Annexes, on the other hand, are considered non-hazardous in Belgium but hazardous in certain parts of Germany. Classification decisions for unlisted waste find no application beyond the respective authority and no European body is tasked with resolving interpretation differences.

Such a lack of harmonization subjects companies to considerable legal uncertainty and makes navigating WSR unnecessarily complex – also because some Member States may be tempted to use waste classifications as a way to attract waste flows to recycling business within their borders or deter shipments to recycling away from national recycling facilities. Recycling facilities can best operate at scale and with a profit if they are specialized and have stable supply. The WSR allows Member States to close off their waste markets, protect local recyclers against EU-wide competition and makes ensuring a stable supply for recyclers from outside the Member State an issue.

DIGITALEUROPE suggests *creating a mechanism under Art. 58 that systematically detects inconsistencies in waste or hazard classifications across Member States and (bi-)annually updates the Annexes through delegated acts.*

Facilitate Mail-in Customer Waste Collection through Art 3(2)

EPR waste legislation is built to encourage the take-back and collection of wastes from customers, which is sometimes considered hazardous. At the same time, the WSR only provides a de minimis exception of 20kg for non-hazardous waste (Art 3(2)), but not for wastes considered to be hazardous. Competent authorities take differing views on whether that means that a collection program which ships single units from customers to a hub across a European border should be considered in scope or not of the WSR.

DIGITALEUROPE suggests *exempting customer mail-in waste collection within the EU through Art. 3(2) for EPR waste, irrespective of its hazard classification.*

Promoting Repair and Refurbishment through WEEE and WSR regulatory alignment

The flows of the innermost loops of the Circular Economy are crucial to extend the life of products in use and to prevent the creation of premature waste. The EU hierarchy for waste management (Art 4 WFD) prefers reuse, repair, refurbishment over recycling. However, the interplay between the WSR and the WEEE Directive as examined and further interpreted by the Basel Convention is less than clear. In practice, shipments of used units to repair/refurbishment/remanufacturing hubs must be proven to not be waste shipments, with some scenarios facing potential legal uncertainty.

The WSR Art. 1(3) could clarify that shipments dealt with in ANNEX VI of Directive 2012/19/EU shall be excluded from the scope of the WSR, as such shipments are already covered by other Community legislation.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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Croatia: Croatian Chamber of Economy	Italy: Anitec-Assinform	Teknikföretagen i Sverige, IT&Telekomföretagen
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