



**PILLAR I
ALBANIAN LEGISLATION**

Legal and Policy Developments of import of Non-Hazardous Waste in Albania
by Av. Florian Xhafa

I. ABSTRACT

This paper deals with a topic which has been very much debated within the Albanian arena for the last years: that of import of non-hazardous waste. It lately came again under the public opinion's attention due to further legal changes and raised the same old Albanian fears regarding the issue of waste import and waste management. This Paper intends to examine the developments on this subject which have taken place throughout the years, and provide the analysis of the latest legal changes and recommendations on future operations.

KEYWORDS: *Environment; Waste Management; Treatment; Recycling; Regulation; Policy; Hazardous; Non-Hazardous*

ABBREVIATIONS

ACW	Albanian Catalogue of Waste
Basel Convention	on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 22 March 1989
DCM	Decision of Council of Ministers
DCM 806	DCM No. 806, dated 4.12.2003 " <i>On the approval of the rules and procedures for the import of waste for the purpose of use, processing and recycling</i> "
DCM 99	DCM No. 99 dated 18.02.2005 " <i>On the approval of the Albanian catalogue on the classification of waste</i> "
DCM 835	DCM No. 835, dated 28.12.2005 " <i>On the approval of the list of waste, hazardous waste, and other waste, prohibited to be imported for purposes of conservation, depositing, and disposal</i> "
DCM 825	DCM No. 825, dated 13.10.2010 " <i>On the approval of the list of waste that is permitted to be imported for purposes of use recycling and processing</i> "
DCM 608	DCM no. 608, dated 17.09.2014 " <i>On development of necessary measures for collection and treatment of bio-waste as well as criteria and rules for their reduction</i> "
DCM 418	DCM No. 418 of 25.06.2014 " <i>On separate collection of waste at source</i> "
EU	the European Union
Law 9299	Law no. 9299 dated 28.10.2004 " <i>On adhering of the Republic of Albania to the Decision III/1, amendment of Basel Convention</i> " " <i>On</i>



Law 9537
Law 10431
Law 10463

Law 156/2013

Law 92/2016

Law 8934
Law 9010

LGU
PIA
POP
PRT Register
RIA
SAA

the trans-boundary transfer of hazardous waste and their disposal".

Law no. 9537 dated 18.5.2006 "On hazardous waste management"

Law No.10431, dated 09.06.2011 "On environment protection".

Law no. 10463, dated 22.09.2011 "On integrated waste management", as amended by the law 156/2013;

Law no. 156/2013 "On amendments to the Law no. 10463/2011 "On integrated waste management"

Law no. 92/2016 "On amendments to the Law no 10463/2011 "On integrated waste management"

Law no. 8934 dated 5.9.2002 "On environment protection"

Law no. 9010 dated 13.2.2003 "On environmental management of solid waste"

Local Government Units

Policy Impact Assessment

Persistent Organic Polluters

Pollution, Release and Transfer Register

Regulatory Impact Assessment

Stabilization and Association Agreement

II. INTRODUCTION

During the last decades, as far as it concerns the environment, Albania has undergone an intense and rather chaotic social and economic development. The main reason is not having properly taken into account the principle of "Sustainable Development", which requires the balance between the economic and social development with the environmental media (*air, water, land, biodiversity*). This situation has been created by the following main elements:

- i. uncontrolled business investments, including in agriculture activity;
- ii. uncontrolled exploitation of natural resources;
- iii. lack of coordination between central and local government in formulation and implementation of development policies.

The lack of attention to environment matters, during the adoption and implementation of development policies, has led to alarming indicators of pollution¹. In addition, another important aspect that highly influences environment is social apathy and disregard toward environmental protection and natural resources. The main pollution causes have been identified throughout a considerable number of projects, financed by international donors (EU; WB; UNDP; etc.) as follows:

- i. the lack of collection and recycling of waste in urban and rural areas;
- ii. the use of streets, rivers, and lakes as dumpsites for urban waste;

¹ <http://www.akm.gov.al/cil%C3%ABsia-e-mjedisit.html#monitorime>

- iii. the un-controlled use of POPs;
- iv. the lack of inter-institutional coordination as a direct consequence of inappropriate segregation of official control functions;
- v. the lack of monitoring waste production and its release into the environment as a consequence of the non-functioning of the PRT Register².

During the recent years, the environmental policies and the respective legal instruments for their implementation have acquired particular attention of the central government and also of the general public, but administrative and technical resources for their implementation remain yet insufficient.

III. ANALYSIS OF THE CRONOLOGY OF THE REGULATORY FRAMEWORK ON WASTE MANAGEMENT

The Albanian policy and legal framework, addressing waste collection and treatment, has undergone several important shifts in the last decades. These changes, regarding policy options, legal instruments, or administrative solutions, have been driven by three main factors:

- i. the political will to attract favourable public opinion or citizens' attention and raise concerns on this matter;
- ii. the international pressure, due to the cross-border impact of environment pollution;
- iii. the integration processes of Albania in various international organisations (UN; EU; WTO, etc.);
- iv. the emergency reaction to hazardous waste and hot-spots, due to industrial pollution (mainly inherited from past chemical industries).

These factors, despite their wide range of focus in regard to waste collection and treatment, have not provided enough political vision and structured endeavour to develop a sustainable policy and create harmonised instruments necessary to solve the waste collection and treatment issue, at the central and local level.

1. 2002-2006 Period

The first major regulatory effort in the area of environment protection, and specifically, waste management, was made during the 2002 – 2006 period. It provided the general framework as well as some procedures on waste management, on import and export. Law 8934 (*now repealed*), laid down the basic requirements for addressing the relation between human activity and the environment, by ensuring the protection of the environmental media and the implementation of the constitutional objective to have an ecologically sound environment for current and future generations³. Regarding waste management, Law 8934, established in its article 22 that import of non-hazardous waste, in the territory of the Republic of Albania, for the purpose of use, processing and recycling, was allowed only after a case by case approval issued through a specific DCM. The mentioned waste could be only of the type included in the approved list of

² As required by the article 32 of the Law 10431/2011 and UNECE Protocol on PRTR.

³ Article 59 (1) (d) of the Albanian Constitution.



wastes, allowed to be imported for such purposes. Necessary sub legal acts were issued based on Article 22 of Law 8934 and specifically: (i) DCM 806 (*now repealed*), which regulated the import of non-hazardous waste for the purpose of use, process and recycle; (ii) DCM 99 (*now repealed*), which divided wastes into “*hazardous*” and “*non-hazardous*”, compliant to the provisions of the EC Directive 2000/532/EC (*now repealed*); (iii) DCM 835 (*now repealed*), compliant with the ACW.

Law 9010 (*now repealed*) followed in 2003, providing a full regulatory framework for solid waste management. Through its Articles 8 and 26, Law 9010, banned the import of any kind of waste (hazardous and non-hazardous) for purposes other than use and recycling, and specifically for the purposes of conservation, depositing and disposal, thus being in harmony with the provisions of the Law 8934. In 2004, Albania ratified the Basel Convention through Law 9299, making the country compliant with the international standards of division between wastes of the Green list and wastes of the Basel list. Following the ratification of the Basel Convention, in 2006, Law 9537 (*now repealed*) was enacted and established the norms that regulated safe management of hazardous waste and their collection, transport, recovery, treatment, disposal and export. Article 20 of Law 9537 banned the import of hazardous waste for any purpose in the territory of Albania.

As a result of the abovementioned legal framework adopted during 2002-2006, the situation related to the import of waste was as follows:

- i. waste was divided into hazardous and non-hazardous;
- ii. import of hazardous wastes in Albania was banned;
- iii. import of non-hazardous waste for the purpose of use, processing and recycling, was allowed;
- iv. import of non-hazardous waste for the purpose of conservation, depositing and disposal was banned.

It is worth noting that the abovementioned legislation and policy regarding waste management, including import and export of waste, provided a basic framework, which was only partially implemented due to lack of comprehensive sub-legal acts, administrative procedures and infrastructure regarding for instance, separation and collection of waste at the source, landfills, recycling, etc., as well as due to lack of financing capacities and public awareness. This situation was additionally deteriorated because of the complex distribution of functions between various institutions involved and the ambiguity of the behaviour of economic operators and households, toward the Environment as a whole. On the other hand, import of non-hazardous waste for the permitted purposes, during this period, was carried out by private operators, based on the interpretation of the DCM 835, which listed the hazardous waste which were banned and could not be imported, while leaving open the right to import almost all the other waste listed as non-hazardous. This regulatory framework and the respective procedure, was not in line neither with the EU legal provisions established by means of the EU Commission Decision 94/721/EC (*now repealed*), which established the Green List of Waste including about 168 products, nor with the



Green List⁴ of the Basel Convention, which included about 179 products. Therefore there existed a legal gap in Albania regarding this issue. In addition, the regulatory framework, regarding waste management and waste water treatment, was rather limited and didn't provide enough procedural frameworks to implement the general obligations established by it. The waste management situation was worsened also because of the limited resources and infrastructure, making the "*dumpsite*" as almost the only alternative for waste management.

2. 2008 Period

Another important step toward proper waste management, especially related to import and export of waste, was made in year 2008, with the approval of DCM 825. This DCM adopted the EU Green List of waste that included non-hazardous waste products that could be imported and exported for the above mentioned purposes. The list of waste permitted to be imported in the Albanian territory, as provided by DCM 825, was more restrictive than the EU Green List, allowing the import and export of only 55 products out of 168 products included in the EU's list. Regarding procedural aspects, another improvement brought by DCM 825 to the situation at that time, was the differentiations in the Custom Nomenclature Code of the waste that could be imported (*G-Green*) and the waste that could not be imported (*B-Basel*), which enabled the custom authorities to perform proper controls to the borders. Moreover, this procedure was completed by requiring the documents of "*notification*" and "*movement*" for the transfers/cross-border movements of waste as established by the Basel Convention, which were required to operators participating in the process of import, export and transport of waste. Despite the general provision of DCM 825, the authorization of import of waste was issued case by case for each operator and quantity only after compliance with the specific requirements of the DCM no. 806.

3. 2011-2014 Period

The third regulatory reform on environment and waste management was realized during the 2011-2014 period, and it is currently governing the subject area. A large number of norms were approved during this period, as a direct requirement of Article 70 of the SAA Agreement, regarding approximation of environmental legislation with the "*acquis*". The organic law on environment protection, Law 10431 was approved, along with the organic law on waste management, Law 10463, and their respective sub-legal acts⁵. This legal package introduced in

⁴ Annex IX of the Basel Convention

⁵ DCM no. 175, dated 19.01.2011 "On the approval of National Strategy of waste management and National Plan on Waste Management"; DCM no. 177, dated 06.03.2012 "On waste packaging"; DCM no. 178, dated 06.03.2012 "On waste incineration"; DCM no. 452, dated 11.07.2012 "On Landfills"; DCM no. 705, dated 10.10.2012 "On waste management from end life vehicles"; DCM no. 765, dated 07.11.2012 "On the approval of rules for differentiated gathering and treatment of used oils"; DCM no. 866, dated 4.12.2012 "On waste batteries and accumulators"; DCM no. 957, dated 19.12.2012 "On waste from electric and electronic devices"; DCM no. 798, dated 29.09.2010 "On the management of hospital waste"; DCM no. 229, dated 23.04.2014 "On approve of the rules for non-hazardous waste transfer and other requirements for the information to be included in the transfer document"; DCM no. 371, dated 11.06.2014 "On approve of the rules for hazardous waste consignment and their consignment notes"; DCM No. 418 of 25.06.2014 "On separate collection of waste at source"; DCM No. 608, dated 17.09.2014 "On development of



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the Albanian legal framework, basic principles on environmental protection such as (i) the obligation of polluters to pay for the waste they produce; (ii) the waste end-life status⁶; (iii) various procedures and requirements regulating a different type of waste management and treatment; (iv) as well as and the obligation of the public authorities regarding waste management.

Regarding import and export of waste, the situation regulated by DCM 825, was further elaborated by Law 10463 in terms of further restriction and control procedures. Nevertheless during the elections period of 2013, one of the main promises of the Socialist Party, was to block all waste imports. This promise was based on two main arguments: that Albania does not comply with the required standards, and does not have the infrastructural and administrative capacities to control and manage the import of waste; that Albania should guarantee standards for the treatment of its own waste, and should develop the necessary systems for monitoring import and export of waste. Also relying on these arguments, environmental organizations and a considerable number of citizens, collected thousands of signatures, with the purpose of holding a referendum abolishing the respective Article of Law 10463, which permitted the import of 55 waste products (out of 168 products foreseen by the EU list, as established by DCM 825). The referendum was never held as the Socialist Party winning the elections, promised to abolish that article through a legal initiative (the amendment to the Law 10463). In fact, the new Government drafted and the Parliament enacted Law 156/2013, which banned the import of any hazardous and non-hazardous waste in Republic of Albania. This law also provided that any Albanian disposition conflicting with the ban on import was abolished, meaning that DCM 825 was also abolish. There is no data that such drastic changes, in the legislation and policy regarding waste import in Albania, was conducted following a prior PIA or RIA on the subject, which would had provided enough argument for such a decision. Without entering on *pros* and *cons* of the policy decision, from the legal analysis point of view, it presented certain constrains and specifically: (i) it took a step back the process of approximation of environmental legislation the *acquis*, as provided in the Article 70 of the DCM 825; (ii) it unilaterally placed more restrictive measures to trade between parties, compared to those established by the Interim Agreement of the SAA, therefore it breached its provisions⁷.

4. 2013-2016 Period

There were no major changes in legislation or policy, regarding waste management, during 2013-2016. Few landfills investments were made, while the system of separate collection of waste at source was not carried out by the municipalities until currently. Even now, this process is made only in few cities, such as Tirana or Korça.

necessary measures for collection and treatment of bio-waste as well as criteria and rules for their reduction”; DCM No 641 of 1.10.2014 “On approve of rules for waste export and non-hazardous waste or inert waste transit”.

⁶ **Waste end-life status meaning:** a waste product shall not be referred as such, at the moment when it complies with the technical requirements established for the row products or when the market requires it as such.

⁷ Nevertheless no evidence of notification or denunciation of such act by the parties have been found.



During 2016, there was a new governmental proposal drastically shifting legislation and policy related to waste import, from the absolute ban to the contrary direction. Law 92/2016 was issued, allowing the import of waste included in the Green list. This action first required the approval of the Green list, containing the list of waste permitted to be imported, which previously existed but was abolished in 2013 together with DCM 825. Despite lack of the list, Law 92/2016 amended Article 48/1, paragraph 1 of Law 10463, providing the right to import non-hazardous solid wastes, for purposes of usage as raw materials, in the recycling industry and other industries, not excluding waste incineration activities. At the same time, the government issued several permits for incineration activities. The enactment of this act was followed by considerable reaction of the public, based on which the President, did not approve the Degree for its entering into force. The argument of the government to the public opinion, for such a shift, was that these new legal changes did not permit entrance of waste but of primary products necessary for the recycling industry. Secondly it was explained that the country was now ready to administer and control the import process through its administrative procedures and facilities.

IV. CONCLUSIONS AND RECOMMENDATIONS

The legislative, policy and regulatory reform regarding waste management in Albania, implemented within the last decade, has improved substantially, nevertheless it was not accompanied by the necessary financing on infrastructure, human resources, and administrative capacities. A major issue was that it lacked transparency and was often used as a political tool by the Albanian political actors. All these elements have produced the general public perception that these reforms were only taken for political purposes, serving certain economic sectors. This perception has been also fed by the unclear arguments provided by the political actors, when lining in favour or contrary to the drastic shifts of legislation regarding this subject matter.

In any case, on a strictly legal point of view, the shift taken in 2013 totally banning the import of waste was a clear breach of international law, which could be adjusted only by the pending approval of Law 96/2016. This does not exclude the responsibility of Albania to priority assess its rights and obligations, as well as the internal capacities to properly implement the international law. That being said, any process of ratification of international agreements or conventions should be preceded in any case by a PIA and a RIA, as well as by a feasibility study regarding implementation capacities of the country. These processes would hinder the misuse for any political or populist reasons, of policy and regulatory norms, as well as of the ratification of international law instruments. In concrete terms, in order to ensure proper waste management, as well as a controlled import of waste, Albanian public authorities should guarantee at least the following:

- i. the establishment of a well-functioning procedure, for the separation of waste at source;
- ii. establishing landfills for waste that cannot be recycled and reused, with proper environmental protection standards;
- iii. standardizing incinerating operations, prohibiting any incineration activity of harmful/hazardous wastes, conforming these operations to the highest technological standards, with



- the requirement of making them at the same time useful to the community where they are placed, by providing energy (electric energy; heating & cooling energy etc.);
- iv. implementing official control of imported wastes guaranteeing that no other products other than those provided for in the Green List, may enter the territory of Republic of Albania, and guaranteeing that entrance is permitted only for the permitted uses.
 - v. Implementing Environmental protection principals, such as “*polluter pays*” and “*end-life status of waste*” leading waste management policies and procedures.
 - vi. Implementing transparent processes for any adopted government policy related to waste management, providing the opportunity to the affected communities to express their opinions and participate in the decision making procedures. This is more important when considering that waste management is a highly sensitive issue, not only to the local communities, but to the cross border-communities as well, due to its expansion potentials.

Lastly, it is necessary to point out that another crucial element strictly related to and impacting waste import, is waste management at the local level. While the public and political debate on waste import is still vigorously ongoing, the debate on the obligation of local government, LGUs, to properly gather, remove and treat waste in their respective territory is totally obscured. This important aspect of the issue has not received any major attention.

To clarify, LGUs are obliged to manage territorial waste due to Paragraph 4 of DCM 608 establishing that “*the timeframe for the differentiated collection of bio waste from LGUs is: (a) within year 2017 for municipalities (at the centre of the region); (b) within 2018 for the other municipalities*”. Moreover, pursuant to Chapter IV of DCM 418 the “*Municipalities of 1st category, should assign within the 31st of December 2016, the appropriate measures for the differentiated collection of waste, at least for: a) Paper; b) Metal; c) Plastic; and d) Glass;*” and “*The other municipalities, should assign these measures, within 31st of December 2018,*”. In addition Law 10463 establishes that any district has the obligation to develop and approve the regional integrated waste management plan for the territory in its jurisdiction, in compliance with National Plan for Integrated Waste Management. As a result, the issue of waste import does not have to be regarded as an isolated problem or the main problem of environmental protection and waste management. Import of waste is only one aspect of the bigger Albanian problem regarding waste management procedures and capacities. Therefore legal and policy dealing with waste, should be comprehensive and regulate all aspects of the subject, from internal collection, treatment, disposal etc. to import-export, transport, transition etc. Waste can be dealt with, only within a coherent legal and policy framework.