# EERA and FEAD JOINT RESPONSE TO THE EUROPEAN COMMISSION ON THE INCORPORATION INTO THE OECD DECISION OF RECENT AMENDMENTS TO BASEL CONVENTION

EERA and FEAD ardently believe that the harmonisation and improvement of regulations intended for the shipment of waste will bring about the prevention of the dumping of untreated e-wastes in those countries without the correct infrastructure and knowledge to ensure that harmful substances are eradicated.

EERA and FEAD have each made statements in recent months regarding the amendments to Annexes II, VIII and IX to the Basel Convention, and its' possible impact and implications.

Both Associations note that these amendments need to ensure it is clear that imports from non-OECD countries to OECD countries are not prohibited, and that the PIC system has to be updated before they are implemented. Considering the increase in PIC applications the amendments will imply, clear guidance and specific training is essential to ensure that all Competent Authorities globally work to the same procedure and policies.

The PIC procedure itself needs to be simplified, online and transparent, especially the procedure for consignments being made to pre-consented facilities. In addition, the methodology for financial guarantees should also be revised and simplified using a risk-based approach. This is in order to facilitate the trade of recyclables in an environmentally sound and economically efficient manner.

We wish to complement our positions with the following additional collaborative comments (*with our recommendations in boxes*):

- **There is a lack of clarity in the Decision and in the draft WSR regulation, that imports from non-OECD countries to facilities located within the OECD will be permissible** in order to support developing countries where the economies of scale mean that appropriate and environmentally sound treatment and the innovated recovery of secondary materials, including in particular key critical minerals, is not technically or economical possible to do at this present time. Given that the growth in domestic e-waste in these countries is also set to grow exponentially in the coming years, this is a key concern that the OECD and European Commission should note.

    - This particular issue was not presented in the Swiss/Ghana proposal, whose aims were to reduce the illegal imports <u>into</u> developing countries with little or no infrastructure, and so without acceptance of the above principal and in addition, the easing of import / PIC burdens made for such imports from non-OECD countries, then the very objectives accepted by the Basel Convention will find that the '***cure will turn out worse than the disease'***.

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| The Decision should include clear text that imports from non-OECD countries are not prohibited. |

- **New entry Y49 in Annex II for non-hazardous e-waste and the new entry A1181 in Annex VIII for hazardous e-waste covered by the PIC procedure**

  - The draft decision sets out to clarify what is defined as 'hazardous' and 'non-hazardous' in the Y49 and A1181 amendments but does not consider shipping practices (especially bulk loads of components and fractions derived from e-waste), and the treatment and end-processing routes concerned with importing e-waste and e-waste fractions to professional and pre-consented facilities located in the OECD.

> Where components and mixed fractions derived from e-waste (e.g. mixed polymer plastics, circuit boards, motors, batteries, shredder fractions etc.) are consigned to **pre-consented** facilities, for example, where high-temperature smelting operations are performed, and where any hazardous substances are destroyed in the process, then these consignments should be permissible under the non-notifiable route for PIC notification procedures using the non-hazardous Y49 classification.
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> This includes the import into the pre-consented plastics reprocessing facilities where the identification and separation of those plastics containing, or that may contain POPs is performed and subsequently sent for destruction.

  - This is in recognition that such shipments into pre-consented facilities pose a low risk for human health and the environment.

- **The deletion of the existing entries A1180, B1101 and B4030 from Annexes VIII and IX respectively from 1 January 2025, when the new entries Y49 and A1181 enter into force**

It should be noted that an economy of scale is needed to have an efficient processing and metal and plastic recovery outcome from the complex materials found in e-waste, and which provides for the minimum environmental impact. Without the innovation and investments made by global professional treatment / recycling and recovery operators, and a reduced burden transboundary system, e-waste generators will look for local or undocumented options, even if they are less environmentally friendly. This is especially true of developing countries where the local infrastructure or volumes available is not yet in place.

**The deletion of the above codes will mean an enormous increase in the numbers of PICs applications being made each year.**

Our Members have reported that the current infrastructure of the Competent Authorities receiving and processing these applications is presently inadequate and under resourced and inconsistent in terms of the procedures set out within the guidance[1] issued by the OECD.

We have had reports that in a number of Competent Authority offices there is only one person making assessments, who has to handle other non-PICs tasks as well. This results in backlogs of three to six months, and in some cases a year or more for even an initial reply or for the approvals to finally be made.

In addition, the expertise of persons in the Competent Authority offices making assessments of PIC application is often understandably lacking regarding e-waste, and often our Members report that irrelevant questions or points are raised creating further unnecessary delays (*e.g. the name of the driver*

[1] https://issuu.com/oecd.publishing/docs/guidance-manual-control-transbounda

*of the truck collecting the consignment that would happen in three months' time and could change by then in any case*!).

Delays in receiving approvals means longer storage at the point of generation (Notifier) is required, which can decrease the quality and pose environmental and health and safety risks. Most sites will have conditions limiting the maximum volume of storage they are allowed to have – adding further pressures and burdens.

These pressures means that the delays may lead to an increase in the volumes of materials being shipped illegally as the burden to get a return on costs (e.g. sales of materials such as metals) and the impact of storage conditions limiting site operations, should be recognised as being paramount in the decisions made for the routes that some operators take.

Therefore, if the above entries are to be removed, then **urgent and clear guidance** is essential in ensuring that all Competent Authorities globally work to the same procedure and policies.

This is in addition to increasing the numbers of trained personnel positioned in the Competent Authorities that will be capable of assessing applications swiftly. Specific training in e-waste streams, components and fractions and treatment and recovery routes is **especially key** to a smooth transition to the new codes to prevent the backlog and large stockpiles of e-waste that will result otherwise.

**In a survey carried out by EERA and FEAD in September 2022, Members reported the following issues with the existing arrangements that will explain the urgency for ensuring that the PICs system in updated prior to the implementation of the Decision (planned 1st January 2025):**

**1. Pre-consented Facilities – applications**: It is noted that the OECD state[2] that "*In order to simplify and accelerate the notification procedures, Adherent countries have the possibility to designate "pre-consented recovery facilities" for which they do not raise objections concerning regular transboundary movements of certain waste types. Transboundary shipments to pre-consented facilities benefit from an accelerated procedure*". However, many countries have no application or legal process to allow professional and environmentally sound facilities to apply for the pre-consented status.

The pre-consent status for facilities should be a **mandatory** obligation and not just a "***possibility***" for all Competent Authorities (being member countries to the OECD) to implement. This is in line with Appendix 7 of Decision OECD-Legal-0266.

**The OECD** should publish **online links**, for all Adherent countries, to their pre-consented application portals, which should be made digital to help speed up the application process.

Application to become a pre-consented facility should be free-of-charge and a decision made within a **minimum of eight weeks** unless justifiable circumstances, notified to the applicant, requires a longer assessment.

Details of the OECD Legal Text can be found here: *https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0266%20#appendix-7*

[2] https://issuu.com/oecd.publishing/docs/guidance-manual-control-transbounda

Furthermore, delays have been reported in the PIC procedures due to the Competent Authority in the country of dispatch taking no account of the pre-consented status of the destination facility and thus any fast-track procedure is negated.

The questions made were reported as including requests for the full treatment process, outputs and final recovery and disposal operations, as well as routes and the environmental controls in place for all operations, all of which are already assessed during a pre-consent application by the Competent Authorities in the destination country.

> The methodology of how different Competent Authorities assess pre-consented applications is unclear, and **the application process should be simplified, online and transparent.**
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> The Competent Authority in the country of dispatch for e-wastes (and components/fractions) **to a pre-consent facility should fast track their assessment** given that the end-destination has met with the environmentally sound management controls required under National and OECD/Basel procedures.

**2. The database of pre-consented facilities:** The current OECD "*Database on transboundary movements of waste destined for recovery operations*"[3] excel spreadsheet is infrequently updated. This means that the information of those facilities with valid pre-consent approvals, and those whose approvals have ended or have been withdrawn, is unreliable, which is one reason Competent Authorities give for not trusting the information and thus not fast-tracking applications.

> With today's modern technology, **the database should be online** and not held in a downloadable excel database (*11.55mb*), which is open to manipulation. This will make the information more accessible, secure, and up to date.
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> Where a code of "*99999 – waste not specified*" has been used, further **specific details** as to what the waste relates to should be included in the database to enable all parties (Competent Authorities and market stakeholders) to understand exactly what is or what is not approved under the pre-consent. This will speed up the fast-track process as often it is this ambiguity and imprecision that raises additional and burdensome questions.

**3. Fast-track procedures** for those facilities with pre-consented approvals should be made clearer in the guidance for Competent Authorities as our survey reported that the PIC process is slow and, in some cases, extremely slow (e.g. between four and eight months and even over 1 year), with little or no recognition given or acknowledged of the pre-consented status of the destination facility. Some operators have reported that there is currently no difference in the administrative and financial burden between a consignment made to a pre-consented facility or not.

[3] https://www.oecd.org/environment/waste/OECD-Database-of-Transboundary-Movements-of-Wastes-11-June-2021.xlsx

**Competent Authorities in the country of dispatch should ensure that pre-consented facilities benefit from the accelerated approval procedure, as set down by the OECD.** Other than justifiable enquiries related to the designation of the waste and point of collection (waste generator) and the waste carrier credentials, which should be set out in the Notification documents, there should be no additional information required as the consignee (destination facility) will have already been pre-assessed and approved locally for such imports.

**A maximum assessment period** for the Competent Authorities in the country of dispatch to check and transmit an application for waste to be shipped to a pre-consented facility to the onward transit and/or the destination authorities, should be no more than **one calendar month**.

**A maximum assessment period** for the Competent Authorities in the destination country should be set down of no more than **ten working days** as they have already assessed the facility and the environmentally sound treatment and recovery operations being carried out, so there should be no further enquiries needed.

4. **Transit countries** (I) Fast-track applications for wastes being shipped to pre-consented facilities.

    a. Often Transit Competent Authorities cause considerable and unjustifiable delays, even for those transit shipments where the waste is only held in a ship docked in a port for refuelling or off-loading of other products etc., in these cases the waste never touches the land in the transit country.

    b. Given that any tacit approval given is valid for one year only, then further approval needs to be sought and given for pre-consented facility notifications; despite pre-consented approvals being valid for three years.

Assessment by Transit Competent Authorities should **not be included** in fast-track applications for wastes being shipped **to pre-consented facilities**, saving on administration and time-delays and the unnecessarily extension of ongoing notification applications for all parties.

5. **Transit countries** (II) Wastes being shipped to non-pre-consented facilities.

    a. Members reported in our survey that some countries make an extortionate charge that cannot be justifiable in terms of any local administration costs, or the risks associated when the waste is merely transiting.

    b. Given that land-locked countries in particular have no option to transit through their neighbours to ports or specialist end-destination facilities in neighbouring countries, this increases the costs and burdens of Notifiers (the applicants), and the likelihood therefore for more undeclared routes, as well as the decrease in opportunities to recover materials efficiently at environmentally sound facilities, including key critical raw materials.

Unless there is a justifiable reason and objection (to be informed in writing to the Notifier within **one week of receiving an application**) then transit countries should either give immediate approval or be made aware that tacit approval will be automatically assumed after thirty days, as set down in the OECD Legal Instrument (0266). Any justification of delays or objections should include only those facts pertaining to the actual transit of a waste through the relevant country, and to any risks to the local environment of such a movement.

If the wastes do not formally enter a transit country, which is often the case with container hubs and vessels, **an automatic tacit consent should be assumed**, thus saving on administration and time-delays and the unnecessarily extension of ongoing notification applications.

c. In the European Commission "Compilation Document"[4] on responses to questions raised regarding the transit of waste (June 2021) it is clear that EU Member States do not take the same approach in terms of fees, definition, or process.

**6. Financial guarantees** are a considerable burden for all Notifiers.

a. Our survey and Member responses indicate many examples of where they have to hold a large number of concurrent notifications, often for different routes of the same secondary materials to different destination facilities (for economic reasons). Respondents have reported obligations of global guarantees exceeding €1 billion in total each year.

b. Acquiring financial guarantees takes a considerable amount of time and resources (e.g. bank or bond costs) and ensure that a substantial amount of capital is immobilised.

c. Members reported that often getting the release of a financial guarantee once the Notification has expired is problematic and time-consuming. This increases the financial pressures on operators and ties up their capital further. This includes requirements by some Competent Authorities for the Notifier to provide environmental liability insurance cover for the shipper, which is considered to be beyond the remit of the PIC application process.

d. The risk of repatriation and the requirement to return wastes to the point of origination is not proportional to the costs or actual environmental risks of moving wastes to alternative facilities.

The methodology **should be revised and simplified** with a risk-based process and assessment approach made transparent via the OECD website.

This should include provision for **one financial guarantee** to be lodged covering all active movements from one Notifier covering a number of PIC Notifications regardless of the waste description or destination.

**The release of financial guarantees should be automatic** on the receipt of the final confirmation of treatment (of the last planned movement). This would be assisted if a digital system was employed – see (8) below.

[4] https://environment.ec.europa.eu/system/files/2021-06/Correspondents_information_document_on_transit_June_2021.pdf

7. **The administrative costs for notifications** charged by some Adherent countries are prohibitively high and not proportional to the risk, costs or work involved. It is understood costs should cover the basic administration charges of assessing applications but seem to mostly serve to increase the overall financial burden of legitimate global e-waste operators.

    a. In some Member States it is current practice that the administrative costs are linked to the volumes or number of movements shipped, in which case this effectively becomes a "tax" on moving whole/untreated e-wastes or secondary materials derived from recycling facilities and destined for final recovery.

    b. Members report that fees can vary from €1 per tonne, to over €18,000 for one twelve-month notification. Reports were also made that fees are being charged in many cases by the country of dispatch as well as the transit and destination countries (e.g. Lithuania to Germany via Poland). It was also reported that some Competent Authorities charge by the hour (e.g. Germany), resulting in fees between €360 - €1,900. This is rarely announced in advance, thus increasing the financial obligations and uncertainty as to the market value of the transit on the Notifier. These comments and the charges are supported in the responses published in the European Commission "Compilation Document" on waste transits (as noted in 5 above). On a global perspective, our joint survey also confirmed that there are similar disproportionate charges encountered outside of the EEA, especially for imports into the Europe Union and including those movements to pre-consented facilities.

    c. Unsubstantiated administrative charges versus the actual risk to the environment should not be permitted. The fact that there may be five separate movements or five-hundred separate movements of the same waste in a notification from one site to the destination facility is considered immaterial to the actual risk of the transport if the destination facility meets the environmentally sound treatment and material recovery requirements.

> Administration charges should be harmonised by laying down published and transparent risk-based requirements for reasonable and justifiable application and administration costs.

8. **One digital platform for notifications; confirmation of arrival and final treatment**

    - The lack of a digital system is impacting the modern activities of today's global marketplace. Having one unified and secure system would save all parties time and expense.
    - It may also be said that this deficiency supports the activities of illegal operators, who some of our Members commented, simply change their names, applicant identifications and/or routes and making new notification applications without any additional safeguards in place, thus allowing illegitimate actors to buck the system.

> Digitization is needed to enable the notification of all parts of a transboundary movement (pre-notification, arrival at the destination facility and final treatment date). This platform could be used to track Competent Authorities efficiency and provide transparency with the different fees requested by the Authorities, as well as any special requests they might have and the consent they are about to provide (i.e. tacit or written).
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> The Electronic Data Interchange (EDI) system established within the revised EU Waste Shipment Regulation where the information and documents are submitted and exchanged via electronic means, should be considered as an example for global transboundary shipments.

9. **The PIC requirements for the carriage of waste and the route to be taken** should be simplified.

   - In today's climate of competitive shipment routes and the availability of compliant waste carriers, the requirement to provide advanced information regarding the competency of global waste carriers is becoming more complex. This became even more apparent during the COVID Pandemic when approved carriers were not available, resulting in stockpiles and bottlenecks at the point of dispatch (e-waste generator), and the exceptionally reduced volumes arriving at destination facilities resulting in uneconomic activities and closure of some sites designated as 'essential' services.

   - A change of route or routes (for whatever justifiable reason) is not considered an essential or risk-based element of a PIC application and should not without good reason halt or stop an approved PIC Notification.

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| The flexibility of using different approved carriers and alternative means of transport, for example intermodal, inland vessel, sea containers etc., and informed changes of route (exit and/or entry routes) to take account of weather (e.g. ferry and sea crossings), blockades by non-related parties of a port, and backload possibilities, to allow for the competitive tendering of shipment operators should be incorporated into the PIC process. Digitalisation would further facilitate this process. |

- **The impact of the proposal by Japan, i.e. that the shipments of certain e-waste between the EU and other OECD countries would not be subject to the PIC procedure?**

EERA and FEAD believe that changing the listing from green to amber would mean significantly longer application processes and much more cost-intensive procedures. Since the industries of the circular economy are already struggling with much higher costs and necessary savings due to the existing energy crisis, such added costs would particularly affect this industry and thus also have a negative impact on the supply of raw materials and the circular economy as a result.

The European Commission set down in the Single Market Strategy[5] ambitions to enable people, services, goods, and capital to move more freely. However, European Union rules (including those within or impacting EEA and EFTA partners etc.) regarding the movement of recoverable waste inter-alia Europe, and in particular, the movement of e-waste (*and the components and fractions derived from e-waste treatment processes*), counteract the objectives to balance and grow a collaborative circular economy.

Further aspirations concerning the circular economy and environmental impact of the growing demand for electrical products within Europe should also be considered when considering the additional burdens and costs associated with the movement of recoverable waste.

[5] https://single-market-economy.ec.europa.eu/single-market/single-market-strategy_en

Given the environmental controls within Europe for the carriage and acceptance and treatment and recovery of e-waste (*as set down in the WEEE Directive and Battery and Accumulator Directive etc*.), the routes of untreated e-waste between Member States and EEA and EFTA partners have little probability of pollution or other environmental damage, especially for consignments to pre-consented facilities that received additional scrutiny and monitoring.

As the OECD Control System for waste recovery aims at facilitating trade of recyclables in an environmentally sound and economically efficient manner, a simplified procedure needs to be adopted within the European Union and EEA and EFTA Partners, for the movement of untreated or partly treated e-wastes (*including e-waste derived components or fractions*) in order to ensure the necessary level of control for materials.

The proposal to retain the current e-waste (and components and fractions thereof) requirements and codes allowing the non-notifiable movement within Europe and EEA and EFTA partners is therefore reasonable.

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**In conclusion,** EERA and FEAD hope that our considerations, and in particular our concepts that through the implementation of harmonised guidance there will be improvements in the shipment of e-wastes in Europe and the wider global market.

We remain open to further questions and to provide any clarifications on the above points.


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***NOTE:***

*The European Electronics Recyclers Association (**EERA**) is the voice of waste electrical and electronic equipment (WEEE) activities in the continent of Europe. Members operating in twenty-two countries represent the leading collection, recovery, recycling, and reprocessing industries. https://eera-recyclers.com*

***FEAD** is the European Waste Management Association, representing the private waste and resource management industry across Europe, including 19 national waste management federations and 3,000 waste management companies. Private waste management companies operate in 60% of municipal waste markets in Europe and in 75% of industrial and commercial waste. https://fead.be*