

Fighting Waste Trafficking in the EU: A Stronger Role for the European Anti-Fraud Office

The Reviewed Waste Shipment Regulation and its
Enforcement Provisions

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ABSTRACT

On 20 May 2024, the new Waste Shipment Regulation (WSR) entered into force. The Regulation aims to better ensure that waste exported outside the EU is properly managed and to modernise shipment procedures to reflect the objectives of a circular economy and climate neutrality.

The new provisions include a mandate to the European Commission to carry out inspections in complex cross-border cases of illegal waste shipments. The Commission will entrust OLAF with implementing these enforcement powers. This will reaffirm and extend the role that the Office and its investigators have been playing in recent years under existing legal frameworks. In the future, OLAF will be able to act on its own initiative, not only in the case of illegal waste shipments entering, transiting or leaving the EU, but also for intra-EU shipments. The new rules will allow for a better fight against waste trafficking, contribute to the protection of the environment and human health and improve the overall enforcement of the WSR. These OLAF-related provisions will be applicable from 21 May 2026.



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Introduction

The protection of the environment is one of the main priorities of the European Commission. Climate change and environmental degradation are existential threats not only to Europe but also globally.

Consequently, environmental crime is becoming an increasingly significant concern. Criminal organisations have been expanding into the sector, which is extremely lucrative and relatively low risk, as sanctions imposed for such activities are significantly milder when compared to other, more 'traditional' criminal offences, such as drug trafficking. According to Interpol and the United Nations Environment Programme, environmental crime represents one of the four most prevalent criminal activities in the world, together with drug trafficking, human trafficking and counterfeiting.¹ According to Europol, environmental crime can be as profitable as illegal drug trafficking. The comparatively low sanctions imposed for environmental crime in comparison to, for instance, drug trafficking and difficulties to detect such crimes,² lead to a substantial increase of such illegal activities. Environmental crime, therefore, became one of the EU's priorities in the fight against serious and organised crime.³

Illegal waste shipments are among the most serious forms of environmental crime. Due to their high profitability, they can often be linked to organised crime and even terrorist financing.⁴ According to estimates, 15% to 30% of all waste shipments might be illegal; the value of this trade could reach up to € 9.5 billion annually. The illicit shipment of waste across national borders can pose a significant risk to human health and the environment. With 67 million tonnes of waste shipped per year within the EU alone and nearly 35.1 million tonnes of waste exported from the EU to non-EU countries in 2023,⁵ it is of utmost importance to control these shipments effectively and efficiently.

In response to these concerns, the European Commission recently adopted the new Waste Shipment Regulation⁶ (hereinafter WSR). The new rules aim to better ensure that waste exported outside the EU is properly managed and to modernise shipment procedures to reflect the objectives of a circular economy and climate neutrality. It will, for example, implement the use of an EU electronic system for the submission and exchange of information. Furthermore, the enforcement of the WSR and the fight against illicit shipments of waste will be reinforced by improving the traceability of the shipments and by supporting more efficient cross-border coordination.

The new provisions include a mandate to the European Commission to carry out inspections in complex cross-border cases of illegal waste shipments. The Commission will entrust the European Anti-Fraud Office (OLAF) with implementing these enforcement powers.⁷ This will reaffirm and extend the role that the Office and its investigators have been playing in recent years under existing legal frameworks.⁸

OLAF's Current Work on Illegal Waste Shipments

The work on illegal waste shipments is not new to OLAF. Indeed, the Office has long-standing experience in tracking down illicit cross-border traffic of dangerous substances, including illicit waste. OLAF's work in the domain of illicit refrigerant gases, for example, has been recognised by a prestigious international award in 2023, the Montreal Protocol Award for Customs and Enforcement Officers.⁹

Its activity is based on Regulation (EC) 515/97 on mutual administrative assistance in the customs area.¹⁰ As such, OLAF's activities and the support it provides to Member States are currently focused on illicit exports outside the EU.

In 2021, for example, OLAF's alerts and intelligence helped Italian customs block attempts to smuggle 800 tonnes of plastic waste to Malaysia.¹¹ In two different cases, the waste was falsely declared as raw material, and OLAF helped establish that the procedures of export of waste had not been respected and that the exporters did not hold the necessary permits.

OLAF's investigative strategy in this domain is based on in-depth analysis of customs and trade data, customs declarations and commercial documents. Through the so-called Rapid Alert System, managed by OLAF, the Office can relay intelligence to national authorities on suspicious exports of waste or suggest controls in the countries of destination. OLAF monitors the original shipments and the returns of refused containers to ensure that they are not diverted on their way back to the EU source country.

Furthermore, OLAF serves as a bridge and coordinator when requested, and has established cooperation with affected third countries. In 2023, for instance, OLAF led the Joint Customs Operation (JCO) NOXIA¹² in collaboration with ASEM¹³ countries. This JCO targeted deep-sea containers in EU and Asian ports and placed them under surveillance, with the objective of preventing dangerous substances from being smuggled. Operation NOXIA resulted in the seizure of over 1,191 tonnes of illicit waste, 27,469 litres and 5 tonnes of illicit pesticides as well as over 67 million cigarettes and 10 tonnes of tobacco.¹⁴

A New Role for OLAF

Articles 67 to 71 of the new WSR allow the European Commission to carry out inspections in complex cross-border cases of illicit waste shipments. Given its expertise and long-standing experience, the Commission will entrust OLAF with implementing these enforcement provisions. In practice, the new rules will facilitate the cooperation between OLAF and the competent authorities of the Member States, thereby strengthening the operational support that OLAF can provide. OLAF will be able to act on its own initiative, at the request of the authorities of one or more Member States or in response to a complaint. This will apply not only to waste shipments entering, transiting or leaving the EU but also to intra-EU movements.

Art. 68 WSR empowers the Commission, thus OLAF, to do the following:

- Access any premises and means of transport;
- Examine any relevant documents;
- Ask for explanations;
- Take and record statements;
- Physically check the waste and take samples.

A variety of actors are involved in this process, including the notifier, the person who arranges the shipment, the waste producer, the waste holder, the waste carrier, the consignee and the facility that receives the waste. These actors are subject to inspections and are obliged to cooperate. Furthermore, Art. 69 WSR allows and regulates the possibility to interview any person who consents to be interviewed.

Procedural guarantees designed to ensure the protection of individuals' rights are defined in Art. 70 WSR. These rights include, among others, the right not to make self-incriminating statements, to be assisted by a person of choice and to use any of the official languages of the Member State where the inspection takes place.

An investigation will only be conducted by OLAF in cases in which there is sufficient suspicion for an illegal shipment of waste potentially having serious adverse effects on human health or the environment, and in which the investigation in question has a cross-border dimension (Art. 67, paragraphs 1-2 WSR). This allows for an efficient use of available resources, as OLAF's expertise lies in the cross-border dimension of such operations.

After the completion of each action, OLAF will draw up a report, which can include recommendations for further action of an administrative or judicial nature, to the competent authorities in the Member State(s). If the conclusion shows that the shipment of waste has been illegal, OLAF will inform the competent authorities of the country or countries concerned by the shipment accordingly (Art. 67, paragraphs 4-5).

IV. Conclusion

The new EU Regulation on shipments of waste is an important step to tackle illegal waste. New provisions empower OLAF to act on the ground and to support Member States even more efficiently with regard to suspicious movements of waste. This improved cooperation sends a strong message against waste trafficking. It not only strengthens the fight against illegal shipments of waste but also contributes to the protection of human health and the environment.

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1. UNEP-INTERPOL Rapid Response Assessment: The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security, June 2016, available at <<https://www.unep.org/resources/report/rise-environmental-crime-growing-threat-natural-resources-peace-development-and>>. Ally hyperlinks in this article were last accessed on 31 October 2024.↵
 2. Europol, "Environmental Crime" <<https://www.europol.europa.eu/crime-areas/environmental-crime>>.↵
 3. For more information see, Europol, "EU Policy Cycle - EMPACT: EMPACT 2022+ Fighting crime together" <<https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact>>.↵
 4. Europol, "Environmental Crime", *op. cit.* (n. 2).↵
 5. See European Commission, "Waste shipments" <https://environment.ec.europa.eu/topics/waste-and-recycling/waste-shipments_en>.↵
 6. Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, OJ L, 2024/1157, 30.4.2024.↵
 7. European Commission, "Waste shipments", *op. cit.* (n. 5).↵
 8. In fact, EU (and, respectively, EC and EEC) legislation on transborder shipments of waste looks back on a 40-year history. Milestones were Council Directive (EEC) No 631/84, Council Regulation (EEC) No 259/93 and EP/Council Regulation (EC) No 1013/2006, which is now being replaced by the new WSR.↵
 9. See OLAF press release of 31 March 2023, "OLAF awarded for its work against smuggling in climate-damaging gases" <https://anti-fraud.ec.europa.eu/media-corner/news/olaf-awarded-its-work-against-smuggling-climate-damaging-gases-2023-03-31_en>. See also the eucrim news of 13 July 2022 (<https://eucrim.eu/news/operation-dismantles-criminal-organisation-trading-illicit-refrigerant-gases/>) with further references.↵
 10. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 82, 22.3.1997, 1.↵
 11. See OLAF press release of 2 September 2021, "OLAF's work against waste trafficking helps Italian authorities stop illicit waste" <https://anti-fraud.ec.europa.eu/media-corner/news/olafs-work-against-waste-trafficking-helps-italian-authorities-stop-illicit-waste-2021-09-02_en>.↵
 12. Code-named in reference to the English word "noxious" which means harmful, poisonous due to its focus on dangerous substances.↵
 13. "ASEM" stands for Asia-Europe Meeting. It is an informal platform for dialogue and cooperation between Asia and Europe on the big challenges of a fast-changing world, including security issues. ASEM comprises 51 partner countries.↵
 14. See OLAF press release of 16 October 2023, "Operation NOXIA: OLAF leads operation against dangerous substances" <https://anti-fraud.ec.europa.eu/media-corner/news/operation-noxia-olaf-leads-operation-against-dangerous-substances-2023-10-16_en>.↵
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