EUROPEAN METALS

The European non-ferrous metals association.



European Metals' recommendations on the draft Delegated Act establishing a list of non-OECD countries to which shipments of certain non-hazardous waste are authorised

Introduction

Overall, European Metals supports the objectives of the draft delegated act (DA) establishing a list of non-OECD countries to which shipments of certain non-hazardous waste are authorised pursuant to Art. 41 WSR and welcomes the environmental benefits that the measure provides. Notably, the proposal helps ensure that waste containing non-ferrous metals shipped to non-OECD countries is treated under environmentally sound conditions equivalent to those set out in applicable EU legislation, thus ensuring a high level of health and environmental protection.

While environmental requirements play a fundamental role in creating a level playing field for environmental and health standards, European Metals underlines that such requirements represent only one part of the overall policy approach needed to address the global challenges and market distortions affecting the European non-ferrous metals value chain and ensure that those materials are retained in the EU. Moreover, it must be underlined that the proposed measure under the Waste Shipment Regulation (WSR) might still present risks of circumvention. Waste shortages already constrain investment in European recycling capacity. For example, in 2023, shortages of suitable, high-quality aluminium scrap forced a recycler in Greece to put a €65 million expansion project on hold, which would have increased annual secondary billet capacity from around 46,000 to 90,000 tonnes.

Therefore, European Metals reminds the European Commission to adopt a holistic approach that does not solely take into account sustainability considerations but also provides adequate market protections through appropriate complementary EU-level trade measures, also in light of recital 32 of the draft Delegated Act. Moreover, adequate measures to prevent the circumvention of the proposed measure under the WSR should also be deployed.

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Our high-level recommendations

- Holistic approach: Adopt a holistic approach including complementary sustainability and trade measures to provide adequate market protections against the leakage of non-ferrous metals waste and facilitate the achievement of the EU's circularity objectives.

- Risk of circumvention
    - Ensure appropriate measures against the circumvention of the proposed measures under the WSR are in place and that the End-of-Waste status is not used as a loophole for exports of aluminium and copper scrap outside of the EU.

    - Strengthen traceability requirements for shipments of non-hazardous non-ferrous metals waste to ensure they reach the designated facility/destination under the export documents.

- Equivalent conditions: Ensure coherence between the requirements in Art. 42 and 46 WSR and clarify how "equivalent conditions" are concretely assessed during the audit phase required under Art. 46 WSR.

Our detailed recommendations

1. Holistic approach

European Metals supports the objectives of the proposed delegated act to ensure that non-hazardous waste can be shipped to non-OECD countries only when these can thoroughly demonstrate that they can guarantee high-quality treatment and a high level of environmental and social standards equivalent to those in EU law. Indeed, under Article 42(3)(a)–(d) WSR, inclusion in the draft list under Art. 41 WSR is conditional upon third countries demonstrating that they can ensure the environmentally sound management of waste, have an adequate legal framework for waste management and appropriate enforcement mechanisms in place, and are parties to the relevant multilateral environmental agreements listed in Annex VIII WSR.[1] .

Sustainability requirements are an essential component to establishing a level playing field when it comes to environmental and health standards. However, European Metals considers that sustainability considerations represent only one of the elements necessary to effectively address the global challenges faced by the European non-ferrous metals value chain. In this context, European Metals recommends that the proposed measure under the WSR should be complemented with adequate initiatives to address global market imbalances and uneven policy frameworks in third countries. For instance, these can include less effectively enforced environmental and social standards, state support and subsidies, domestic measures restricting

[1] These include the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Paris Agreement, and the UN Framework Convention on Climate Change.

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or prohibiting exports of non-ferrous metals scrap[2], and regulatory and cost differentials that create significant arbitrage opportunities between the EU and third-country markets.

These considerations apply not only to non-OECD countries but to OECD countries as well. Notably, exports of non-ferrous metals waste to OECD countries remain a major gap. Article 45 of the WSR addresses environmental and health risks but does not provide appropriate measures against disruption to EU scrap availability or recycling capacity. In this context, aluminium scrap serves as a noteworthy example of this risk, with EU scrap exports to the US rising by 273% in Q1 2025 compared with Q1 2024.

Therefore, European Metals considers that only a holistic approach also encompassing broader economic considerations can adequately address the ongoing market distortions and the risk of leakage of valuable non-ferrous metals waste. In light of the urgent necessity for appropriate measures to support the European non-ferrous metals value chain, **the current proposal under the WSR should, therefore, be complemented with appropriate trade measures, such as export duties, to avoid further leakage of valuable non-ferrous metals waste outside of the EU**. Such an approach would greatly support the achievement of the circularity objectives set out in, among others, the European Steel and Metals Action Plan, the RESourceEU Action Plan, Critical Raw Materials Act (CRMA)and the upcoming Circular Economy Act (CEA) and facilitate the development of the Single EU waste market through, among others, the retention of valuable non-ferrous metals waste within the EU.

Our recommendations

- Adopt a holistic approach including complementary sustainability and trade measures to provide adequate market protections against the leakage of non-ferrous metals waste and facilitate the achievement of the EU's circularity objectives.

2. Risks of circumvention

European Metals underlines that the proposed measure under the draft delegated act still carries a risk of circumvention. Notably, although the current draft list excludes certain non-OECD countries (e.g. India, Egypt and Indonesia) from receiving non-hazardous European non-ferrous metals waste, there remains a risk that those countries could nevertheless receive such waste indirectly, either by acquiring it from non-OECD countries authorised to receive it or through OECD countries. Such an outcome would effectively undermine the original objective of the proposed measure under Art. 41 WSR, as non-OECD countries unable to demonstrate waste management conditions equivalent to those under EU law would still be able to receive European

[2] Notable examples include: the temporary export ban on aluminium scrap introduced by Dubai; China and Vietnam's tax on scrap export; Malaysia's export tariffs; Indonesia's export licensing.

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non-ferrous metals waste, refine that waste into secondary raw materials or products, and subsequently place those materials or products on the EU market.

Further consideration must also be given to potential circumvention of the proposed measure through a misuse of the existing end-of-waste (EoW) criteria for aluminium and copper. Once scrap ceases to be considered waste under the conditions set out in Council Regulation 333/2011 for aluminium and Commission Regulation 715/2013 for copper, it can be shipped without being subject to the stricter requirements set out in the WSR and can rather benefit from the less demanding shipping regime for products. As an example, under applicable EU legislation, aluminium scrap only needs to be cleaned, sorted and prepared for use to obtain the EoW status, without being remelted into a new product. In this context, however, practice shows that the official EU end-of-waste criteria prescribed for aluminium and copper scrap are not uniformly used across the EU Member States and that instances of "falsely" applied EoW status persist. This can lead in turn to significant quantities of aluminium and copper scrap being shipped to third countries under a "falsely" applied EoW status, effectively circumventing the measures proposed in the draft delegated act and Annex.

Moreover, it must be underlined that the EoW criteria were developed under the Waste Framework Directive to support recycling and circularity within the European Union. It was never intended to facilitate exports of strategic secondary raw materials to third countries operating under different environmental and regulatory frameworks.

Therefore, European Metals calls on the European Commission to ensure that appropriate measures are taken to avoid the circumvention of the proposed measures under the WSR. These could include ensuring that the implementation of the procedure for the application of existing EoW criteria for copper and aluminium scrap is strengthened to avoid the misuse of the EoW status and make sure that aluminium and copper scrap is always exported outside the European Union as waste. This is necessary to allow traceability and control of the waste flows, avoiding especially that falsely declared EoW becomes a way to by-pass the requirements of the Waste Shipment Regulation.

Our recommendations

- Ensure appropriate measures against the circumvention of the proposed measures under the WSR are in place.
- Ensure strengthened implementation of the existing official EU EoW criteria for copper and aluminium across Member States and that the End-of-Waste status is not used as a loophole for exports of aluminium and copper scrap outside of the EU.

3. Equivalent conditions

European Metals underlines the need for further clarification on how "equivalent conditions" for environmentally sound management of waste are assessed. Under Art. 42(3) of the WSR, the

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inclusion of a non-OECD country in the list under Art. 41 is conditional upon the proof that, among others, the country making the request has in place an appropriate legal framework to ensure "*that the residual waste generated through the recovery operation for the wastes concerned by the request is managed in an environmentally sound manner as referred to in Article 59*". Art. 59 WSR establishes that waste can be considered managed in an environmentally sound manner when human health, climate and environmental protection requirements equivalent to those in EU law are met. Art. 59(2) further specifies that "*when assessing such equivalence, full compliance with requirements stemming from Union legislation shall not be required*". However, the article underlines that "*it shall be demonstrated that the requirements applied in the country of destination ensure a similar level of protection of human health and the environment to the requirements stemming from Union legislation*".

These requirements also apply at facility-specific level, as, under Art. 46 WSR, a notifier or the person who arranges the shipment of waste to third countries must ensure that the facilities that will manage the waste in the country of destination have been audited by a third party independent of both the notifier or person who arranges the shipment and the audited facility.

In the context of the proposed measure under the WSR, it will, therefore, be essential to clarify how "equivalent conditions" for the environmentally sound management of waste are concretely assessed and ensure coherence between Art. 42 and 46. This will help ensure that any additional countries included in the list under Art. 41 in the future meet those equivalent requirements. Of note, this also applies to countries that, while not included in the current draft list or not currently authorised to receive non-hazardous non-ferrous metals waste, are currently candidates to join the OECD (e.g. Indonesia, Thailand). Notably, once a member of the OECD, those countries would not be required to be included in the list under Art. 41 WSR to receive shipments of non-hazardous non-ferrous metals waste, although still subject to the provisions on equivalent conditions under Art. 59 WSR.

Our recommendations

- Ensure coherence between the requirements in Art. 42 and 46 WSR and clarify how "equivalent conditions" are concretely assessed during the audit phase required under Art. 46 WSR.

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About European Metals

European Metals is an umbrella association representing the interests of the combined non-ferrous metals industry towards EU policy makers. We bring together the companies and associations shaping Europe's non-ferrous metals ecosystem: from upstream mining and refining to downstream use and high-quality recycling. By connecting technical expertise with policy action, we ensure that the importance of the metals sector is recognised, valued, and that our sector's future is secured. For more information, visit our website: https://european metals.eu