

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
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- 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 (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

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

Your name or organisation:

European Biogas Association

Please provide your EU Transparency Register ID number (if you have one)

18191445640-83

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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- ΚΥΠΡΟΣ (ΚΎΠΡΟΣ)
- БЪЛГАРИЯ (BULGARIA)

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

In addition EBA has non-EU members in Switzerland and Serbia

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?

Anaerobic digestion is still not recognised as a recycling technique in all member states. Hence, this results in very uneven biogas deployment across the EU.

The rate of biowaste recycling is still very low across most European countries, where over 2/3 of all biowaste in the EU is inadequately treated (either landfilled or incinerated). The recycling rate is considerably lower than for other waste streams including paper, metal, glass and plastic. Bearing in mind that biowaste constitutes approximately 1/3 of all household waste in addition to industrial and catering waste, this has major negative impacts:

- serious environmental repercussions and a setback for resource efficiency;
- biowaste is still landfilled across most countries in the EU causing serious environmental impacts;

- approximately 78 million tonnes of still landfilled biowaste in EU member states causes about 110 million tonnes of CO₂eq. GHG emissions. Additionally this causes a loss and a possible leakage into groundwater of about 400 000 tonnes of nitrogen, 120 000 tonnes of phosphorus and about 450 000 tonnes of potassium;
- incineration of biowaste cannot generate the full energy potential from biowaste and additionally it causes a loss of valuable nutrients;
- a lost opportunity to the European economy and in particular for job creation in the recycling sector (i.e. anaerobic digestion and composting).

While it is essential to introduce EU-wide End-of-Waste criteria for organic waste, it is equally important to have strong European waste legislation on organic waste (revision of WFD). As we see it, the first pre-requisite to have a functioning market for digestate from waste is to have robust and binding EU legislation on biowaste. This will give investors the right incentives and security to put money in the anaerobic digestion sector. In addition to the needed End-of-Waste Regulation for digestate and compost, it is also essential to include organic fertilisers into a revised Fertilisers Regulation and an exemption from the administrative burden of registering digestate under REACH legislation.

To sum up, the European Biogas Association (EBA) calls on the Commission to propose a revision of the Waste Framework Directive with the following elements:

- include mandatory separate waste collection for biowaste;
- introduce an ambitious recycling target which is specific to biowaste;
- introduce a total (or nearly total) ban on incineration and landfilling of biowaste;
- introduce a Regulation on End-of-Waste criteria for digestate and compost;
- recognise anaerobic digestion of biodegradable waste as a recycling method across the EU by explicitly including it in the Annex II of the Waste Framework Directive under point 'R3'
- ensure that residues which are often used in other industries (such as spent grain from breweries), are not considered as waste after they are processed in an anaerobic digester.

And additionally:

- Revise the EU's fertiliser legislation by incorporating organic fertilisers into the scope
- Exempt digestate from the registration requirements under the REACH Regulation by amending the Annex V point 12

3. Could you provide an example of such a regulatory failure/obstacle? Please describe it briefly.

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:

The main regulatory failure is the absence of strong provisions within the WFD to boost biowaste recycling, together with the lack of a ban for biowaste landfilling and a ban for the incineration of biowaste. As mentioned in the bullet points of answer 2, the specific shortcomings are: the absence of separate biowaste collection (article 11 (1)), the absence of biowaste specific targets and the absence of a ban for incinerating and landfilling biowaste.

These shortcomings are directly visible in most EU member states, where other waste streams with stronger recycling provisions in the WFD have been more successful in bringing material back to the market than the biowaste stream. This evidences that stronger European waste legislation (i.e. with compulsory targets) results in most cases in stronger national and/or regional legislation. Similarly, municipalities and other local entities (which often have limited budgets) tend to take easier/cheaper solutions when recycling is not mandatory.

While all levels of public administration are concerned by this market failure, only coordinated EU action via the revision of the WFD can correct this. In addition, existing EU and national instruments should be mobilised to help municipalities and local entrepreneurs to meet more ambitious biowaste legislation.

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.

The low rate of biowaste recycling is a regulatory failure which has several negative impacts including the following:

- Anaerobic digestion can produce valuable energy in the form of biogas, which can be used as renewable transport fuel, or for electricity and heat generation which is essential to decarbonise Europe's economy and consolidate its energy security. Therefore, low recycling rates of biowaste also have a negative impact on climate change and international trade.
- The approximately 78 million tonnes of biowaste which are currently still landfilled in the EU cause GHG emissions of approximately 110 million tonnes CO₂eq.
- Digesting these 78 million tonnes of landfilled biodegradable waste would additionally: generate 150 PJ of renewable energy in form of biogas or biomethane with 11 million tonnes CO₂ eq. savings by replacing fossil fuel (oil); Recycle large amounts of nutrients in the form of organic fertiliser equivalent to 400 000 tonnes of nitrogen (N), 120 000 tonnes of phosphorus (P₂O₅) and 450 000 tonnes of potassium (K₂O).

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.

The European Biogas Association (EBA) is a wide network of biogas actors from 24 European countries from national associations, companies and academia. Our members are active within their countries and they share experiences and best practices across the network. Since the creation of EBA in 2009, our members have found several common problems and barriers, including the mentioned issues.

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.

Legislative changes are essential, in particular the mentioned WFD revision, regulation on End-of-Waste criteria for digestate and compost, as well as the revision of the Fertilisers Regulation to include organic fertilisers (i.e. digestate and compost).

In view of the large divide between EU countries, where there are leaders and laggards in biowaste management, it is essential that the Commission takes a more active role in following up implementation in those countries that are struggling. Platforms of debate between regional/local authorities and the exchange of best practices should also be encouraged.

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.

While biogas and compost are exempt from REACH declaration, this is still not the case for digestate. Should digestate be eligible for REACH declaration once it is included in the EU Fertilisers Regulation, this would imply costly reporting for small biogas operators. Hence plant operators would not apply for produced digestate becoming a fertiliser and would stall the development of this market.

The Nitrates directive is an important instrument to protect Europe's environment, yet some of its provisions do not take into account digestate's specificities. The current wording disproportionately disadvantages digestate containing manure.

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

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

Anaerobic digestion is still not recognised as recycling technique under WFD and therefore it's development is hindered in some member states. EBA therefore requests the European Commission to include anaerobic digestion of biodegradable waste in the Annex II ('recovery operations') of the Waste Framework Directive (2008/98/EC) under point 'R3'. This would incentivise Member States to produce renewable energy and organic fertilisers in a sustainable manner.

Some member states already introduced End-of-Waste regulations for digestate from biowaste. This very positive step forward helps to create national markets within countries but it also hinders the development in regions close to borders because often these national End-of-Waste criteria are different and therefore digestate cannot be traded across borders. The best option would be to develop EU-wide EoW criteria directly under the WFD by introducing an End-of-Waste regulation for digestate and compost.

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.)

The lack of strong measures within the WFD to recycle biowaste has serious impacts for Europe:

- Approximately 78 million tonnes of biowaste are still landfilled in the EU. This causes about 110 million tonnes of CO₂eq. GHG.
- Digesting this amount of biowaste could create: 150 PJ of renewable energy and result in GHG emission savings of 11 million tonnes CO₂ eq; recycle valuable nutrients for farming and horticulture in the magnitude of 400 000 tonnes nitrogen (N), 120 000 tonnes phosphorus (P₂O₅) and 450 000 tonnes potassium (K₂O). By using nutrients, rather than landfilling them, the risk of nitrogen leakage to ground water is strongly reduced.
- Recycling the remaining share of biowaste is expected to create 20 000 green jobs across the EU

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.

As previously indicated, point c on overcapacity is a raising concern. Several regions within the EU have a significant surplus of incineration capacities, what discourages the investment in biowaste recycling. Moreover, many more regions plan to build incineration plants in the future (partly with EU funds), making this problem even more wide spread. Therefore, this problem has to be tackled rapidly by banning the incineration of organic waste, before more investments are made that factor within their business model the incineration of organic waste. Concerning point e, landfills and incineration plants also have the drawback of dealing with large volumes of waste, what in many cases implies long transport routes, which can be avoided with local solutions such as anaerobic digestion. In addition, the lack of an End-of-Waste Regulation at EU level leaves organic waste management to national legislation, what is a lost opportunity for neighbouring regions which could cut their transport routes by cooperating across borders.

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).

1. 10i) Introducing EU-wide End-of-waste Regulation for digestate and compost, additionally clear exemption for registering digestate under REACH regulation and inclusion of organic fertilisers under the Fertilisers Regulation;
2. 13c) Avoiding overcapacities of incineration facilities. Strengthen the waste hierarchy so that recycling methods (Article 4 paragraph 1 letter c) become priority to incineration of biodegradable waste;
3. 10h) 'R-codes': explicit inclusion of anaerobic digestion of biodegradable waste as recycling technology under Annex II option R 3.

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

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).

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:

There are still some member states where nearly all biowaste is landfilled or incinerated. As long there is no EU-wide ban for landfilling and a ban for incineration together with mandatory separate collection of biowaste, no recycling market for biowaste can be developed.

As there are no European End-of-Waste criteria for biowaste introduced, countries are creating their own diverging criteria. These gaps between countries are very likely to widen in the future, whereby states develop different measurement methods and limit values for pollutants, ultimately resulting in a split market.

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

There should be robust EU legislation with a mandatory separate collection of biowaste, a ban of landfilling and a ban of incineration of biowaste promoting organic waste recycling as well as common criteria to recognise it as products (EoW regulation for digestate and compost, inclusion of organic fertiliser into fertiliser regulation), as well as a clear exemption from REACH registration.

The public and policy debate on the revision of the WFD will certainly be a very heated one with high political stakes. If the EU is serious about its commitment to move towards a circular economy, an ambitious WFD proposal is essential which will set the tune of discussion for the rest of the Circular Economy Package. The European Biogas Association firmly supports the European Commission in its important task and it is ready to provide expertise on sustainable organic waste management and organic fertilisers.

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.

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