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

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 (KÝPROS)
- ☐ БЪЛГАРИЯ (BULGARIA)

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

Your name or organisation:

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ePURE- European renewable ethanol association
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Please provide your EU Transparency Register ID number (if you have one)

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3259113448-30
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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
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- ☐ MALTA
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- ☐ ΚΥΠΡΟΣ (KÝPROS)
- ☐ БЪЛГАРИЯ (BULGARIA)

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

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

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?

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There are two main regulatory failures:

1- The Renewable Energy Directive incentivises the uptake of 'Used
Cooking Oil' by counting twice its contribution towards the RED
objective of 10% renewables in transport, without any definition of what
consitutes 'used cooking oil'. This incentivises the generation of more
waste and imports of used cooking oil, and that cooking oil is used
'less' before it is discarded. This is done without proper tracking of
whether the cooking oil has been used or not, and its origin.

2- Waste hierarchy:
A proper enforcement of the waste hierarchy by Member States will
prevent the artificial generation of waste identified under point 1-,
although this will not prevent the use of imported used cooking oil from
overseas that fails to comply with the definition of 'waste'.
However, Member States are entitled to depart from the principle where
it is justified by life-cycle thinking. Against this background, ePURE
wishes to highlight that while it is supportive of a proper
implementation of the waste hierarchy, options to depart from here
should also take into consideration the economic realities of ethanol
biorefineries. A too narrow application of the waste hierarchy would
consider the production of energy in the form of fuel ethanol at the
same level as the burning of biomass for electricity production. We
believe that there is a difference between the recovery of energy by
incineration of waste and its valorisation through the production of a
biochemical product like ethanol that can also be used for energy as a
fuel. Deviations from the waste hierarchy principle should therefore
encompass the realities of ethanol biorefineries that produce food,
feed, biobased products and energy at the same time, from agricultural
biomass and residues, and waste. It is often appropriate to use waste on
site than ship it somewhere else for purposes which may be deemed more
appropriate under the hierarchy. Finally, producing energy in the form
of fuel ethanol provides for the economy of scale and the needed volumes
to produce other higher value products which would not be produced
otherwise.
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3. Could you provide an example of such a regulatory failure/obstacle? Please describe it briefly.

In relation to the incentive given to Used Cooking Oil under the Renewable Energy Directive:
the economic value of double counting leads to a risk of fraud and some cases of doubtful transactions that have already been observed in the market place. The risk of fraud is enhanced by the fact that the controls of double counting material streams in the framework of the sustainability schemes do not have to be reported up to the point where the biofuel is sold to the blender. The absence of definition of Used Cooking Oil Renewable Energy Directive increases the risk of fraudulent practices.

Directly linked to this lack of control is that effect that volumes of Used Cooking Oil can be artificially increased. Instead of for instance using the cooking oil as long as possible, it is discarded quicker to sell it as 'used' and maximise profits. This leads to an increased demand of virgin oil, which has an impact on the vegetable oil market.

In addition, we have witnessed an increase of the imports of Used Cooking Oil into the European Union, from 52,500 tonnes in year 2009 when the RED was adopted and the double counting started to be implemented, to circa 500,000 tonnes in both years 2013 and 2014, where surely the intention of the RED was not to import waste from overseas but valorise the use of domestically generated waste. An additional perversion is that imported Used Cooking Oil does not fit the definition of 'waste' in the Waste Framework Directive, since it has a use overseas: unlike in the EU, Used Cooking Oil in countries such as the US and China can be used as animal feed. Accordingly, it should not be treated as a waste. Yet, increasing volumes of UCO are reported on the EU biofuels market: the UK Department for Transport, in its Renewable Transport Fuels Obligations statistics for year 2013/2014 show that over a third of the UCO was from non-EU origin, with major countries of origin being the US, South Korea, UAE, Saudia Arabia and Malaysia. This trend continues with preliminary UK data showing the share of UCO from non EU origin was over 40%.

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:

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The renewable energy directive (RED) that counts twice the contribution
of biofuels made from Used Cooking Oil towards the 10% target of
renewable energy in transport. As of today, Used Cooking Oil and Animal
Fats make 0.7% of the energy used in transport, which double counted,
makes 1.4%. This is 30% of the European biofuels market, half of which
is purely on paper, hence replaced in reality with conventional fossil
fuels.
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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.

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C.f. above answers.
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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.

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Literature:
Trends in the UCO market, Ecofys, for the UK Department of Transport,
2013:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/fil
e/266089/ecofys-trends-in-the-uco-market-v1.2.pdf

Statistics
- Trade, based on Eurostat, based on HS Code 1518;
- on shares of UCOME and TME in the biofuels market: FO Lichts Vol.13 n°
13, 10 August 2015.
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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.

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A proper definition of what constitutes 'Used Cooking Oil' is needed,
together with proper traceability systems in relation to double counting
materials, incl. waste, must be implemented at EU level and uniform
across Member States.
The double counting incentive for materials classified under RED Annex
IX-B should be eliminated altogether since it is a perverse mechanism
that incentivises waste generation or waste trade instead of prevention,
and in fine reduces the level of ambitions in terms of renewables
incorporation: every litre of UCO consumed in the EU that counts double
towards RED requires an extra litre of fossil fuel to be consumed in
reality, where UCO is already a mature technology and does not require
extra supportive measure other than to be eligible towards the
renewables obligation in transport.
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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.

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

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

14

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

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

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.

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

[ ]

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

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:

23

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

24

Part 3 – Follow-up activities

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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info@epure.org
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Contact

✉ Peter.Wessman@ec.europa.eu