

# Introduction to the EU Waste Law and Policy

JUDr. Vojtěch Vomáčka, Ph.D., LL.M.



**INTRODUCTION TO THE EU ENVIRONMENTAL LAW**  
6 November 2020, on-line seminar

Instead of going too much into the too many details that there are, the presentation will focus on the general principles behind the legislation, and on a complete overview of the legislation.

### *Why do you need to know about EU waste legislation?*

- **You are super-important** for enforcement of EU Waste Law!
- To **understand the scope** of the EU requirements and the core principles behind them.
- To **apply the correct legislation** (legal regime)
- To interpret the national law

*It is not necessary for the parties to expressly plead before the national courts which individual provisions of national law those courts should disapply or interpret in accordance with EU law* (Opinion in Case C-254/19, Friends of the Irish Environment, para. 67, 69).

- **Identificaton of certain material** = **a crucial question** for planning and permitting procedures (EIA, SEA, IPPC), liability, environmental protection, tax law, state aid/subsidies, public procurement, intellectual property...



The parties are not obliged to point specific EU legislation, so it is mostly up to the judge to know them and to know which one to apply. Also, sometimes it is not even transposed perfectly to the national law. It is even more important to what concerns waste, because waste is not going anywhere, so there will always be someone trying to find a lacuna in the law, etc.

## CJEU ON EFFECTIVNESS

- C-129/16 (Túrkevei Tejtermelő Kft.) - whether the owner of a leased-out plot of land may be penalised because waste was illegally incinerated there

### CJEU:

63 In those circumstances, the answer to the first question is that (...) **do not preclude national legislation**, (...) which identifies another category of persons who, in addition to those using the land on which unlawful pollution was produced, share joint and several liability for the environmental damage (...) **provided that such legislation complies with the general principles of EU law**, all relevant provisions of the EU and FEU Treaties and of the acts of secondary law of the European Union.

66 (...) **provided that the legislation laying down such a fine is, in accordance with the principle of proportionality, appropriate for the purposes of contributing to the attainment of the objective of more stringent protection**, which is the purpose of the legislation prescribing joint liability, and that the methods for determining the amount of the fine do not go beyond what is necessary to attain that objective.

67 In the present case, **it is for the referring court to establish whether the national legislation at issue** in the main proceedings, notably Article 34(1) of Government Decree 306/2010, **fulfils these conditions**.



To say that in many cases the important thing is to analyze if the principles of EU waste law apply, even if the case is to be decided by national law.

## CJEU ON PROPORTIONALITY

- C-69/15 (Nutrivot) - administrative fines imposed for infringements of the rules on shipments of waste
- CJEU:

*the national court is required, in the context of the review of the proportionality of such penalty, to take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.*

...Such an infringement may, in principle, be subject to an equivalent penalty to that provided for in respect of infringement of the obligation to complete that document. (...) if the circumstances of the infringement make it possible to find that they involve equally serious infringements in the light of the risks they entail for protection of the environment and human health, which it is for the national court to ascertain



## CJEU ON PROPORTIONALITY

- **C-487/14 (Total Waste Recycling)** - Point of entry different from that specified in the notification and in the prior consent

**Recital 4 of Directive 2005/35 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences states as follows:**

*(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.*

Article 8 of Directive 2005/35 specifies that Member States are to impose sanctions that are **effective, proportionate and dissuasive** for discharges of polluting substances.



In C-487/14 (*Total Waste Recycling*), the CJEU assessed the proportionality of the fine imposed by the Inspectorate for breach of waste shipment legislation. The fine was imposed on a transport company, which used a different border crossing point than agreed by the competent authorities. The fine was equal to a penalty imposed in the complete absence of the transportation permit. According to the CJEU, the national court should assess whether the amount of the sanction reflects, in particular, the risks of harm which may be caused by specific conduct in the field of the environment and human health.

This is because the fine should be proportionate to the infringement.

## CJEU ON PROPORTIONALITY

- **C-487/14 (Total Waste Recycling)** - Point of entry different from that specified in the notification and in the prior consent

*Article 50(1) of Regulation No 1013/2006, as amended by Regulation (EC) No 669/2008, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document which had been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, **is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements. It is for the national court to determine, by taking into account all the factual and legal circumstances of the case before it, and, in particular, the risks which may be created by that infringement in the field of the protection of the environment and human health, whether the amount of the penalty does not go beyond what is necessary to attain the objectives of ensuring a high level of protection of the environment and human health.***



## CJEU ON DISSUASIVENESS

### C-494/01 - Commission v Ireland (Waste framework directive)

#### GA:

The Commission claims that Ireland has not taken sufficient action to enforce the provisions implementing the waste directive and that where penalties are imposed these do not have deterrent value. Ireland objects to this and refers to figures on enforcement action taken and to certain judgments of Irish courts in which severe penalties were imposed. As the Commission has shown in a number of situations (inter alia complaints 2, 3, 5 and 8), a fact which was not expressly denied by the Irish Government, **either penalties were not imposed or these were so low as not to be considered to act as a deterrent.**

#### CJEU (on several different operations):

106 As regards waste dealt with by private operators, the Commission contends that the Irish authorities, at various levels, also tolerate the continuation over long periods of unauthorised operations in a very large number of places in Ireland, failing to ensure that they cease or are punished, as is apparent in particular from investigation of Complaints 1997/4705, 1997/4792, 1999/4478, 1999/4801, 1999/5112, 2000/4145 and 2000/4633. The **few penalties that are imposed continue, moreover, to have no deterrent effect at all**, as is shown in particular by examination of Complaint 1997/4847. Unscrupulous operators are thus encouraged, on making a simple financial calculation, to continue their illegal activities, while their competitors who comply with the Directive's requirements are penalised.



In practice, all these criteria overlap largely, since the penalties must be proportionate to the gravity of the infringements they penalise, in particular by ensuring a substantial deterrent effect, while respecting the general principle of proportionality. A non-dissuasive sanction can generally not be effective either. For example, see C-494/01 *Commission v Ireland*, para 106: “*Unscrupulous operators are thus encouraged, on making a simple financial calculation, to continue their illegal activities, while their competitors who comply with the Directive’s requirements are penalised.*”

## Content

- **EU Waste Law and Policy overview**
- **Waste Framework Directive**
- **Waste Operations: Landfilling and incineration**
- **Waste Stream Directives**
- **Shipment of Waste**



## ***Waste Law and Policy – from history...***

**1975 The Community starts building its body of environmental legislation** with the adoption of – among others – the Waste Framework Directive (1975), the Bathing Water Directive (1976) and the Birds Directive (1979).

### **The Second Action Programme (1977 - 1981)**

- priority of the protection of water, air and noise
- rational use of land, environment and natural resources

### **The Sixth Action Programme (2001 - 2010)**

- Better resource efficiency and resource and waste management

The Roadmap to a Resource Efficient Europe - COM(2011)571  
Action Plan towards Circular economy – COM (2015) 614



In 1975, there was no provision in EU primary law regarding environmental protection. So, the Waste legislation started even before the EU was strictly allowed to regulate in this field.

Following the pieces from the 1970's, the EU environmental policies adjusted and based the principles on the needs of these regulations. So, you can see some action programmes that determined the direction of the EU environmental policies.

The Roadmap to a Resource Efficient Europe (COM(2011) 571):

- outlines how to transform Europe's economy into a sustainable one by 2050, how to increase resource productivity and decouple economic growth from resource use and its environmental impact. It illustrates how policies interrelate and build on each other.
- sets various actions (2012-2014) to be taken by the Commission to treat waste as a resource, including the review of the waste targets

The Action Plan towards Circular economy try to look into waste from early stages, for example from product design, to the last moment, for example recycling instead of just disposal.

## Article 191 TFEU

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the **quality of the environment**,
- protecting **human health**,
- prudent and rational utilisation of **natural resources**,
- promoting **measures at international level** to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment **shall aim** at a **high level of protection** taking into account the diversity of situations in the various regions of the Union. It shall be based on the **precautionary principle** and on the **principles that preventive action** should be taken, that environmental damage should as a priority be **rectified at source** and that **the polluter should pay**.



Nowadays, the basis for almost all EU environmental legislation is article 191 of the TFEU. And you can see from it that it is based on certain principles.

The CJEU always emphasizes those principles when interpreting the EU law.

## Application of principles in EU Waste Law

**C-2/90:** *The principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r (2) of the Treaty as a basis for action by the Community relating to the environment, entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transport of waste.*



*Moreover, that principle is consistent with the principles of self-sufficiency and proximity set out in the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal, to which the Community is a signatory.)*

## Application of principles in EU Waste Law

***C-297/08: ...failing to ensure that, Campania region has sufficient installations enabling it to dispose of its urban waste close to the place where that waste is produced, the Italian Republic has failed to meet its obligation to establish an integrated and adequate network of disposal installations***



## *...to future*

### **The Eighth Action Programme to 2030 ?**

- the European Commission published a proposal on 14 October 2020

*the long-term priority objective for 2050 that citizens live well, within the planetary boundaries in a regenerative economy **where nothing is wasted**, no net emissions of greenhouse gases are produced and economic growth is decoupled from resource use and environmental degradation*

promoting environmental sustainability and reducing key environmental and climate pressures related to production and consumption, in particular in the areas of energy, industrial development, buildings and infrastructure, mobility and the food system.

**'Waste management'** means the collection, transport, recovery (including sorting), and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker (Article 3 WFD)



So, looking into the future, the aim is to close the chain completely. Still, the Eight Action Programme does not elaborate on the principles of waste treatment and certain technical criteria. It is taken as evident.

For example, from this concept under article 3 WFD, we see that waste management deals with all the steps.

Although we are not going through every case that the CJEU has judged about waste, every year there are about 5 to 6 cases to this regard. Many are infringement procedures against the MS.

## ***AIMS OF WASTE LEGISLATION***

- **reduce generation of waste**
- **use waste effectively as a resource**



- **improve resource efficiency**
- **limit hazardous substances in waste**

see: the Waste Framework Directive 2008/98/EC  
the European Parliament on circular economy  
the Commission guidelines on waste prevention

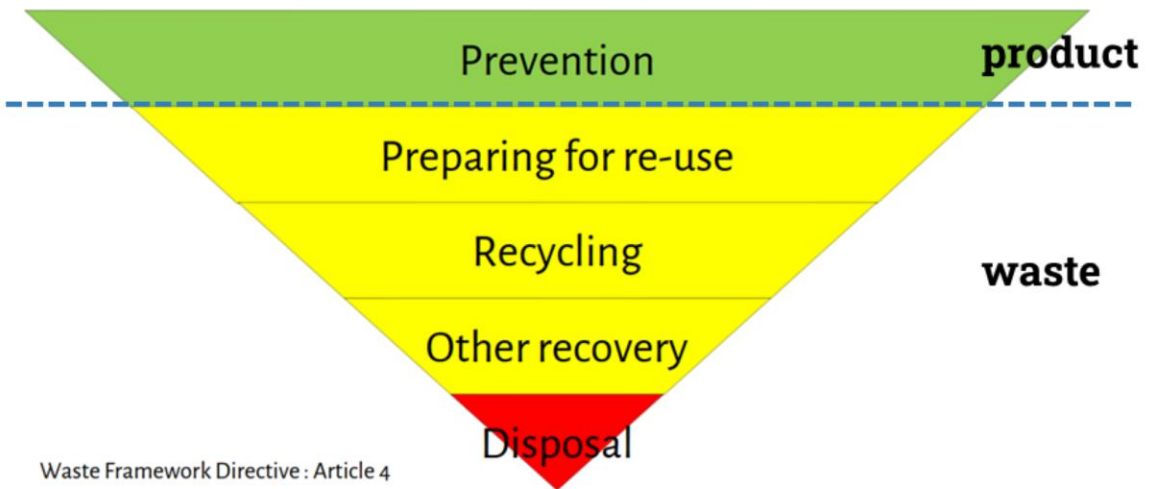


EU waste legislation objectives are defined in Article of the Waste Framework Directive 2008/98/EC:

- Waste prevention – has been and continues to be the first and most important objective of the EU waste management policy.
- Reduce environmental impact of resource use and improve resource efficiency of such use. This objective is also called developing a “recycling society” - one that not only avoids producing waste but also uses it as a resource.

You see that, in the end, the goal is to create a circular economy.

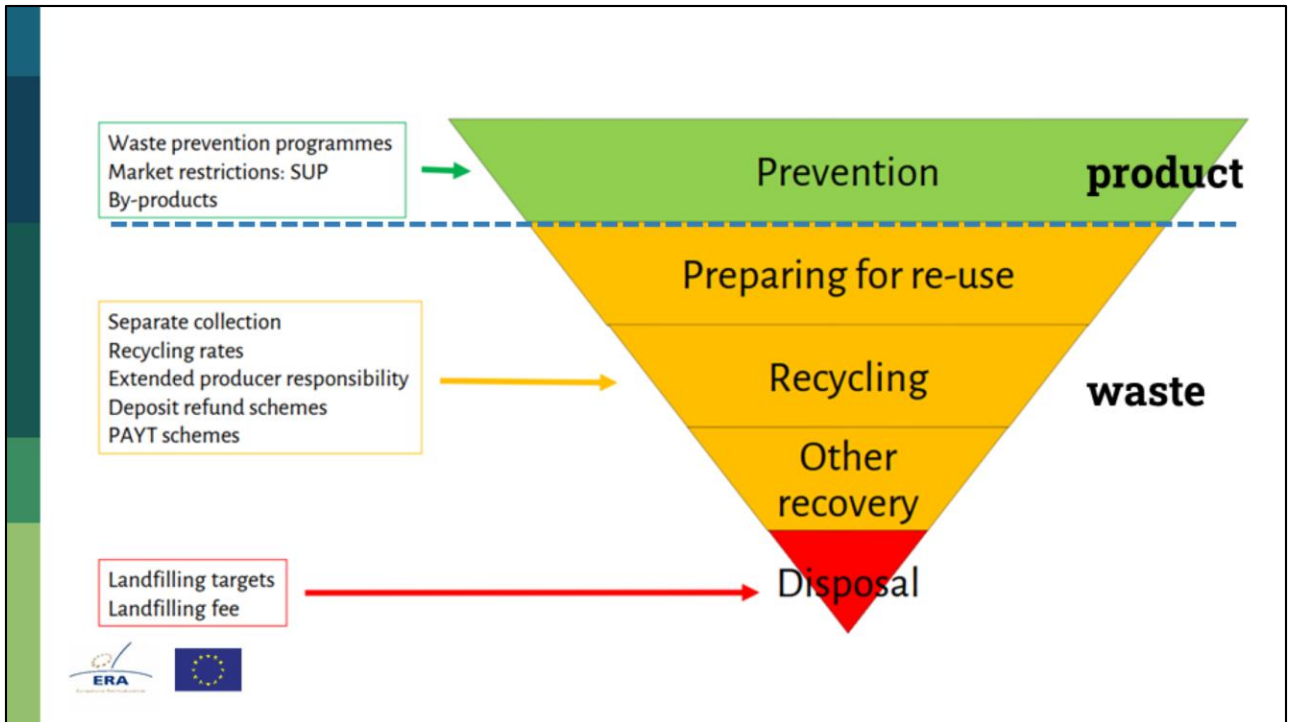
# Waste management hierarchy



The hierarchy works with the logic of “from best to worse”. There are instruments to strengthen this, but it does not mean that it always goes this way.

- ❖ ‘preparing for re-use’ means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
- ❖ ‘recycling’ means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
- ❖ ‘recovery’ means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;
- ❖ ‘disposal’ means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;

❖ Alternative: <https://www.goingzerowaste.com/blog/the-5-rs-of-zero-waste>



MS are obliged to take measures to facilitate compliance with this hierarchy.

As a national judge you may be required, for example, to review a urban planning to analyze if it complies with the hierarchy of waste management.

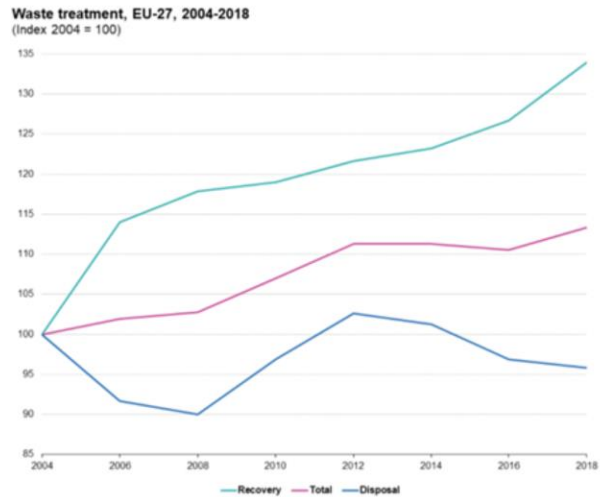


Figure 5: Waste treatment, EU-27, 2004-2018

(Index 2004 = 100)

Source: Eurostat (env\_wasrt)

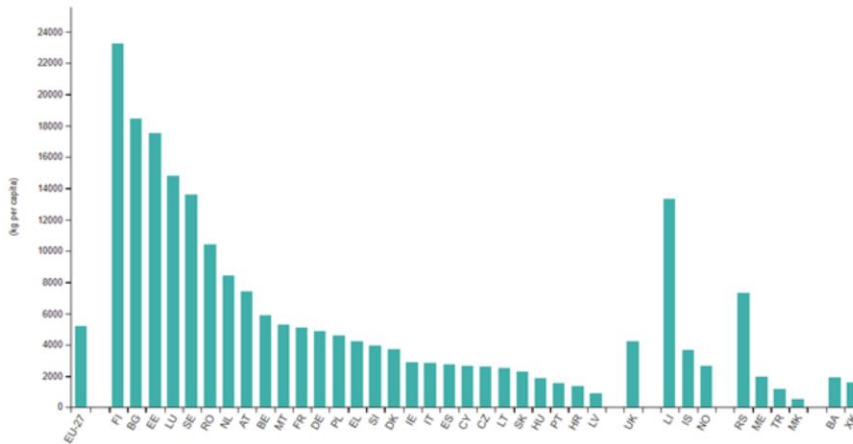


Nowadays, more than half of the waste in Europe is treated in recovery operations, which is rather positive. And it is getting better, even though still slow. Still, of those remaining 45%, about 38% is landfill, a part of it is incinerated without any energy recovery, ... The point is that there are significant differences between the EU MS as regards different methods. So, if you look at different MS you have different statistics.

5.2 tonnes of waste were generated per EU-27 inhabitant in 2018.

38.7 % of waste were landfilled and 38.1 % were recycled in the EU-27 in 2018.

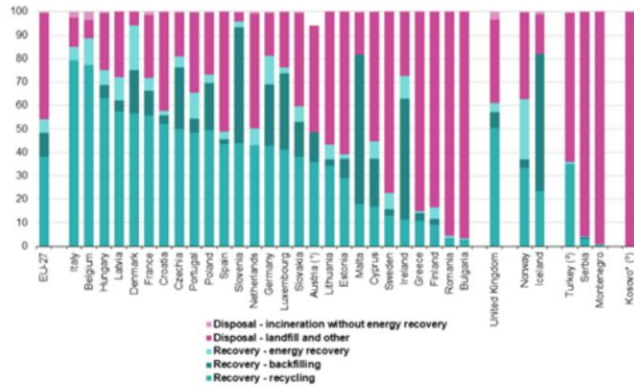
Waste generation, 2018



This graphic shows how much waste is generated among the MS. Those numbers are higher than in 2017 or 2016, but lower than 10 years ago. If you look into specific kind of waste you may have different pictures. So, for example, if you look into home waste, you may have an idea of how the individuals are willing to recycle, etc. In average, each person living in the EU generates 500kg of waste per year, which means around 1.5kg per day per person. In Denmark this is more than 2kg per day. In Poland or in Romania, it is about 300 per year. So, in some countries each individual produces twice as much as individuals in other countries. So, considering the whole system, you also have to think about how to deal with it.

When it comes to hazardous waste, for example, more than 2/3 is generated by only 4 countries: Germany, France, Bulgaria, and Estonia.

**Waste treatment by type of recovery and disposal, 2018**  
(% of total treatment)



(\*) No data available for energy recovery and incineration without energy recovery.  
 (\*) No data available for incineration without energy recovery.  
 (\*) 2016.  
 \* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.  
 Source: Eurostat (online data code: env\_wastst)

eurostat

Figure 6: Waste treatment by type of recovery and disposal, 2018

(% share of total)

Source: Eurostat (env\_wastrt)



This picture shows the waste treatment or type of recovery and disposal in different MS. Despite the hierarchy, you can see here that there are still countries that landfill almost all their waste.

## *EU waste legislation: system*

### **General framework**

- Directive 2008/98/EC on waste (WFD)
- Regulation (EC) 1013/2006 on shipments of waste (WSR)
- (Ship Recycling Regulation (EU) 1257/2013) – specific waste stream?

### **Waste management operations**

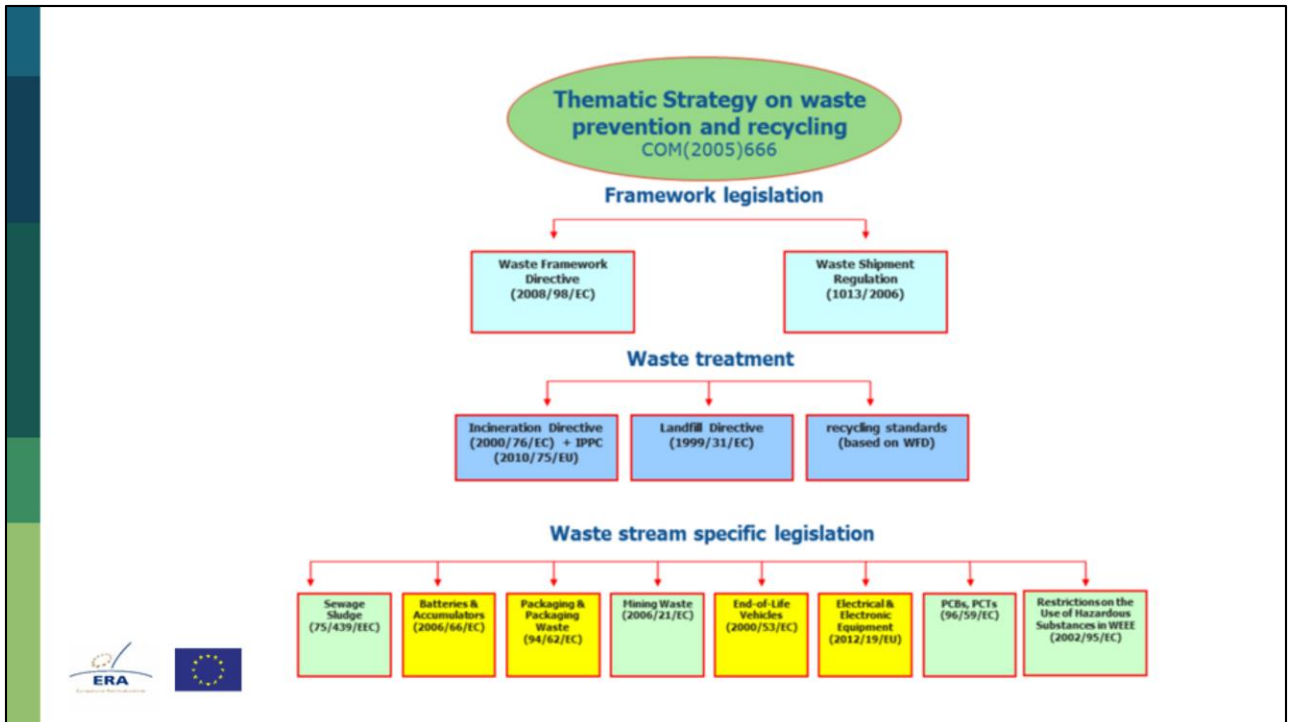
- Directive 99/31/EC on the landfill of waste
- Directive 2010/75/EU on industrial emissions: for waste incineration

### **Specific waste streams (e.g.)**

- Directive 94/62/EC on packaging and packaging waste
- Directive 2000/53/EC on end-of-life vehicles (ELV)
- Directive 2006/66/EC on batteries and accumulators
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)



Those are the key EU waste legislation.



This slide pretty much summarizes everything.

This slide lists the key EU waste legislation. Waste is one of the first topics that EU environmental legislation tackled in the 1970s. The Waste Framework Directive was adopted in 1975 (then 2006/12/EC and now 2008/98/EC) and provides the overall framework for waste management in the EU, seeking to ensure that it does not present a risk to water, air, soil, wildlife and human health. All Waste Directives have an Environmental legal basis (Article 192 TFEU) with two exceptions: Batteries directive has double legal basis with an internal market basis covering specific articles that provide for full harmonisation on metal content for batteries, labelling accepted on the market; and Packaging Directive that has a full Internal Market legal basis (Article 114 TFEU). In addition to the Waste Framework Directive and the Landfill Directive also the Directives marked in yellow provide for specific collection, recycling and recovery targets.

# Waste Framework Directive



## DEFINITION OF WASTE

*„any object which the holder discards or intends or is required to discard“*

- **these types of waste are excluded:**

- e.g. gaseous effluents emitted into the atmosphere
- land (in situ) including unexcavated contaminated soil and buildings permanently connected with land (see case C-1/03 Van de Walle)
- radioactive waste

- **excluded to the extent that they are covered by other EU legislation**

- waste waters
- waste from extractive industries (Directive 2006/21/EC)



The crucial question is the definition of waste.

It is tricky, although it is simple and pretty much the same one for many years. It circles around the notion of discard, which is not defined.

The Court of Justice emphasizes the need of a broad interpretation of the concept of waste and the flexibility of looking at it in a case-by-case approach. Therefore, it is up to you (judge) to consider whether the specific criteria are present in certain cases. For example, because it is somewhere for a long time and there is a clear intention of discarding.

The types of waste that are excluded are excluded either because they are not considered waste at all or because there are other specific legislation to deal with them, so they are excluded from the scope of the EU legislation.

In the case of radioactive waste, for example, there are national legislation to deal with it, but not EU legislation.

From experience, translation is something to be careful about. So, there is land vs. soil, for example. If you are building a house and you excavate and all you take is soil, then it is not waste, but the directive stipulates that soil and other naturally occurring materials which is excavated. But in some countries the translation says not naturally occurring materials, but soil and other natural materials. In those countries, taking out a large piece of wood is not considered waste, but it should be considered under the directive.

So, sometimes it is important to look into the English or French versions of the

Directive, if there is a dispute and depending on the case.

## DEFINITION OF WASTE

### *The EU List of Wastes: Commission Decision 2000/532/EC*

20	MUNICIPAL WASTES (HOUSEHOLD WASTE AND SIMILAR COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL WASTES) INCLUDING SEPARATELY COLLECTED FRACTIONS
20 01	separately collected fractions (except 15 01)
20 01 01	paper and cardboard
20 01 02	glass
20 01 08	biodegradable kitchen and canteen waste
20 01 10	clothes
20 01 11	textiles
20 01 13*	solvents
20 01 14*	acids
20 01 15*	alkalines
20 01 17*	photochemicals
20 01 19*	pesticides



## DEFINITION OF WASTE - INTERPRETATION

*„any object which the holder discards or intends or is required to discard“*

- ***extensive interpretation - high level of protection***
- ***it is necessary to consider all circumstances***
- ***classification as 'waste' is to be inferred primarily from the holder's actions***  
→ *only the holder of the products can prove that he intends not to discard those products (C-113/12; 38, 64 – burden of proof)*

- *the object is produced intentionally - product!*
- *(-) the object is a production residue*
- *(?) substances which are capable of economic reutilization (recovery) are not excluded*
- *but – significant commercial value (C-241/12)*
- *(-) the object holder accepts that it is waste (description of the substance)*
- *(-) the object cannot be used for the original purpose (C-9/00)*
- *(-) the method of production indicates that the object is unwanted*
- *(?) no danger to environment*



The Commission has some guidelines trying to summarize the case law of the Court of Justice and give some hints. Some examples are those colored ones in the slide.

## IS IT WASTE?



In the picture on the left:

Those pieces of wood are sometimes sold during reconstructions of the railway. There was a problem in the Czech Republic, however, because they were full of chemicals, and, therefore, became hazardous, and then you have obligation to get rid of it, because you cannot sell something that is dangerous. So, the State company was fined.

In the picture with the car:

The car is serving as a type of container for the flowers. We know that some times end-of-life vehicles have value, but the one in the picture does not look like it could be sold for a collector or on eBay, etc. It is a car which will deteriorate. So, it will probably be considered waste.

The third one:

It is demolition/construction waste. It looks like in the picture that there are bricks that could be used, so it does not have to be waste. So, for construction waste, it depends on what it consists of and if it can be reused or not. Also depends on for how long it has been stored.

## BY-PRODUCTS

*substance (object) is a **result from production process***

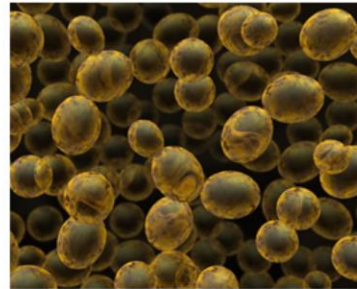
- *but primary aim is not the production of the substance*

### **conditions:**

- *the substance is produced as **an integral part of a production process***
- *the substance **can be used directly** without any further processing other than normal industrial practice*
- *further use is **lawful***
- *i.e. the substance fulfils all relevant product, environmental and health protection requirements for the specific use*
- *will not lead to overall adverse environmental or human health impact*
- *further use of the substance is **certain***



## IS IT A BY-PRODUCT?



Those are some examples of by-products.

On the left, if you produce furniture, this dust of wood is a by-product.

On the up right side, this is a sludge from a water treatment facility. And there are even some materials left. It can be used, because it can be full of chemicals that can be good for farming, for example. So, it is a by-product. But some could say that clean water is not a product, because you are not producing something, it is just a process.

The last one is yeast, from a brewery, which can be used for food, animals, cosmetics, etc. But it is from the input – to produce the beer. So, it is leftover, not a product. Therefore, there is doubt if it is a by-product. But if you can use it, it becomes a by-product.

## END-OF-WASTE CRITERIA

- **waste has undergone a recovery** and complies with specific criteria based on these conditions:
- the substance is commonly used for specific purposes
- a market or demand exists for such a substance
- the substance fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products
- the use of the substance will not lead to overall adverse environmental or human health impacts

Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste

Commission Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste



## HAZARDOUS WASTE

- included on **the List of waste (\*)**
- displays **one or more of the properties listed in Annex III** of WFD; Regulation (EU) No 1357/2014
- packaging and labelling requirements
- traceability from production to final destination
- ban on the mixing of hazardous waste with other waste or substances
- C-358/11 (*Lapin*) – products from waste



### ANNEX III

#### PROPERTIES OF WASTE WHICH RENDER IT HAZARDOUS

- H 1 'Explosive': substances and preparations which may explode under the friction than dinitrobenzene.
- H 2 'Oxidizing': substances and preparations which exhibit highly exothermic particularly flammable substances.
- H 3-'Highly flammable'
- A — liquid substances and preparations having a flash point below 21 °C
- substances and preparations which may become hot and finally without any application of energy, or
- solid substances and preparations which may readily catch fire and continue to burn or to be consumed after removal of the source of ignition
- gaseous substances and preparations which are flammable in air at 20 °C
- substances and preparations which, in contact with water or damp surfaces, evolve flammable gases in quantities which are sufficient to ignite immediately
- H 3-'Flammable': liquid substances and preparations having a flash point of
- B 55 °C.
- H 4 'Irritant': non-corrosive substances and preparations which, through direct contact with the skin or mucous membrane, can cause inflammation.

Comes from the list of waste but also the list of properties (such as flammable, carcinogenic...)

## Economic instruments

• Art. 14 WFD – „*In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.*“

- **landfilling fee**
- **incineration fee**
- **local fee for handling of household waste**
- **payment for recovery and recycling of packaging waste**

... whatever the national rules may be governing landfill sites, they must ensure that all the operating costs of such a site is *actually borne by the holders of the waste* deposited in the landfill for disposal (C-172/08 – Pontina Ambiente)

the price charged shall not result in the imposition on certain 'holders' of costs that are *manifestly disproportionate to the volume or to the type* of waste that they are liable to produce

... criteria relating to the type of property that the users occupy, its surface area and use, the productive capacity of the waste 'holders'; the volume of the containers provided to the users, and the frequency of collection, *in so far as those parameters are liable to have a direct impact on the amount of the costs of waste management and disposal.* (C-335/16 - VG Čistoća)



To what concerns fees, the CJEU says that it is up to the MS to create a system that is fair but respects the polluter-pays principle.

## Landfilling and incineration

### waste management operations

- Directive 99/31/EC on the landfill of waste
- Directive 2010/75/EU on industrial emissions: for waste incineration



## Landfilling of waste

landfill **classes** (hazardous – non-hazardous – inert waste)

The following wastes may **not be accepted in a landfill**: liquid waste; flammable waste; explosive or oxidising waste; hospital and other clinical waste which is infectious; used tyres, with certain exceptions; any other type of waste which does not meet the acceptance criteria laid down in Annex II.

### **closing and after-care**

- closed after the final on site inspection carried out by the competent authority
- the operator remains responsible for maintenance and control of the site

### **targets – 2020/30**

#### **new targets (Circular economy package directives 2018/849-852)**

- increase of the preparing for re-use and recycling target for municipal waste to 55 % by 2025; 60 % by 2030; 65 % by 2035
- gradual limitation of the landfilling of municipal waste to 10% by 2035
- food waste should be reduced by 30% by 2025; 50% by 2030



- landfilling is the worst waste management option
- greenhouse gas – loss of resources – soil and water pollution

# Waste incineration

Directive 2000/76/ES – no longer in force

## IED Directive (2010/75/EU)

- **permitting procedure**
- **best available technologies (BAT)**
  - the facilities are required to have flue gas cleaning plants to 'scrub' the gases generated and reduce emissions of the above parameters as far as practically possible
  - requirements for combustion conditions

*Commission Implementing Decision (EU) 2019/2010 of 12 November 2019 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for waste incineration*

For certain activities, i.e. large combustion plants, **waste incineration and co-incineration plants**, solvent using activities and titanium dioxide production, the IED also sets EU wide emission limit values for selected pollutants.

- **public participation**



The Waste Incineration Directive (WID) has been recast within the Industrial Emissions Directive (IED) as of December 2010. The purpose of this was to transpose several pre-existing directives on the control of emissions from industrial processes into one directive on industrial emissions.

As such, WID facilities are required to have flue gas cleaning plants to 'scrub' the gases generated and reduce emissions of the above parameters as far as practically possible. Such systems must be detailed within the EP application process and supported by a technical review of the systems selected on a site by site basis. Further to the above, WID introduced minimum requirements for combustion conditions at such facilities, including a requirement for combustion gases to be heated to 850°C<sup>4</sup> for a minimum of 2 seconds in the secondary combustion chamber to ensure complete combustion of all potentially polluting substances

## Waste Stream Directives

- Directive 94/62/EC on packaging and packaging waste
- Directive 2000/53/EC on end-of-life vehicles (ELV)
- Directive 2006/66/EC on batteries and accumulators
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

### + plastic policy: plastic carrier bags (2015/720), plastic policy (2019/904)

- An EU-wide ban of single-use plastic cotton buds, straws, plates, cutlery, beverage stirrers, balloon sticks, oxo-degradable plastics, and expanded polystyrene food containers, beverage containers and beverage cups by 2021.



## Directive 2006/66/EC on batteries and accumulators

- With some exceptions, it applies to all batteries and accumulators, no matter their chemical nature, size or design.
- prohibits the marketing of batteries containing some hazardous substances,
- defines measures to establish collecting schemes
- fixes targets for collection and recycling activities
- sets out provisions on labelling



## Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)

- fastest growing waste stream, separate collection
- obligation to minimise the disposal of WEEE in unsorted municipal waste;
- private households and distributors can return WEEE free of charge;
- bans the disposal of WEEE collected separately that has not been properly treated;



minimum annual WEEE collection rate – min. 45%

Collection should be free of charge, even though you see that in the prices of those products there is sometimes a part that is for the costs of collecting.

Also, there should be separated collection, not only in the shops that sell the products.

## Directive 2000/53/EC on end-of-life vehicles (ELV)

- Owners of ELVs delivered for waste treatment must receive a certificate of destruction. This is necessary to deregister the vehicle.
- **Manufacturers, importers and distributors** must provide systems to collect ELVs and, where technically feasible, used parts from repaired passenger cars.
- pushes producers to manufacture new vehicles without hazardous substances (in particular lead, mercury, cadmium and hexavalent chromium),
- specific exemptions in Annex II (to regular reviews according to technical and scientific progress).
- clear **quantified targets for reuse, recycling and recovery** of the ELVs and their components.



## Directive 94/62/EC on packaging and packaging waste

- covers all packaging placed on the European market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.
- Requires EU countries to take measures, such as national programmes, incentives through extended producer responsibility schemes and other economic instruments, to prevent the generation of packaging waste and to minimise the environmental impact of packaging.

**recycling targets for various materials**



### ELV

It sets out measures to prevent and limit waste from end-of-life vehicles (ELVs) and their components by ensuring their reuse, recycling and recovery. It also aims to improve the environmental performance of all economic operators involved in the life-cycle of the vehicles.

## Shipment of Waste

- Regulation (EC) 1013/2006 on shipments of waste (WSR)
- Ship Recycling Regulation (EU) 1257/2013



## ***SHIP RECYCLING REGULATION***

- **Implements the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal** (Basel Ban: no export of hazardous waste and waste for disposal to non-OECD countries)
- Specific rules, procedure depending on the type of waste, waste treatment operation, country of destination
- **information procedure**
  - waste has to be accompanied by documents signed by exporter and recovery facility
  - contract
  - notification procedure

restrictions to shipments within the EU for recovery (C-292/12 Ragn Sells)



Non-hazardous waste destined for recovery may freely circulate between MS (without notification). Shipments of waste for disposal are subject to principles of proximity and self-sufficiency. Export of waste for disposal is prohibited, unless to EFTA countries. MS may restrict shipments of waste for disposal operations and mixed municipal waste. Case C-209/98 Sydhavens Sten & Grus clarifies that a restriction of waste collectors to bring waste to waste treatment facility in the same MS amounts to a measure of general application prohibiting shipments of waste to other facilities. Question is whether it is justified under the Regulation Article 11(1)(a). Objective – measures encouraging rationalisation of the collection, sorting and treatment of waste, including a measure to treat waste in the nearest facility of production, especially in the case of mixed municipal waste. C-292/12 Ragn Sells Case from EE contesting national procurement requirement that municipal waste, industrial and construction and demolition waste are transported to specific treatment facilities in EE. National court asked if the Waste Shipment Regulation and the principle of proximity allows such rule to treat waste in the nearest treatment plant or whether that could be interpreted as a restriction to free movement of goods. The Court ruled that MS can restrict that mixed municipal waste is treated in the nearest appropriate treatment facility in the same MS; However, MS cannot restrict transport of industrial and C&D waste to the nearest appropriate treatment facility in the same MS if that waste is for recovery.

## ***SHIP RECYCLING REGULATION***

- **ships flying the flag of a Member State**
  - \* Art. 12 applies to ships flying the flag of a third country calling at a port or anchorage of a Member State – prohibition of installation and use of hazardous materials at a port, inventory of hazardous materials, the statement of compliance... *may be warned, detained, dismissed or excluded from the ports or offshore terminals*
- **Except warships, ships of less than 500 gross tonnage**
- **Except ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying.**

*“Member States are encouraged to adopt appropriate measures to ensure that ships excluded from the scope of this Regulation act in a manner that is consistent with this Regulation, in so far as is reasonable and practicable”*



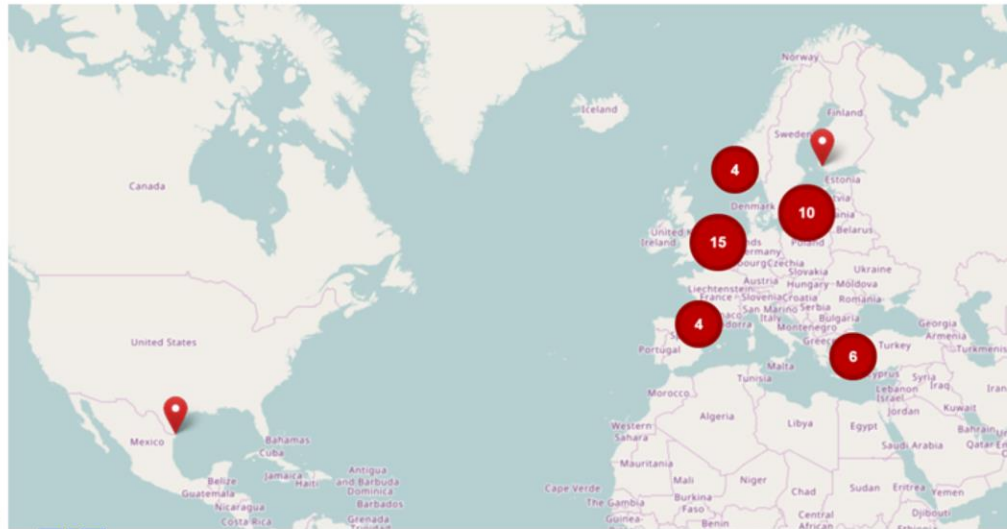
As regards the scope of the SRR, it applies mainly to ships flying the flag of a Member State, with a few provisions applying to ships flying the flag of a third country calling at a port or anchorage in a Member State (Article 2 and Article 12). Such ships may be “a vessel of any type whatsoever” of 500 gross tonnage (GT) or more, except warships or other ships owned or operated by a State and used only on government non-commercial services.

So only the large EU ships fall under the SRR and other large ships if they approach the EU shores.

Ships of less than 500 gross tonnage are excluded from the scope of the SRR.

Furthermore, ships used only on government **non-commercial service**, and ships operating throughout their life **exclusively in waters subject to the sovereignty or jurisdiction of the Member state whose flag the ship is flying** are exempted (Art 2. SRR).

## ***Ship Recycling Facilities (the European List) – Article 13 to 16 of the SRR***



You can also check the European List of ship recycling facilities which contains information as regards.

By the way, its update was one of the first documents officially signed by the new head of the commission, von Leyen.

## **THE SCOPE x WSR**

### **WSR:**

- *Subjects ships within its scope to controls throughout their life-cycle and aims to secure recycling of those ships in an environmentally sound manner*
- *Bans the export of hazardous wastes to non-OECD countries ("Basel ban"), bans the export of waste for disposal. **Ships are generally classified as hazardous waste.***

*Historically, ship owners had **systematically evaded the provisions of the WSR** by recycling their ships at facilities located in non-OECD countries. The beaching method is mainly used in India, Pakistan and Bangladesh. None of these countries are members of the OECD. Exportation of end of life vessels from the EU for scrapping in these countries is therefore prohibited*

- *One of the motives behind the SRR (a global regime for ship recycling)*



*Before the SRR the WSR applied to all ships.*

*At the end of their life they were classified as waste, usually hazardous waste, because of various dangerous substances..*

*As such, their export to the non-OECD countries is and was forbidden. Historically, however, the ship owners had systematically evaded the provisions of the WSR by recycling their ships at facilities located in non-OECD countries due to a lack of ship recycling capacity in OECD countries, but also because the price received for their end-of- life ships is higher in those countries.*

*This practice is difficult to be fully avoided. The perfect scenario would be a global regime for ship recycling which means the SRR and the Hong Kong Convention.*

## NEED MORE INFORMATION?

- *website of the EU Commission*
- *Case-law of the CJEU (Curia)*
- *eur-lex*
- *Guidelines*
- *Eurostat*

The screenshot shows a web interface for searching by subject-matter. On the left, there is a sidebar with various filters and sorting options. The main area is titled 'Subject-matter' and contains a search bar and a list of categories. The 'Chosen values' section on the right shows 'Waste' selected.

**Subject-matter**

Search for subject-matter:

Chosen values:

- Environment
- Waste

Subject-matter categories:

- Competition
- Conjunctural policy
- Consumer protection
- Culture
- Data protection
- Economic and monetary policy
- Economic, social and territorial cohesion
- ECSC matters
- Education, vocational training and youth
- Employment
- Energy
- Environment
- Pollution
- Waste
- Euratom matters
- European Investment Bank (EIB)



**THANK YOU FOR YOUR ATTENTION!**

[vomacka@mail.muni.cz](mailto:vomacka@mail.muni.cz)

