

1. Waste Legislation

Background

European legislation on waste forms the basis for waste law in the various Member States. Current waste legislation and regulations originated in the 1970s, when it was still based on the linear idea that a product would become waste in the long or short term, which one wanted to get rid of at the lowest possible cost. Waste legislation has been developed to prevent all kinds of undesirable activities with waste (such as illegal dumping or incineration) with negative consequences for people and the environment.

Since the 70s of the 20th century, this waste legislation has shifted towards recycling (reuse economy) and now a trend is visible towards a circular economy. The realization has dawned that the resources available are finite. Efficient use and keeping raw materials available for future use is now given more priority, with the main objective of protecting people and the environment at all times.

Upcycling of waste

In order to be able to use the available raw materials more efficiently in the future, attention must also be paid to reducing the production of waste and reusing the waste that is created. That is what the Ucycle your Waste project is about. The high-quality use of industrial waste streams. This does mean that we must do this within the possibilities that innovative entrepreneurs, technology and legislation currently have to offer. That is why this inventory of waste legislation and the available (legal) options for using waste as a raw material has been included in this document.

Content

In this document we discuss the history of waste legislation, the changed insights in dealing with waste and resource efficiency, the European waste legislation framework, the impact on national and local legislation insofar as it is relevant for SMEs and upcycle initiatives. in the pilot areas.

2. European Waste Framework Directive

2.1. Preface

Within Europe, the Waste Framework Directive (Directive 2008/98 / EC, hereinafter: Kra) applies. This must be implemented by the member states in national legislation. After it first came into effect, the Kra has moved from the linear idea towards recycling and now the circular idea has been added to the last change. The Kra was changed in 2018 and the objective of efficient use of raw materials in connection with the transition to a circular economy has become more central, in addition to and as part of the importance of the protection of the environment and human health.

2.2. Article-by-article explanation

The Kra sets out the basic concepts and definitions related to waste management, such as definitions of waste, recycling and recovery. The directive lays down some basic principles for waste management: it requires that waste is managed without endangering human health and the environment, and in particular without risk to water, air, soil, plants or animals, without causing nuisance by noise or smell. It also explains when waste ceases to be waste and becomes a secondary raw material (so-called end-of-waste criteria) and how a distinction can be made between waste and by-products. The content of the main articles from the Waste Framework Directive in relation to the Ucycle your Waste project are summarized below:

Article 1: Protection of the environment and human health by preventing or reducing the adverse effects of waste generation and management and by reducing the overall impact of resource use and improving the efficiency of such use.

Article 3 provides definitions of waste, hazardous waste, biological waste, but also of waste operations such as (separate) collection, prevention, reuse, treatment, recovery, recycling, disposal and best available techniques and the companies or persons who perform actions with waste such as waste producer, waste material holder, trader, broker and disposer.

Article 4 discusses the order of priority to be followed by Member States in legislation and policy initiatives for prevention and management of waste and which is set out below.



Article 5 deals with the definition of by-products and Article 6 explains the end-of-waste of specific waste that is no longer a waste.

Article 7 deals with the fact that waste materials must be classified in accordance with a European system (Eural).

The Kra describes an extended producer responsibility and offers Member States the possibility to take legal or other measures to stimulate prevention (step 1) and reuse (step 2), recycling (step 3) and other recovery of waste to ensure that any natural or legal person who develops, manufactures, handles, processes, sells or imports (producer of the product) professionally fulfills its extended producer responsibility.

It is also prescribed (Art. 10) that Member States take measures that are necessary to ensure that waste undergoes operations for recovery. To facilitate or improve this, waste materials are collected separately, provided that it is technically, environmentally and economically feasible and not mixed with waste materials or materials that do not have the same properties.

It is also regulated (art 11) that Member States, in combination with separate collection and recycling, take measures to promote the reuse of products and activities, by setting up and supporting reuse and repair networks, applying economic instruments, procurement criteria, quantitative targets or other measures. Waste that is not recovered must undergo such disposal operations that it does not endanger human health and has no adverse effects on the environment.

Article 23 provides that Member States may determine that establishments and companies wishing to process waste must obtain a permit from the competent authority, containing at least the following matters:

- types and quantities of waste that may be treated;
- for each type of licensed operation, the technical and other requirements applicable at the site concerned;
- the safety and precautions to be taken;
- the method to be applied for each type of practice;
- monitoring and control actions as necessary;
- closures and aftercare provisions where necessary.

The permit is granted for a limited period of time, may be renewable and may be refused if the competent authority is of the opinion that the proposed processing method endangers human health and has no adverse effects on the environment.

Member States can exempt establishments and companies from the permit requirement (Art 24) if it concerns a) the disposal of their own non-hazardous waste at the site of production, or b) the recovery of waste. The permit may require minimum technical standards for processing operations if it can be demonstrated that such minimum standards are beneficial for the protection of human health and the environment. It has also been laid down that if permit requirements do not apply, the Member States keep a register of companies that collect or transport waste professionally, of traders or brokers of waste or companies that process waste, but are exempt from the permit requirements.

The Waste Framework Directive requires Member States to establish and operate Waste Management Plans waste prevention programs.

2.3. The WFD and upcycling of waste

In order to promote the transition to a circular economy, it is necessary to clarify whether substances or objects are waste or not. After all, different rules apply depending on whether a material is waste or not. A waste material cannot simply be reused as a new raw material. If a substance does not have to be classified as waste, the processing thereof is not subject to a permit requirement and the administrative burden (including registration obligations) will decrease.

Terms "waste" and "no waste"

For entrepreneurs who want to reuse residual substances, it is (legal) desirable to make a distinction as to whether a material / substance is not waste or waste.

If a substance is not a waste from a legal point of view, then it is designated as a product, second-hand product, material, raw material and the waste legislation does not apply. However, other legal regimes may apply to that substance, such as product regulations or fertilizer regulations, but also, for example, certification systems or declarations of conformity.

To determine whether a substance is waste, the following definition from Article 3 of the Kra applies:

Waste is defined as: any substance or object that the holder discards, intends or is required to discard.

When applying and explaining the definition, the following points for attention (mostly from case law) must be taken into account:

- The concept of waste must be interpreted broadly and on the basis of all the facts and circumstances of the case. Any substance can potentially be waste. The same substance can also be waste at one company and not at another.
- The assessment must take place in the light of the objectives of the Kra: the protection of people and the environment and efficient use of raw materials.
- It is important to assess whether further use of the material is demonstrably certain, lawful and of sufficient quality. If further use can be sufficiently demonstrated, then the substance is (in principle) not regarded as waste.
- The mere fact that a material must undergo treatment prior to use does not automatically mean that it is waste.
- If there is a legal obligation to discard the substance, this is waste.
- When a substance is mixed with a non-waste material in violation of legal mixing prohibitions, the mixture must be classified as waste.

Even if the substance is not released to another party, it may still be waste. In order to be able to reuse a waste, the holder can examine whether a by-product (art 5 Kra) or an end-of-waste status (art 6 Kra) can be obtained:

By-product:

Substances or objects that are released during a production process (but not as the primary purpose of that process) and which the holder wishes to discard as a by-product instead of as waste is only possible if the following conditions are met:

- a. it is certain that the substance or object will be used;
- b. the substance or object can be used immediately without any processing other than that which is customary in normal manufacturing practices;
- c. the substance or object is produced as an integral part of a production process;
- d. further use is lawful, i.e. the substance or object complies with all product, environmental and health protection requirements for the specific use and will not lead to overall adverse effects on the environment or human health.

End-of-waste status

When a substance must first be classified as waste, this substance can be given the end-of-waste status if it has undergone a treatment for recovery (art 3 point 17), including recycling treatment and meets the following conditions:

- a. the substance or object is usually used for specific purposes;
- b. there is a market for or demand for the substance or object;
- c. the substance or object complies with the technical regulations for the specific purposes and with the legislation and standards applicable to products and also;
- d. the use of the substance or object has no overall adverse effects on the environment or human health;
- e. the criteria shall include limit values for pollutants, where appropriate, and take into account any adverse environmental effects of the substance or article.

In the Kra it is provided that the European Commission can give certain substances such as granulates, paper, glass, metal, tires and textiles an end-of-waste status if they meet specific criteria. If no criteria for this have been established by the European Commission, Member States can decide on a case-by-case basis whether certain waste materials are no longer waste.

2.4. Interim conclusion

A substance or an object can be given one of the following predicates in the waste legislation:

- no waste,
- by-product,
- waste material or
- end-of-waste.

Hazardous waste is also a separate category, with additional regulations.

Depending on the predicate, it is then determined which rules apply to actions with the substance in question. When evaluating substances, the main objective of waste legislation, the protection of people and the environment, must not be forgotten. Whatever the legal qualification of a substance, the processing or use of the substance must be safe for humans and the environment.

De WFD has many aspects that must be worked out nationally, such as:

- implement the Waste Management Plans and draw up waste prevention programs;
- drawing up and applying criteria for the granting of permits for the processing of waste;
- taking measures necessary to ensure that waste undergoes recovery operations;
- reporting on the amounts of waste and the application in plans and programs of the waste hierarchy;
- registering companies that collect or transport waste, traders or brokers of waste or companies that process waste but are exempt from the permit requirements;
- implement the comprehensive products responsibility.

2.5. Waste legislation and policy

In addition to the specific waste legislation, there are various documents setting out objectives that have an effect on the waste flows and the way in which waste should be treated in order to increase reusability or to prevent waste. These will be disregarded here. It is clear, however, that this policy is increasingly aimed at reducing the generation of waste and increasing the use of raw materials, independent of the predicate, in order to increase raw material efficiency.