

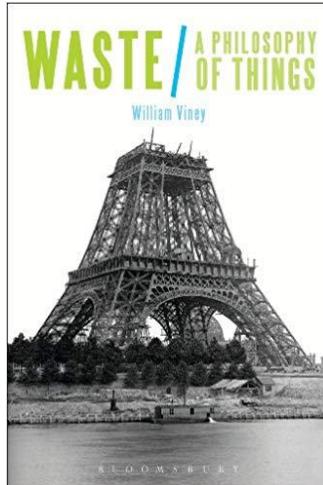
Brief overview of the EU Waste Law and Policy

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If the primary achievement of recent civilization is to produce unprecedented heaps of garbage, what does this tell us about that civilization?



General remarks

- For a long time the question has been how to dispose of the large amount of waste produced in our societies.
- In the last years, more and more awareness on the necessity to **prevent the creation of waste**.
- Focus has shifted on the **relation product-waste**.
- The definition of waste based on the act of discarding and not on the value of the material is in itself problematic.

Waste policy as part of environmental policy

- Waste policy is not an isolated topic, but is part of the general environmental policy. It contributes to fight:
 - climate changes
 - resource depletion
 - loss of biodiversity
 - soil, water, air contamination



The general principles of environmental law apply, i. e. the polluter pays principles, the precautionary principle, the prevention principle and the rectification of damage

at source.

Linear patten Scenario 1

- The linear pattern of consumption (produce-use-discard) produces large amount of waste.
- In this context waste is a costly burden.
- There are two separated worlds, the world of product and the world of waste.
- A variety of economic and social actors produce or use products that at some points become waste (industries, hospitals, agriculture, handcraft, household, offices, shops)
- The equally complex reality of all the operators which deal with waste management and waste disposal.

The complexity needs regulations

- These complex worlds require extensive regulations.
- On the one side, the product regulation, the technical standards, the labelling, the protection of origin etc.
- On the other side, as waste is always potentially dangerous for the environment and the human health, rules are needed to discipline the collection, transport, disposal of waste.

The definition of waste

- The legal definition of waste is included in Art. 3 of the WFD. The definition of waste is itself a problem.
- It is too broad and it is centered on the idea of discard (art. 3(1) *any substance or object which the owner discards or intends or is required to discard*).
- What does the concept of discard mean? the producer and the user give up control on the item, with serious consequences on the environment.
- This definition corresponds to a moving reality, where waste streams become more and more problematic due to the variety and complexity of all the new products available on the market, especially in the electric and electronic field.



The definition of waste is included in Article 3 of the Waste Framework Directive, i.e. Directive 2008/98/EC, modified by Directive (EU) 2018/851, as part of the Circular Economy Waste Package.

Of fundamental importance for the comprehension of the notion of waste is the case-law of the Court of Justice, which has opted to emphasize the environmental protection aspects of the Directive. The Court has adopted a case-by-case approach, considering all the factual circumstances involved. In general, the Court has opted to emphasize the environmental protection aspects of the Directive, with the result that it has applied the definition of waste, and it has considered incompatible with the Directive any attempt to interpret this definition restrictively.

The waste framework directive 2008/98/EC

- Waste hierarchy: top priority is **waste prevention**.
- It is a programmatic legal instrument setting the agenda for **sustainable production** and consumption.
- It highlights the importance of **extended producer responsibility**, through product design
- It closes the loop between **product and waste** by introducing the principle of life-cycle thinking.
- In spite of these elements, the WFD is still in the logic of the scenario I, i.e. an instrument focusing mainly on the treatment of waste.

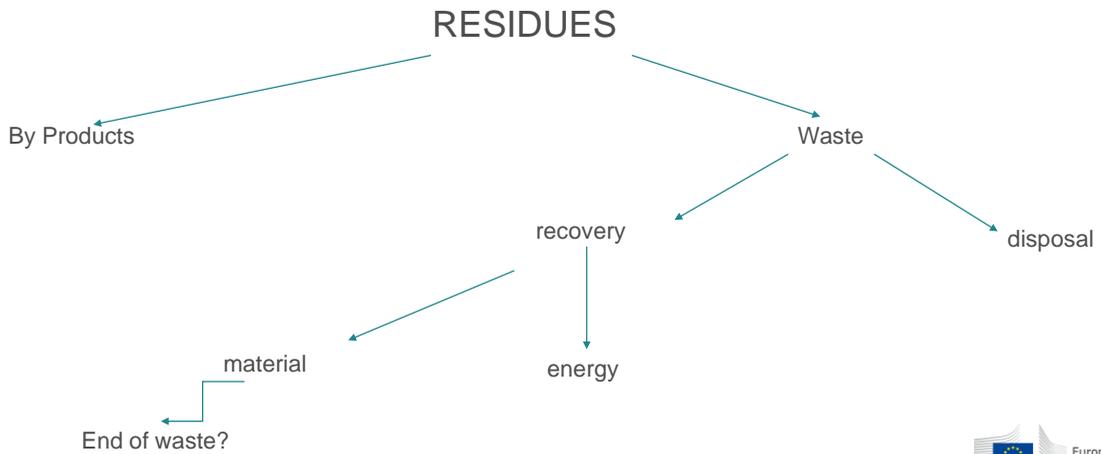


The waste hierarchy enounced in Article 4 of the Directive indicates which are the preferred options in treating waste, because they deliver the best environmental outcome. The priority order is the following: prevention, preparing for reuse, recycling, other recovery (e.g. energy recovery) and disposal in landfills.

Article 13 of the WFD

- All waste must be treated in an environmental sound manner
- *Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health and without harming the environment.*
- This article lays down an overarching principle on which many infringement cases are built. For instance the case on illegal landfills which has huge financial implications for Italy are not built on the Landfill Directive, but on Article 13 of the Waste Framework Directive.

«Waste» v. «Non-waste»



The essence of a recovery operation, which is a necessary element for waste to achieve the status of «end of waste», is the waste serving a useful purpose, substituting other materials.

Art. 5 WFD By-Products

- A production residue that fulfils the conditions of Article 5(1) WFD is a by-product.
- It has to be decided on a case by case basis
- 1) further use of the substance or object is certain;
- 2) the substance or object can be used directly without any further processing other than normal industrial practice;
- 3) the substance or object is produced as an integral part of a production process;
- 4) further use is lawful.



The Court of Justice of the EU, through a number of judgments, has given guidance on when a material can be regarded as something which an undertaking wishes to exploit rather than a substance or object which is being discarded. See, for instance, the judgments: *Palin Granit* (case C-9/00), *Saetti* (case C-235/02), *Euro Tombesi* (joined cases C-304/94, C-330/94, C-342/94 and C-224/95) and *Inter-Environmental* (case C-129/96).

Art. 6 WFD End of waste

- Waste can achieve, after undergoing a recovery operation, a non-waste status. Criteria must comply with the following cumulative conditions :

- 1) The substance or object is commonly used for specific purposes;
- 2) A market or demand exists for such a substance or object;
- 3) The substance or object fulfils the technical requirements for the specific purpose and meets the existing legislation and standards applicable to products;
- 4) The use of the substance or object will not lead to overall adverse environmental or human-health impacts.

If there are not criteria at community level, MS may decide whether certain waste has ceased to be waste, taking into account applicable case law.



There is an important link between the end of waste criteria and REACH (Regulation (EC) No 1907/2006), i. e the EU regulation on chemical substances.

As emphasized by the Waste Directive Guidelines, issued by the Commission 2012

(https://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf),

whomever places the material on the market for the first time after it has achieved the «end of waste» status must ensure that the material meets the relevant requirements under applicable products regulation , including REACH.

Circular pattern Scenario 2

- How it is possible to **prevent waste generation** and promote recycle and reuse?
- How can producers/users keep control over the products and avoid discard?
- In this model the **producer is made responsible during the entire life-cycle of the product**, including the phase in which it has become waste.
- New instruments are needed connecting **product policy and waste policy**, design with end-of-life treatment i.e. the extended producer responsibility, rules on mandatory recycled content.

Shift from waste to product policy

Linear pattern

- Waste is an unwanted burden
- Producers produce
- Users use and discard
- Waste management operators take care of the waste
- Mass production, mass consumption, mass disposal

Circular pattern

- Waste is a profitable resource
- Producers conceive and produce **sustainable products** (which have reduced environmental impacts and are easily recyclable)
- **Integrated product policy**, Ecodesign, EPR are instruments to make the producers responsible throughout the entire life-cycle of the products



In this model, the producer is responsible throughout the entire life cycle of the product. From designing to manufacturing, in a way that minimise resource consumption, to recycling and disposing a product which is easy to dismantle.

Reduce, reuse, recycle



The 3Rs symbol is used in Japan to promote a sustainable society.

Circular Economy Action Plan (2015)

- It aims at saving resources and reducing waste.
- Identifies 54 actions in 4 key areas:
- **Production:** emphasis on **product design** for recycling, durability and on **extended producer responsibility**. Mandatory EPR scheme to be introduced for all packaging by 2025.
- **Consumption**
- **Waste management:** as part of the first Circular Economy Action Plan, in 2018 the waste legislation was revised (increasing recycling targets for municipal waste and for packaging waste; separate collection obligation are strengthened and extended to hazardous household waste (by end 2024), bio-waste (by end 2023) , textile (by end 2025).
- **Secondary raw material**



The revision of the waste legislation included the revision of the Waste Framework Directive, Landfill Directive, Packaging Directive, and of the Directives on end-of-life vehicles, batteries and accumulators, and waste electrical and electronic equipment (WEEE).

Sustainable products

- **Aim:** to conceive, realise and commercialise **sustainable products**, i.e. products with reduced environmental impacts and which are easy recyclable
- **Instruments:** at the moment there is not a set of mandatory rules that ensure that all products placed on the EU market are sustainable, but a number of initiatives that on a mandatory or voluntary basis address a number of sustainability aspects (Ecodesign, Energy Labelling Framework, Ecolabel).
- Chemicals legislation on the reduction the presence of dangerous substances.
- Legislation regulating the single-use (plastic strategy)

Extended producer responsibility

- **Aim** : making producers more conscious of their responsibility during the whole life-cycle of the product
- **Instruments**: product design and EPR (= **Extended producer responsibility**, ensuring that the producers bear financial and/or organisational responsibility for the management of waste).
- Mandatory for ELVs, batteries, WEEE.
- Mandatory for packaging by 2025;



Separate collection obligations

- **Aim:** effective separate collection is a mean to achieve high quality recycling.
- **Instruments:** legal obligations.
- As for 2015 mandatory for paper, metal, plastic and glass.
- By 31 december 2023 mandatory for bio –waste and by 1 January 2025 for textile and hazardous waste.

A European Strategy for Plastics in a Circular Economy (2018)

- Only around 30 % of plastic waste is collected for recycling in the EU.
- The Circular Economy Action plan identifies plastic as one of the priority sectors. In 2018 the EU adopted a **Plastic Strategy**.
- **Aim:** To define a vision for a more circular plastic economy, to reduce plastic litter.
- **Instruments:** Member States have to take **preventive measures** (i.e. product design requirements) **and waste management measures** (i.e. separate collection targets).



The Strategy sets out some actions, such as the adoption of Single-Use Plastic Directive aiming at reducing plastic litter. The Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment is due to be transposed by mid 2021.

The Strategy foresees the revision of the essential requirements of Packaging and Packaging Waste Directive so that all packaging should be either recyclable/reusable by 2030.

European Green Deal (2019)

The European Green Deal:

- foresees a Circular Economy Action Plan 2.0, including a **sustainable product initiative**
- strategic is **preventing waste**
- higher-quality recycling
- reviews of waste legislation (batteries, shipments of waste)
- «The Commission is of the view that the EU should stop exporting its waste outside of the EU and will therefore revisit the rules on waste shipments and illegal exports».



For the text of the Communication from the Commission of 12.12.2019, see the following link:

https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF

Circular Economy Action Plan 2.0

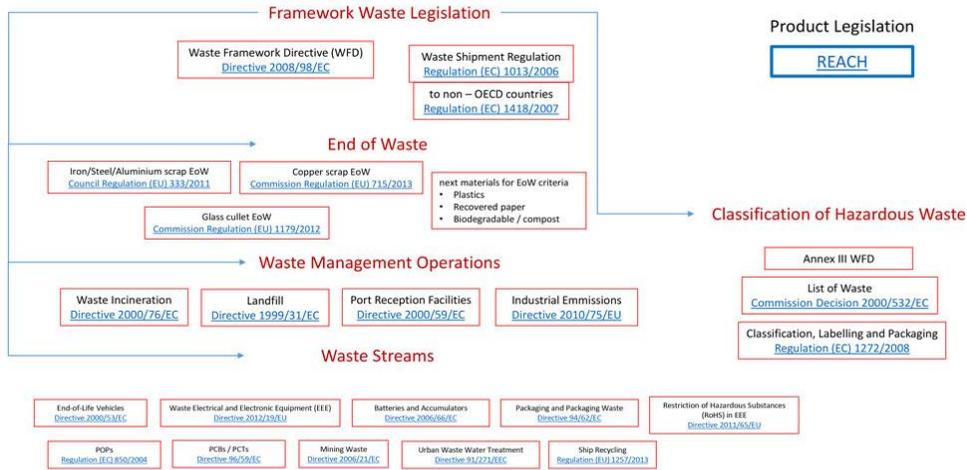
- **Sustainable Product Initiative.** A legal instrument is necessary.
- Strengthening **the extended producer responsibility**
- Particular focus on resource intense sectors such as textiles, construction, electronic and **plastics**
- All packaging in the EU market is reusable or recyclable in an economically viable manner by 2030
- Regulatory framework for **biodegradable and bio-based plastics**
- Implementation of measures on single use plastics



For the full text of the Communication from the Commission of 11.3.2020 on a new Circular Economy Action Plan-For a cleaner and competitive Europe, see the following link:

https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC_1&format=PDF

European Legal Framework



Coordination with the WFD

- All these directive are older that the waste framework directive.
- Their provisions are sometimes divergent from key concepts and key provisions contained in the more recent WFD.
- Discrepancy in logic: fitness check of five waste stream Directives carried out in 2014.
- Revision in 2018 of WFD, Landfill Directive, WEEE, End-of-life vehicles, Batteries

Other directive on specific waste streams

- End-of-life vehicles 2000/53/EC - legal basis IM (EPR, waste prevention, life-cycle thinking)
- Batteries 2006/66/EC dual legal basis IM + ENV (EPR, life-cycle thinking)
- Packaging Directive 94/62/EC - legal basis IM (EPR in form of soft law recommendation, waste prevention, life-cycle thinking)
- Electrical and electronic equipment (WEEE)2012/19/EU – legal basis ENV (EPR, waste prevention, life-cycle thinking)



In this slide, in addition to concepts previously introduced (waste prevention, life cycle thinking) is mentioned the question of the legal basis of the different pieces of legislation. The abbreviation IM stands for Internal Market, i. e. Article 114 of the Treaty on the Functioning of the European Union and ENV stands for Environment, i.e. Articles 192 and 193 of the same Treaty. The choice of the legal basis is important, because under Articles 192 and 193 the Member States have the right to introduce more stringent environmental legislation, whilst under Article 114 there is a total harmonization. For instance, in the case of the Batteries Directive, currently under revision, there is dual legal basis. The primary objective of this Directive was to minimise the legal impact of batteries on the environment, with the additional objective to

ensure the smooth functioning of the internal market.

Hazardous waste

- All waste is potentially hazardous for the environment!
- The concept of hazardous waste includes many different waste streams (waste oils, certain batteries, end-of-life vehicles)
- Directive 2008/98/CE and Commission Decision 2000/53, containing the list of wastes periodically revised, jointly form the definition of hazardous waste and must be read together.
- From 1 January 2025 an obligation to collect household hazardous waste will



In particular, Articles 17 (control), 18 (ban on mixing of hazardous waste, 19 (labelling), and 20 (hazardous waste produced from household).

Hazardous waste

- Article 3 (2) WFD considers waste as hazardous when it displays one or more of the hazardous **properties** listed in Annex III. Annex III lists in general terms fifteen hazard categories (i.e. explosive, flammable, irritant, toxic, corrosive, infectious etc.).
- These properties are further specified by Decision 2000/53, lastly modified by Decision 2014/955/EU (so called list of waste). **The list is periodically reviewed on the basis of the notifications made by Member States and on the basis of new knowledge and, in particular, of research results.**



The decision 2014/955/EU (so called list of waste) is a reference nomenclature for classification of waste which has a major impact, *inter alia*, on transport of waste and installation permits.

Hazardous waste

- Member States may consider waste as hazardous when the material displays one or more of the properties listed in Annex III, even though it does not appear as such on the List of Waste (art. 7(2)WFD) The Commission must be notified without delay and must be given «*all relevant information*». In this way, the list might be updated.
- Member States may consider that a specific waste that appears on the list of hazardous waste does not display any of the properties listed in Annex III and therefore it is non-hazardous waste. The Commission must be notified without delay and must be given the «*necessary evidence*» (art. 7(3)WFD).
- The WFD sets specific provisions on hazardous waste management (i.e. art. 18 ban on the mixing of hazardous waste, art. 19 packaging and labelling)

Hazardous waste, remaining problems...

- It can happen that a particular type of waste may be considered hazardous in one Member State, and not in others.
- Member States use in their national legislation different terminology such as chemical waste, special waste and so on.
- The Basel Convention on the shipment of hazardous waste and the OECD have established hazardous waste lists which are different from the EU list, obviously a situation that can generate inconsistencies and illegal practices.
- Finally, it is necessary to mention the Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste



Thank you



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