

Feed-Back to the public consultation from the working group “Fast Track Notifications”

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Background and history of this “NSRR Fast Track” working group

The use of waste material as a secondary resource is one of the first actions that businesses could consider to improve both their economic and their environmental performance. Value chains are often cross border in nature and thus they require transboundary shipment of secondary resources. However, businesses perceive barriers in transborder shipment of waste and secondary resources. Many barriers are related to the uncertainty regarding the waste or resource status, the subsequent treatment of these wastes and hence on the waste shipment requirements.

Procedures to get clarity on waste or resource status are complex and time consuming. This can result in different interpretations between countries and so create confusion and a lack of legal certainty and clarity. Addressing these barriers and identifying shared solutions has the potential to accelerate the transition towards sustainable growth: this is what the North Sea Resources Roundabout (NSRR) aimed to achieve.

The NSRR was initiated by The Netherlands (in the period in which the Netherlands held the EU presidency), UK, France and Flanders with the aim to stimulate the circular economy in the North Sea region by facilitating trade and transportation of secondary resources. The five-year deal was signed in March 2016 and is envisioned to accommodate a maximum of ten secondary resource streams or cases. For each case, a working group tries to establish practical and scalable solutions to the barriers encountered. Most solutions are likely to involve the harmonization of existing national procedures and enforcement of EU legislation (often WSR) and will not require the adoption of new rules or regulations.

‘Fast-Track Notifications’ was the fifth case for the International Green Deal NSRR. Following the request by two WEEE recycling companies in the Netherlands and Austria and after a quick scan of the proposal, Dutch, Austrian and French public and private sector experts started a NSRR working group aiming to facilitate and simplify shipments between compliant EU WEEE recyclers through harmonization of the criteria and procedures.

Among other things, the competent authorities in the working group set common criteria for pre-consented facilities, pledged to respect each other's pre-consents and discussed procedures. Flemish and UK colleagues (until 2020), as well as the European Commission, have been observing the work of the working group since 2017.

Two European recycling associations, EERA and EuRIC, have actively been involved by participating in these discussions.

This forms the background of this feedback to the proposals formulated by the EU Commission regarding the re-cast of the Waste Shipment Regulation.

The remarks and recommendations in this paper are therefore limited to all issues related to pre-consents only (Article 14 of the Waste Shipment Regulation).

“Fast-Tracks” and “Pre-Consents” get the priority level it deserves

The working group is particularly pleased that the reduction of the administrative burden for shipments to 'pre-consented' facilities (Article 14) is recognized by the proposals of the Commission.

The working group is convinced that this will lead to many compliant EU recyclers requesting to become recognized as 'pre-consented' treatment facilities.

This will lead to much quicker and smoother notification processes with two major advantages for all parties involved. The competent authorities will see a largely reduced workload for the treatment of notification requests, as they can be sure that the notifications to pre-consented facilities effectively result in the environmentally sound treatment of the wastes.

The treatment facilities will see largely reduced throughput times for their notification requests.

And as a result, the competent authorities will free up resources to fight illegal exports of waste, rather than spending most of their time on administrative issues involving compliant recyclers of recyclable wastes who will be able to compete with suppliers of primary raw materials more easily.

The proposals have largely taken up the working groups' list of requirements for obtaining a pre-consent status.

As the working group requested, the necessity to set out the conditions under which the status of 'pre-consented' can be granted, to ensure their mutual recognition by all Member States and harmonization of the requirements for shipping waste to these facilities, is clearly defined as a requirement. It is extremely important that these conditions are explicit and clear to ensure all competent authorities in the countries of dispatch are confident, that the material is treated in line with the latest technologies ensuring an environmentally sound treatment. The pre-consent thus becomes a guarantee, so that the competent authorities of dispatch do not need to do further research on notification requests for deliveries to such pre-consented facilities, thus saving a lot of time and effort.

The validity of the pre-consent for 7 years is a reasonable time. However, a provision needs to be made to avoid those notifications after the 4th year of the pre-consent validity period are not limited to the end-validity date of the pre-consent, which can then be less than 3 years. This can easily be done, by making the renewal of the pre-consent a condition after the 4th year of the validity time of the pre-consent.

The working group understands perfectly that a pre-consent of a recovery facility may be revoked at any time by the competent authority, if this is duly motivated and communicated to the facility concerned. However, the working group requests that the conditions for a revocation should be clearly defined to exclude minor misdemeanors, not impacting the environmentally sound treatment of the material involved.

The response time related to a notification request for shipments destined to a pre-consented facility by any of the competent authorities involved of seven working days after receipt of the information is considered reasonable.

The total time needed for a notification request for deliveries to a pre-consented facility of 30 days following the date of submission of the notification request is also considered reasonable and in line with the experience that the working group gathered during the pilot project of a "Fast-Track" notification between the Netherlands and Austria.

Based upon the experience of the working group and for standardization reasons, it is requested to add to Article 27, that notification requests (at least to pre-consented facilities) and related correspondence can always be made in the English language.

The working group requests from the Commission that this 'Fast-Track' concept and its' related procedures are recognized and implemented by all Competent Authorities of the European Union, to avoid the situation of today, that this concept is not recognized or implemented in large parts of the European Union.

Digitalization is indeed a far-reaching change within the WSR.

In the proposals of the EU Commission far-reaching changes are proposed and the working group warmly welcomes these far-reaching changes that are described as:

Far-reaching changes – improve the WSR through targeted amendments to existing provisions and envisaging modernised and digitalised procedures, establish a new framework to ensure sustainable management of exported waste, and strengthen enforcement.”

The working group is particularly pleased with the objective for modernized and digitalized procedures, as digitalization requires the definition of standardized and harmonized business processes, which have been lacking in too many instances in the practice of transboundary shipments of wastes.

A mandatory shift to an EU-wide digital management of all waste shipments, procedures for Prior Informed Consents (Notifications), an EU wide implementation of Pre-Consents, and digitalization of all shipment documentations will have major other advantages such as reductions of workloads and time requirements, particularly as all the business processes will need to be streamlined.

However, the working group realizes that this transition towards fully digitalized procedures, will take time before all procedures and working practices will be in place.

The working group therefore requests, that for the duration of the transition time – during which paperwork and digitalized procedures will be required in parallel – several measures will be put into place to avoid too much duplication or work and more particularly:

1. Notification requests can be made with digitally formatted and signed (PDF) request documents that can be sent in by mail to the competent authorities within the EU.
2. Digital Signatures on all waste shipment documents (notification requests, notification request form, notification movement form, Annex VII forms etc.) are permitted to allow the transfer of these documents in digital format (PDF) by mail.
3. Waste shipment documentation such as movement forms can accompany the loads shipped in digital form (PDF) with digital signatures.
4. In case of notifications and in the case that one of the competent authorities involved is already working with databases, the following data can be added to these databases by either the sending or the receiving notification parties:

- a. the Proof of Delivery (in the form of a completed and digitally signed (PDF) movement document from the company of receipt) and
- b. the Proof of Treatment (in the form of a completed and digitally signed (PDF) movement document from the company of receiving/treatment company)

These measures are seen to be necessary to help the recycling industry to go through the transition period, that will certainly be required for this far-reaching change.

The classification of wastes

Over the last few years, we have seen an inflation of the amount of waste types that are classified as “notifiable” wastes and it may be expected that this will increase, especially with as consequence of Article 28. A very recent example was the new classification of most mixed plastics as notifiable waste in an almost impossibly short timeline. This kind of short-term decisions automatically leads to disturbances in the value chains of recyclable wastes, and it has made shipments to compliant recyclers within Europe much more difficult. It has created large stocks of recyclable wastes in some countries and shortages of recyclable raw materials in other countries.

The working group questions why for shipments within the European Union, more than one waste code is required. The EU recycling industry requires harmonization and simplification. Proper classification of wastes has become extremely difficult, which has led to so-called “illegal” shipments of perfectly recyclable materials being delivered to recyclers performing environmentally sound treatment.

The working group welcomes the idea of simplifying the classification by creating clear guidance on the classification. In the case of plastic wastes, the publication of the Guidance Document 12, 11 months after the new classification of plastic waste. Although late, it has at least clarified many open questions.

The working group would welcome a simplification of the classification of waste, by reducing the number coding systems for shipments of recyclable wastes particularly to pre-consented treatment facilities.

Financial guarantees for Fast-Track Notifications.

The issue of the “financial guarantees” is the most time consuming and costly element of Notification processes. The amount of capital immobilized by financial guarantees and the amount of time needed to “negotiate” these financial guarantees are both disproportional and inefficient.

The working group has made a survey amongst competent authorities and based on this the working group was able to quantify, that financial guarantees were needed in only 1 on 10 000 cases (in 0.001% of the cases) and that in the EU over 1 bn € in terms of capital is immobilized by this system, which is a clear competitive disadvantage compared to producers of primary raw materials.

A huge amount of human capital is needed to manage these financial guarantees, both on the ends of the competent authorities as well as in the notifying companies involved. The amount of work involved in the management of these financial guarantees therefore is completely disproportionate to the benefits that the guarantees provide. The working group is convinced that the proposals made by the Commission are a missed opportunity to simplify the conditions, if not for all notifications, then at least for “fast-track” notifications.

Pre-Consents are issued to fully permitted and thoroughly checked treatment facilities and these facilities are supplied with materials by known and identified sources of material. Both follow Article 24, i.e., “notifier de facto” respectively “notifier de jure”, thus annulling the possibility that the costs of return, storage or treatment are eventually borne by the competent authority in question, so that the concept of a financial guarantee becomes obsolete.

Pre-consented treatment facilities should be celebrated and rewarded, and the working group therefore requests the Commission to review, whether the concept of Pre-Consents or Fast Tracks can be recognized as a different category of notifications for which this burden of financial guarantees can either be completely abolished, significantly reduced, or at least be largely simplified by the concept of a (European) fund.

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