

**Brevdato** 15-05-2023

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**Akttitel** Danish questions regarding the Waste Framework Directive definition of recovery

**Identifikationsnummer** 429671

**Versionsnummer** 1

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**Vedlagte dokumenter** Danish questions regarding the Waste Framework Directive definition of recovery  
Questions regarding Waste Framework Directive 4 May

**Dokumenter uden PDF-version (ikke vedlagt)**

**Udskrevet** 13. jun 2023

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**Titel:** Danish questions regarding the Waste Framework Directive definition of recovery  
**Sendt:** 15-05-2023 15:58  
**Bilag:** Questions regarding Waste Framework Directive 4 May.docx;

Dear waste framework directive team,

I hope this e-mail finds you well.

Some colleagues and I have some questions regarding the Commissions understanding of the Waste Framework Directive and the definition of recovery, please see the attached. I hope that you might be available for a meeting to discuss our questions possibly on Monday at 11 am?

Kind regards,

Amalie

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15 May 2023

## **Assessing whether an operation is a recovery operation or a disposal operation**

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### **The Danish case**

In Denmark, we are phasing a challenging situation regarding a Danish company importing oily wastewater for recovery. It concerns shipments of waste, which consists of only about 3% oil for recovery, while the remaining part of the shipment is destined for a disposal operation. In processing these notifications, some broader questions regarding the Waste Framework Directive have occurred. We are looking into what constitutes recovery, and how to assess whether a shipment is destined for recovery or disposal and therefore have a few questions we hope to get your view on.

### **Recovery**

According to the 2008 Waste Framework Directive Article 3 (15) “recovery” is defined as “any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.”

According to the Court as set out in case C-147/15 this definition “corresponds to the definition developed in the Court’s case-law, according to which the essential characteristic of a waste recovery operation is that its principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose, thereby enabling natural resources to be preserved”.

- a. Do you interpret Article 3 (15) of the Waste Framework Directive as meaning that recovery can comprise situations where the waste is not recovered in the plant itself but prepared for recovery at another place than the initial plant, ie. out in the wider economy?
- b. Can an operation be considered a recovery operation if the waste does not replace other materials at the plant, e.g. the waste is treated at the plant and the outcome (product) of the treatment is recycled elsewhere in the wider economy, replacing other materials there?
- c. In assessing whether or not recovery can comprise situations in which the recovery takes place other places than at the plant do you then take the ruling in C-147/15 into account?

### **Assessing whether a shipment is destined for recovery or disposal**

We have had notifications where part of the waste was to be recovered and part of the waste was to be disposed of, and we are wondering how you would assess such notifications.

- a. How do you assess whether a shipment is destined for recovery or disposal? Which criteria do you take into account when determining the principle result of the operation?
- b. Furthermore, to what extent do the criteria differ depending on the type of waste or the type of operation?

The Court has in case C-458/00 ruled that “[t]he shipment of waste in order for it to be incinerated in a processing plant designed to dispose of waste cannot be regarded as having the recovery waste as its principal objective”.

- a. Do you consider the design of the plant an important criteria in the assessment of whether a shipment is destined for recovery or disposal?
- b. How would you assess the design of a plant?
- c. Do you have plants which perform both recovery and disposal operations?

According to the Court in case C-147/15 “the fact that the operator of the quarry at issue in the main proceedings acquires [the] waste in exchange of payment to the waste producer or holder may indicate that the main objective of the operation in question is the recovery of such waste”.

- a. Would you consider payment on the part of the waste producer to indicate that the shipment is destined for disposal?
- b. Do you accept import of waste for recovery where the treatment facility receives payment for the recovery of the waste? Or is this only in rare cases?

### **Which operation?**

In case C-116/01 the Court has held that “the treatment process as a whole is not to be assessed as a single operation, but each phase must be classified separately for the purpose of implementing the [Waste Shipment Regulation] when it constitutes a distinct operation in itself”.

- a. How do you assess whether a phase constitutes a distinct operation in itself?
- b. Would you consider the judgement to be applicable also where the 'first' operation is for example separation or sorting?

### **In such a small quantity that the provision of new specialized disposal installations within that State would be uneconomic**

According to the Waste Shipment Regulation Article 11 (3) “In the case of hazardous waste produced in a Member State of dispatch in such a small quantity overall per year that the provision of new specialised disposal installations within that Member State would be uneconomic, paragraph 1(a) shall not apply”.

- a. How would you assess whether hazardous waste in a Member State of dispatch is produced in such a small quantity overall per year that the provision of new specialised disposal installations within that Member State would be uneconomic?