

# European waste law

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Regulation of waste in the European Union anno 2016



## Things to discuss

- European Waste Law in a Nutshell
- Waste Framework Directive
- Scope: Waste Definition
- Circular Economy; the End of Waste?

## European waste laws in a nutshell

1/4

What are we talking about?

- Waste Framework Directive (2008/98/EC)
  - General framework of waste management requirements and basic waste management definitions for the EU
  - Hazardous and non hazardous (including waste oils)
- Waste Shipment Regulation (1013/2006)
  - Shipments of waste between MS and to third countries: movement is not free!
  - Direct application in all MS / Transposition not required
  - Tracking waste across borders
  - Regulation 660/2014 – strengthening inspection & enforcement obligations



## European waste laws in a nutshell

2/4

- Directive on Landfill of Waste (1999/31/EC)
  - Curb uncontrolled landfilling
  - Operational and technical requirements
- Industrial Emissions Directive (2010/75/EU)
  - Integrated Pollution Prevention and Control (IPPC) > Best Available Techniques
  - Includes former Directive on Incineration of Waste
  - Includes former Titanium Dioxide Directives
- Directive on Packaging and Packaging Waste (94/62/EC)
  - 2015 amendment re. the consumption of lightweight plastic carrier bags
- Directive on Waste Electrical and Electronic Equipment (2012/19/EU)



## European waste laws in a nutshell

3/4

Other European legislation addresses specific waste streams such as:

- Batteries (2006/66/EC)
  - End of Life Vehicles (2000/53/EC)
- Or specific management operations
- Port Reception Facilities (2000/59/EC)
  - Ship Recycling Regulation (1257/2013)

## European waste laws in a nutshell

4/4

Observations:

- Organic growth (1975 – 2016)
- Largely ad hoc approach / learning as we go

Concerns:

- Lack of integrated approach
- Compromise legislation / legal (un)certainty
- Inertia: keeping up with the real world
- Transposition required; dilution?
- Compliance (paper is patient)

## Waste Framework Directive

1/8

- Definitions and basic obligations
- What is waste?
  - Cambridge dictionary: *“unwanted matter or material of any type, especially what is left after useful substances or parts have been removed”*
  - WFD: *“means any substance or object which the holder discards or intends or is required to discard”* (article 3)
  - Exemptions: By-Products (article 5) and End-of-Waste (article 6)



## Waste Framework Directive

2/8

### By-products (article 5)

Production residues may be regarded not as waste but as by-products if following conditions are met:

- Further use is certain
- Direct use without any further processing other than normal industrial practice
- Produced as an integral part of a production process; and
- Further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.
- European measures may be adopted determining detailed criteria for specific waste streams



## Waste Framework Directive

3/8

### End-of-Waste (article 6)

Certain specified waste shall cease to be waste when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- Commonly used for specific purposes
- A market or demand exists
- Fulfillment of technical requirements for the specific purposes and comply with existing legislation and standards applicable to products
- The use does not lead to overall adverse environmental or human health impacts
- Specific criteria to be adopted at European level – if not MS may decide case by case

## Waste Framework Directive

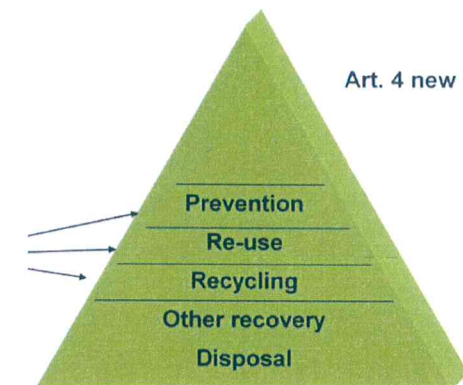
4/8

Basic obligations:

- Waste hierarchy / priority order (article 4)
  - Prevention
  - Preparing for re-use
  - Recycling
  - Other recovery, e.g. energy recovery
  - Disposal, e.g. landfill or incineration (without energy recovery)

In other words: putting waste to use / saving raw materials

Other obligations relate to: producer responsibility, prevention and promotion of re-use and recycling



## Waste Framework Directive

5/8

More practical obligations:

MS must ensure that waste undergoes recovery operations or, alternatively, undergoes disposal operations without endangering human health, without harming the environment (articles 10, 12 and 13).

Cost must be borne by the polluter (article 14)

The original waste producer or other holder must carry out the treatment of waste himself or has the treatment handled by a professional waste treatment company (article 15)



## Waste Framework Directive

6/8

- All establishments or undertakings intending to carry out waste treatment must obtain a permit from the competent authority (article 23). Such permits must specify at least the following:
  - The types and quantities of waste that may be treated;
  - For each type of operation permitted, the technical and any other requirements relevant to the site concerned;
  - The safety and precautionary measures to be taken;
  - The method to be used for each type of operation;
  - Such monitoring and control operations as may be necessary;
  - Such closure and after-care provisions as may be necessary.
- Some exemptions allowed (articles 24 and 25) but registration minimum (article 26) – general environmental rules are allowed



## Waste Framework Directive

7/18

- Technical minimum standards may be adopted “*where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards*” (article 27)
- In addition MS must ensure that waste management plans and waste prevention programmes are adopted (articles 28 and 29)

### Inspection and enforcement

- MS must ensure that companies handling waste are subjected to appropriate periodic inspections by the competent authorities (article 34)
- MS must prohibit the abandonment, dumping or uncontrolled management of waste and must provide for effective, proportionate and dissuasive penalties (article 36).



## Waste Framework Directive

8/8

Observations:

- Basic (and often vague) obligations
- Level of environmental protection not specified
- However, specific demands aimed at protection of human health and the environment laid down in other directives, such as:
  - Landfill directive
  - Industrial Emission Directive
    - Waste incineration
    - Compliance with BAT for waste treatment

## Scope: Waste definition

1/7

‘Waste’ means any substance or object which the holder discards or intends or is required to discard (article 3 WFD)

Application of European (and national) waste laws depends on scope of waste definition: No waste means no regulation - Most debated definition ever?

Scope / meaning of definition to some extent clarified in case-law

Broad interpretation vs. practical approach: scope is not unlimited

Case-law instrumental in limiting scope of ‘waste’ definition:

- By-products
- End-of-Waste



## Scope: Waste definition

217

- *Arco Chemie* (C-418/97 and C-419/97)
  - By-product (LUWA-bottoms) and wood chips from construction / demolition sector used as fuel
  - Scope of waste turns on meaning of term 'discard'
  - Waste must be interpreted in light of the aim of the directive
  - Concept of waste cannot be interpreted restrictively
  - The concept of waste is not to be understood as excluding substances and objects which are capable of economic reutilization
  - The environmental impact of the processing of that substance has no effect on its classification as 'waste'. For the purpose of determining whether the use of a substance such as LUWA-bottoms or wood chips as a fuel is to be regarded as constituting discarding, it is irrelevant that those substances may be recovered in an environmentally responsible manner for use as fuel without substantial treatment



## Scope: Waste definition

317

- *Arco Chemie* (C-418/97 and C-419/97)
  - The method of treating a substance may serve to indicate the existence of waste
  - What is commonly regarded as waste may also serve to indicate the existence of waste
  - Whether a substance is a waste must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined
  - Even where waste has undergone a complete recovery operation which has the consequence that the substance in question has acquired the same properties and characteristics as a raw material, that substance may none the less be regarded as waste if (...) its holder discards it or intends or is required to discard it.
  - So Court still hesitant

## Scope: Waste definition

4/7

*Lapin (C-358/11)*

- Old telecommunications poles contaminated with arsenic used as building material
- End-of-Waste?
- Court holds: *“even where waste has undergone a complete recovery operation which has the consequence that the substance in question has acquired the same properties and characteristics as a raw material, that substance may none the less be regarded as waste if, in accordance with the definition in Article 3(1) of the directive, its holder discards it or intends or is required to discard it”*
- As a matter of principle, European Union law does not *“exclude the possibility that waste regarded as hazardous may cease to be waste within the meaning of Directive 2008/98 if a recovery operation enables it to be made usable without endangering human health or harming the environment and, also, if it is not found that the holder of the object at issue discards it or intends or is required to discard it”*.
- In other words: risk oriented approach



## Scope: Waste definition

5/7

What about by-products?

*Palin Granit (C-9/00)*

- Operating permit granite quarry / leftover stone: Waste or by-product?
- *“the reasoning applicable to by-products should be confined to situations in which the reuse of the goods, materials or raw materials is not a mere possibility but a certainty, without any further processing prior to reuse and as an integral part of the production process”*
- *“in addition to the criterion of whether a substance constitutes a production residue, a second relevant criterion for determining whether or not that substance is waste (...) is the degree of likelihood that that substance will be reused, without any further processing prior to its reuse. If, in addition to the mere possibility of reusing the substance, there is also a financial advantage to the holder in so doing, the likelihood of reuse is high. In such circumstances, the substance in question must no longer be regarded as a burden which its holder seeks to 'discard', but as a genuine product”*

## Scope: Waste definition

6/7

By-products exemption confirmed in *Commune de Mesquer* (C-188/07)

- Heavy fuel oil obtained in process of refining oil is capable of being exploited commercially on economically advantageous terms
- No waste

*Brady* (C-113/12)

- More room for by-products
- Pig farm / reuse of slurry as fertilizer on other farms
- By-products exemption is not limited to reuse on “*land forming part of the same agricultural holding as that which generated the effluent. It is possible for a substance not to be regarded as ‘waste’ (...) if it is certain to be used to meet the needs of economic operators other than the operator which produced it*”.
- In other words: reuse by others than producer is also allowed



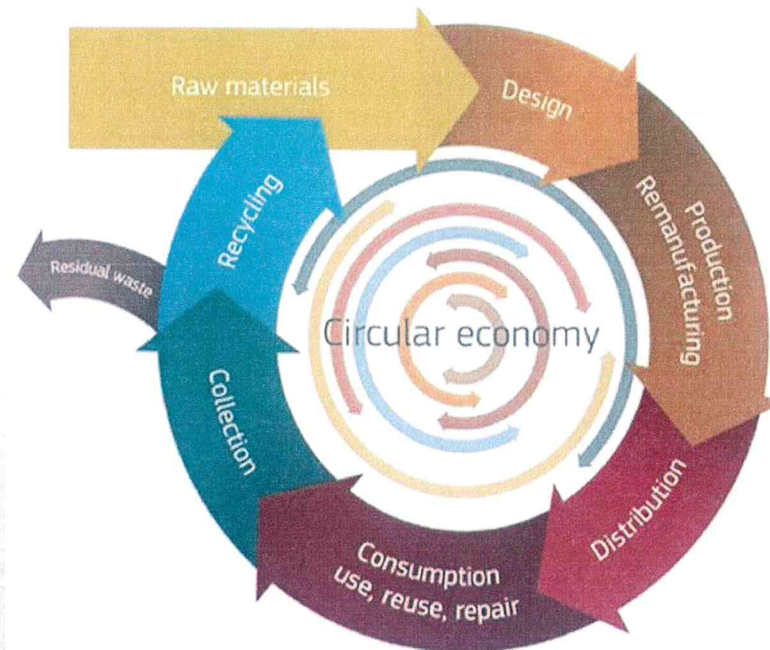
## Scope: Waste definition

7/7

*Shell* (C-241/12 and C-242/12)

- Ultra Light Sulphur Diesel delivered to Belgium Company
- Found off-spec and returned to Netherlands
- Illegal shipment of waste?
- The term of waste must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a consignment of diesel accidentally mixed with another substance is not covered by the concept of 'waste', provided that the holder of that consignment does actually intend to place that consignment, mixed with another product, back on the market
- Reuse must be certain without the necessity of using a waste recovery process
- Practical, risk oriented, approach

# Circular Economy; the end of waste? 1/5



## Circular Economy; the end of waste? 2/5

Circular Economy Package (COM (2015) 614)

- Adopted December 2015
- Closing the loop - An EU action plan for the Circular Economy
- Transition to (more) circular economy
  - Value of products, materials and resources is maintained in the economy for as long as possible
  - Generation of waste minimized
- Product design (more durable or easier to repair, upgrade or remanufacture)
- Lean production processes
- Consumption (information must lead to better choices)



## Circular Economy; the end of waste? 3/5

Circular Economy Package (COM (2015) 614)

- Waste management
  - Implementing waste hierarchy
  - More ambitious recycling targets
  - Revision WFD (COM (2015) 595)
  - Boosting market for secondary raw materials (quality standards)
  - Priority areas (plastics, food waste, critical raw materials, construction and demolition, biomass and bio-based products)
- Supporting research and innovation
- Monitoring framework



## Circular Economy; the end of waste? 4/5

Revision Waste Framework Directive

By-products (article 5)

- Member States shall ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if the following conditions are met:  
(...)
- Commission may adopt delegated acts with detailed criteria on conditions for by-products

## Circular Economy; the end of waste? 5/5

Revision Waste Framework Directive

End-of-Waste (article 6)

- Member States shall ensure that waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions: (...)
- Specific European criteria no longer required
- National courts may 'test' directly whether conditions are met
- Commission may adopt delegated acts with detailed criteria on conditions for by-products

## Conclusions

- Long way to go for true circular economy
- Not the end of waste
- Shift in thinking: Broad scope of waste definition may actually be detrimental for achieving the waste hierarchy and moving towards more recovery, more recycling and more reuse
- Both Court and 'Brussels' increasingly take more practical – risk oriented – approach

## Questions?

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