



Achieving the ‘Low waste and Recycling Society’
EEB amendment recommendations on the Commission proposal to amend
the Waste framework Directive
COM(2005) 607

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Waste policy is one of the few concrete resource efficiency policies established at EU level. Thus the focus on a ***‘Low waste and Recycling Society’*** has a key role to play in moving towards a resource efficient Europe and stimulating innovation. The EEB regrets therefore that the Commission proposal fails to deliver the framework that will achieve this and despite much talk of ‘lifecycle thinking’ focuses excessively on end-of-pipe approaches such as energy-from-waste in detriment to the much greater ‘demand side efficiency’ that waste prevention, reuse and recycling can deliver.

High time for prevention - moving on from the landfill diversion debate

Numerous institutional policy documents, the European Environment Agency reports and the Commission’s own Thematic Strategy Communication highlight the continued lack of progress on tackling the ever growing quantities of waste. To reverse the trend of growing waste generation the 5 step hierarchy must not only be reconfirmed but also implemented. To achieve a ***‘Low waste and Recycling society’*** the policy debate should not be focused on *‘diversion from landfill’*. The emphasis must shift to prevention and, for waste that is still generated, reuse and recycling should predominate. As short and mid-term objectives the EU should stabilise then reduce its waste generation, as a long-term objective it should minimise all residual (non-reusable or recyclable) waste. In short, by 2020 the EU should be producing less waste not more and should have moved from an average of 70% incineration and landfill to at least 70% reuse and recycling.

A multi-speed Europe on waste management

The current reality facing waste policy is a critical phase of integration of 10 new Member States, where much waste management infrastructure is still to be built. Europe has at least 2 ‘speeds’ of waste management. It is important that the changes proposed are adapted to these realities. Introduction of tools and approaches that abandon harmonised targets (for example on biodegradable wastes or other priority waste streams) or policies that blur the line between recycling/reuse and incineration is not in line with this. Leaving the choices between recycling and burning to EU internal market forces, with only some technical standards to steer ignores the fact that even with such standards the costs will be very different in countries with greatly differing monitoring and enforcement capacities and societal demands. Shifting target setting from EU directives to depending only on national waste plans will further magnify differences.

Better Regulation = less law or better law and better implementation follow-up?

Under the *‘better regulation’* drive, environmental policies are more and more frequently challenged in terms of having to prove no significant short-term negative impact on business and even specific sectors. This has led in the last years not only to an absence of any new ambitious legislation, but also the repeal of existing legislation and policies. Policies proposed are characterized by a domination of procedural requirements and increased flexibility in setting and meeting targets and deadlines at national level. The repeal of the waste oils directive and non-action on biowaste are two cases that illustrate this trend. Better law should be enforceable law, this requires establishment of EU harmonised and measurable objectives. Better implementation requires proper follow-up. It is critical therefore that a permanent EU level consultative and implementation structures be established to accompany closer monitoring of implementation.

We therefore call on the European Parliament and Council to ensure that the Waste framework Directive is indeed a good example of Better Regulation – regulation that will set, define and implement environmental objectives, give priority to prevention, and whose implementation will be enforceable and adapted to the reality of a ‘multi-speed waste Europe’. To achieve this the EEB recommends the following amendments to the Commission’s proposal to revise the Waste framework Directive:

Overview

1) Establishing a functional environmental objective and a clear 5 step waste hierarchy

Amendment 1 - Recitals for article 1

Amendment 2 - Article 1 Objective, hierarchy and precautionary use of LCAs

Amendment 3 - new Article 3a setting General environmental conditions (moving article 7 to top of directive)

2) Providing strong EU level leadership to back up national programmes on waste prevention

Amendment 4 - Article 3 – definition of prevention

Amendments 5 and 6 - new Chapter – Prevention and new Article 4a - setting EU prevention objectives (aiming for no further growth=stabilisation) and specifying EU measures to supporting prevention programmes

Amendments 7 and 8 - Articles 29+30 links to prevention objectives in article 4a, ensuring prevention programmes are regularly revised

Amendments 9 and 10 – Article 31 and new Article 31a on evaluation of prevention programmes by EEA, and foreseeing the Commission reporting back on progress to the Parliament and Council

Amendments 11a,b – new Annexes IVb + IVc – prevention actions for EU plan, measuring stabilisation

3) Establishing a Framework Directive. Defining and setting the framework for an EU (Reuse and) Recycling Society.

Amendment 12a – Recital for New Article 2a

Amendment 12b– new Article 2a – implementing legislation, recycling directives, biowaste directive

Amendment 13 - Article 3 – definitions of recycling and recycling rates

Amendments 14a,b - Article 5.2 – minimum provisions to implement the waste hierarchy (reuse, recycling, minimisation of residual waste, long-term diversion from landfill and incineration)

4) A definition of recovery with a credible environmental focus. Maintaining municipal waste incineration as disposal.

Amendment 15 - new recitals – maintaining ‘principal use/principal objective’ criteria for incineration,

Amendments 16 - Article 3 – definitions of recovery (beyond only resource replacement), and disposal

Amendment 17 – Article 3 –definition of *Use principally as a fuel or other means to generate energy by incineration*

Amendment 18 – Article 5.1 – applying definition of recovery

Amendments 19a,b – Article 6 – disposal in accordance with environmental Conditions (art 3a), incineration as disposal where energy recovery is not the principal use, possibility of proximity for all incineration

Amendments 20a,b – Article 19 – Permit criteria – permits to include input/output flow accounts, high level of energy efficiency for all energy recovery from waste (combined heat and power), where levels are set

Amendment 21 – Annex II R1 – deletion of formula thus maintaining ‘principal use/principal objective’ criteria for incineration

5) Scope, end-of-waste criteria and limiting movements and exports of waste

Amendment 22a– Article 2 – scope

Amendment 23a – Article 11 – end of waste

Amendment 23b,c – new recitals and Article 27a principal of reducing movements of waste, prevention of movements of waste in accordance with waste management plans

6) Governance, enforcement and implementation

Amendments 24a,b – articles 19 and 20 – maintaining waste relevant elements in IPPC permit

(Note: we support deletion of the exemptions from permits by deletion of articles 22-24)

Amendment 25 - Article 36a new – Waste Management Committee

1) Establishing a functional environmental objective and a clear 5 step waste hierarchy

Continued use of life-cycle based waste hierarchy

The Commission's 1996 Waste Strategy Communication, and the 1997 Council conclusions in response, established clearly that the waste hierarchy in article 3 of the Waste framework Directive should be interpreted in such a way as to give recycling of materials preference over recovery of energy. It states "Within the recovery principle, where environmentally sound, preference should in general be given to the recovery of material over energy recovery operations. This reflects the greater effect on the prevention of waste produced by material recovery rather than by energy recovery."¹ This interpretation of the hierarchy in its full 5 steps is further consolidated by the establishment of targets in waste stream legislation giving quantitative preference to reuse and recycling over other options. This distinction is no longer made in the 2005 Waste Strategy Communication and has not been reflected in article 1 of the proposal to amend the Framework Directive.

Lifecycle thinking logic and lifecycle thinking assessment tools

The strong emphasis on 'lifecycle thinking' via use of lifecycle assessment tools such as Life cycle analyses needs also to be approached with caution. Lifecycle thinking is not new as a concept, the waste hierarchy itself is based on lifecycle logic – prevention at source is almost invariably the most environmentally efficient way to deal with waste impacts. The emphasis in waste stream legislation on the use of producer responsibility to drive design change in products to reflect their end-of-life properties is another example of lifecycle logic. The use of lifecycle analysis studies (LCAs) and the so called 'battles of the studies' are a reality. However, the role given to those LCAs needs however to recognise that they are still largely immature in their methodology and their use should be as a decision support tool but not the only basis for a political decision. National waste planning processes, setting (or not) their own targets and their own hierarchy of options on the evidence of LCAs, without proper democratic process and third party scrutiny, is a sure recipe for 'take-over' by commercial interests.

General Environmental principles and Conditions for waste management

The overarching environmental conditions applicable to waste management are delegated to a reduced position in the Commission proposal. In order to return them to the status of general applicable conditions to all operations and aspects of management – including prevention of hazardousness, collection, transport, permitting etc they should be moved from the chapter only applying to recovery and disposal to a position that is applicable to the whole directive. They should also be modernised to reflect the so called 'kidney function' of waste management ie ensuring the cleaning up of the waste streams, especially if the materials are to be (re) cycled, by establishing the general principle of preventing the formation, transfer and dispersion of hazardous substances. Furthermore the resource efficiency aspect should emphasise especially the material savings and associated energy savings. Similar to demand-side energy efficiency this recognises that generally more energy and material savings are made through prevention and recycling than end-of-pipe technologies such as waste-to-energy options.

Text proposed by the Commission

EEB proposed amendment

¹ COM(96) 399 final. COMMUNICATION FROM THE COMMISSION on the review of the Community Strategy for Waste Management . Executive summary – page 2 . Chapter. 3.1.1 The hierarchy of principles of waste management policy. *The Council Resolution of February 24 addressing this communication stresses the same – with the addition of the words 'reuse'.* Points 42 and 22 of respectively COM(96) 399 went on to emphasise -.... " **Furthermore, energy strategies relying on waste supplies should not be detrimental to the principles of prevention and material recovery... . This general rule is based on the fact that material recovery has a greater effect on waste prevention than energy recovery.**" It goes on to state " **The Commission will continue to promote this hierarchy in the coming years, by establishing legal, economic and administrative instruments which allow these principles to be pursued throughout the Community**".

Amendment 1

Recital, new

- *Whereas the first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human health and the environment;*

- *Whereas waste legislation should also aim at reducing the use of resources, and favour the practical application of the waste hierarchy.*

- *Whereas the Council confirmed, in its Resolution of 24 February 1997, that waste prevention should be the first priority of waste management, and that re-use and material recycling should be preferred to energy recovery of waste, where and insofar as they are the best ecological option; whereas this orientation was confirmed by the 6th EC environmental action programme of 2002, stating that the EU should achieve a significant overall reduction in the volumes of waste generated and set targets to be achieved thereof;*

Justification

The objective of waste management should be about the minimization (not just reduction) of the impacts related to the generation and management of waste. This will contribute in turn to reducing the use of resources.

The hierarchy should not only be established but also put into practice and applied.

In order to ensure continuity of existing policy objectives established the recitals recall the existing basis for the 5 step hierarchy and the recall the 6EAP decision (adopted by the EP and Council) on the political objective for waste prevention.

Amendment 2a

Article 1, paragraph 1, Subject matter

This Directive lays down measures with a view to **reducing** the overall environmental impacts, **related to the use of resources**, of the generation and management of waste.

For the same purposes, **it also makes provision whereby** the Member States **are to** take measures, as a matter of priority, for the prevention **or** reduction of waste production and its harmfulness and, **secondly, for the**

I. This Directive lays down measures with a view to **minimising** the overall environmental **and health** impacts, of the generation and management of waste, **contributing also to reducing the use of resources.**

For the same purposes, the Member States **and the Community shall** take measures, **firstly** as a matter of priority, for the prevention **and** reduction of waste production and its harmfulness and, **secondly, in descending order of priority , for:**

**recovery of waste by means of re-use,
recycling and other recovery operations.**

- (i) re-use,**
- (ii) recycling,**
- (iii) other recovery operations,**
- (iv) for the safe and environmentally sound disposal of waste.**

In the case of hazardous substances in waste the appropriate techniques for their removal and where possible final disposal of those substances to prevent further cycling and dispersion shall be given priority.

Justification

The objective of waste management should be about the minimization of the impacts of waste, this will in turn contribute to reducing the use of resources. The hierarchy, which should be clearly differentiated into 5 steps, should be directly relevant to national policy making (not via provisions of the Directive), also to the Commission's (the Community) waste policy development. It should be made clear that prevention is both about reducing the harmfulness and quantities of waste.

In the specific case of hazardous substances in waste - for example heavy metals such as mercury removed from waste electrical equipment - the option of safe disposal should be prioritised.

Amendment 2b

Article 1, paragraph 2, Subject matter

2. Both Member States and the Community may only depart from using the hierarchy set out in paragraph 2, for a specific waste on a case by case basis, when life cycle and other impact assessments clearly demonstrate that there is exceptionally a net gain thereby for environmental, health and socio-economic reasons.

These assessments shall be made public and be reviewed by independent scientific bodies. Consultation shall be undertaken and ensure a full and transparent process, including stakeholder and citizen involvement.

Justification

Life-cycle assessment instruments like Life Cycle Assessments (LCA) cannot take into account unquantifiable aspects – for example educational effects of separate collection on consumption patterns or biodiversity benefits of less resource extraction. It is therefore important to take a precautionary approach to the use of such instruments in relation to overturning the hierarchy. They should be used as supplementing assessments to inform proper political assessment including all non-quantifiable socio-economic (dis) benefits. Derogations from the hierarchy should be case-by-case, where evidence of gains is unequivocal. To ensure full transparency and create balanced governance it is essential that the assessments are made public, are reviewed by an independent scientific body and proper consultation is performed.

Amendment 3
Article 3a, Conditions

Member States shall ensure that the management of waste is carried out, as far as possible, as follows:

- (a) without endangering human health;*
- (b) without using processes or methods which could harm the environment;*
- (c) without risk to water, air, soil and plants and animals;*
- (d) without causing a nuisance through noise or odours;*
- (e) without adversely affecting the countryside or places of special interest.*
- (f) avoiding the formation, transfer and dispersion of hazardous substances,*
- (g) maximising material savings and other resource efficiencies such as energy savings*

Member States shall prohibit the abandonment, dumping or uncontrolled disposal of waste.

Justification

(Article based on EC proposed article 7 and last part of article 6.1. All subsequent references to article 7 should be changed to article 3a). *Not only the recovery and disposal, but the whole management chain (including collection and transport) should be subject to provisions of this article, which should be returned to its 'umbrella' position as in the existing Framework Directive . The introduction of the wording 'as far as possible' removes the implication of 'zero impact' requirement.*

These overarching environmental conditions applicable to waste management should also be modernised to include a) the so called 'kidney function' of waste management ensuring the cleaning up of the waste streams, and b) resource efficiency of 'upstream' material savings and associated energy savings compared to 'end-of-pipe' options.

Dumping and abandonment are not a type of disposal – they are forbidden – it is proposed that this general requirement is also returned from Article 6.1 to this more general overarching article as well .

2) Providing strong EU level leadership to back up national programmes on waste prevention

No analysis – no targets – no action

The Commission proposes not to adopt waste prevention targets on the ground that setting targets is not the most effective and eco-efficient way to achieve waste prevention. The supporting analysis for the Strategy is, however, almost completely devoid of any serious assessment of different possible approaches to EU waste reduction targets and implementing measures (as requested by the 6EAP, with targets to be set and achieved by 2010). The main argument used is that such targets would fail to address the complexity of waste's environmental impacts. Given that different options (such as those focusing on impacts, or on particular impacting waste streams for example²) were not investigated we do not see how this claim can be made. There are plenty of examples of possible targets actually in use – starting with the basic one of 'less generation of waste at source' that can be further differentiated into specific waste types or streams (for example municipal waste, packaging, nappies, kitchen bio-waste etc).

Starting with stabilisation

The complete absence of a proper chapter on waste prevention on the proposal to amend the framework directive also reflects the Commission's lack of real prioritisation. All actions taken under waste prevention programmes by Member States and subsequent actions required by the Commission are 'unevaluable' without a common benchmark of 'how much is prevention'. The objective set should reflect the already agreed 6EAP objective³ and translate this into something measurable. In order to address the specific environmental pressures of the EUs constantly growing waste generation a short-term objective of stabilisation in the generation of waste, by 2012 (the end of the 6EAP period) should be established. The basis of this proposal is that in order to make the transition from increasing waste generation to declining waste generation a phase of 'flat generation' is a first step. Some Member States, regions or cities have already managed to stabilise their waste generation – at least as far as municipal solid waste is concerned⁴. This trend should be followed by the rest of the EU as soon as possible. Without such a reference the political motivation for action will be weak and we face another 15 years without serious political engagement on waste prevention.

Two pillars missing

National measures to be laid down in nationally and locally developed prevention programmes are a vitally important pillar of action on prevention as they offer the widest opportunities for finding creative solutions with local communities. However their success in achieving the objectives will also depend on them being properly supported by appropriate Community measures and frameworks. It is therefore equally important to task the Commission with taking supportive measures on the other two pillars – the EU level operational measures – in particular 1) the setting of harmonised definitions, indicators, reporting and monitoring and 2) other relevant EU level policy tools such as hazardous substance restrictions and a product eco-design policy. However - while it is true that product design is crucial to waste prevention there are still very important actions in the waste management domain that can be taken to drive waste prevention. In particular policies that create greater awareness of the links between consumption choices and waste generation (for example charging by amount of waste produced, Pay-As-You-throw, and household-separation). This is evident from the positive results already being achieved by the some countries and regions that have already invested in such policies.⁵

² For more examples of indicators and making links to impacts please see chapter 6.3 of EEB working document on waste prevention - www.eeb.org/activities/waste/EEB-waste-prevention-working-document-April2004-final-II.pdf

³ Article 8.2 of DECISION No 1600/2002/EC (6EAP) establishes as an objective: “- *achieving a significant overall reduction in the volumes of waste generated through waste prevention initiatives...*”

⁴ Belgium has had a stable generation of municipal waste at 450-460 kg/capita/year for the last 10 years, the city of Munich and surrounding rural district (Germany) achieved a stabilisation over a 10 year period 1991-2001.

⁵ For more information please see briefing on waste prevention best-practice cases at - webink

Amendment 4
Article 3 (ea), Definitions

(ea) ‘prevention’ means the reduction of generation of waste or its hazardousness, it shall include any action that is taken before products or substances have become waste, and, concerning prevention of hazardousness, any action taken to prevent formation, transfer and formation of hazardous substances during waste management

Justification

The absence of a clear definition of prevention in the Strategy and framework Directive make it hard to imagine how national waste prevention policies can be implemented in a minimally harmonised and comparable way.

Based on the OECD definition of “Waste prevention occurs before products or materials are identified or recognised as waste” (OECD Manual 2000). Supplements specific aspects of qualitative (hazardousness prevention) that can still be taken during waste management ie after the point of discarding (avoiding mixing of hazardous wastes with non-hazardous wastes etc)

Amendment 5
New Chapter, Prevention, new article 4a para 1, prevention

Prevention

1. Member States shall, in accordance with Article 1, take all necessary measures to achieve a significant overall reduction in the volumes of waste generated, taking as a short-term objective the stabilisation of waste generation by 2012, and subsequent reductions in generation by 2020 and thereof.

Stabilisation shall mean no further increase in generation relative to the start of the stabilisation period and shall be measured according to the methodology established in Annex IVc

Justification

According to the stated priority to be given to waste prevention in article 1 and the Commission's proposal that the Directive " make provision s whereby ..." it is coherent that these provisions and objectives to be met should be laid down in a new dedicated chapter (as is done for recovery and disposal).

All actions taken under waste prevention programmes by Member States and subsequent actions required by the Commission are 'unevaluable' without a common objective of 'how much' ? The objective set should reflect the already agreed 6EAP objective and translate this into something measurable. An intermediate objective of stabilisation in the generation of waste by 2012 should at least be foreseen. Some Member States and regions or cities have already managed to stabilise their waste generation – in particular municipal solid waste. This trend should be followed by the rest of the EU as soon as possible.

Amendment 6
New article 4a, paragraph 2, prevention

2. The Commission shall, ensuring the proper consultation of stakeholders in accordance with the Committee referred to in Article 36a, come forward with legislative proposals to the Parliament and Council for the necessary measures to support the Member States activities being taken to achieve the objectives set, including:

a) by June 2008 a set of indicators that will be used by Member States to monitor , assess and report on the progress of their waste prevention programmes and measures.

b) by 2010 product eco-design policy requirements addressing both the generation of waste and the presence of hazardous substances in waste, promoting durable, reusable and recyclable products and technologies;

c) by 2010 further qualitative and quantitative waste reduction objectives for 2020, based on best practice experiences collected;

d) by 2010 an action plan for further supporting measures to be taken at the European level, including at least the actions listed in Annex IV b and in particular measures to address consumption patterns .

Justification

National programmes and measures are one necessary pillar of achieving waste prevention but their success in achieving the objectives will also depend on them being properly supported by appropriate Community measures and framework. The measures to be taken by the Commission should include:

- indicators for harmonisation in reporting and enabling comparison (to be established before programmes are adopted and used in the evaluations - see amendment to article 31)*
- a particular focus on concrete measures on product policy*
- based on collection of best practice experience elaboration of more specific qualitative (ie including hazardous waste reduction) and quantitative waste reduction objectives to guide the 'subsequent reductions',*
- drawing up an EU level action plan and committing itself to concrete supporting actions such as best practice sharing (see amendment to Annex IV b below).*

Amendment 7 **Articles 29, Establishment**

Member States shall establish, in accordance with Article 1, waste prevention programmes no later than [**three years after the entry into force of this Directive**].

Such programmes **shall either** be integrated into the waste management plans provided for in Article 26, **or shall function** as separate programmes. They shall be drawn up at the geographical level most appropriate for their effective application.

1. Member States shall establish, in accordance with Article 1 **and Article 4a**, waste prevention programmes no later than [**18 months after the entry into force of this Directive**].

Such programmes **may alternatively** be integrated into the waste management plans provided for in Article 26, **but shall be clearly assessable** as separate programmes. They shall be drawn up at the geographical level most appropriate for their effective application.

Justification

A link needs to be made to the new chapter and relevant article on prevention. 1 ½ years should be enough time to adopt the first waste prevention programmes. Assuming entry into force of Dec 2007 this translates into approximately June 2009 (enough time to take into account the common indicators developed at EU level and the measures to achieve intermediate objectives set for 2012).

Even if integrated into the waste management plans the programmes should be clearly distinguishable to ensure they can be assessed independently with ease, and to ensure that prevention policies are given the necessary priority attention alongside general waste management planning.

Amendment 8 **Article 30, paragraph 1, Content**

1. In their programmes, Member States shall set waste prevention objectives and shall assess opportunities of taking measures as set out in Annex IV. Such objectives and measures shall be designed to **break the link between**

1. In their programmes, Member States shall set waste prevention objectives and shall assess opportunities of taking measures as set out in Annex IV. Such objectives and measures shall be designed to **meet the common objectives**

economic growth and the environmental impacts associated with the generation of waste.

established in article 4a.

Justification

A link needs to be made to the objectives set in the new chapter and relevant article on prevention. Breaking the link between economic growth and the environmental impacts associated with the generation of waste can still allow both waste volumes and impacts to grow (just slower than economic growth). The Natural Resources strategy has already recognised that 'slower growth', and indeed even stable resource use is probably not enough for sustainable resource management. The Council has also called for 'reduced use' of natural resources in its recently adopted conclusions on the Sustainable Development Strategy. The same level of ambition is therefore necessary for waste as a contribution to these policy objectives.

Amendment 9

Article 31, Review , evaluation and reporting

Member States shall regularly evaluate the waste prevention programmes, and as a minimum *before submitting their reports in accordance with Article 34(1)*.

1. Member States shall regularly evaluate the waste prevention programmes, and as a minimum they shall be revised at least every 5 years.

2. The Commission shall, following consultation of the Committee established in Article 36a, develop guidelines for evaluation of the waste prevention programmes, including the indicators to be developed according to Article 4a .

3. The European Environment Agency shall, on the basis of these guidelines and in cooperation with the relevant authorities, undertake an evaluation of the programmes.

On the basis of this evaluation and within 18 months of the end of the 5 year period covered, it shall provide the Commission with an assessment report of how the programmes will contribute to their objectives and targets and to the objectives laid down in this Directive or subsequently established at Community level.

Justification

Review of the waste prevention programmes should be foreseen , at least every 5 years (in line with that foreseen for the general waste management plans). Evaluation and standardisation of the information collected

is necessary to assess progress in general and whether the measures proposed in prevention programmes will meet the objectives and targets set.

In order to avoid an additional formal reporting requirements and alleviate the pressure on staff resources in the Commission the regular task of data collection can be placed on the European Environmental agency. The evaluation should make use of guidelines and indicators (to be set by 2008) developed with the participation of Competent authorities and stakeholders (Committee established in Article 36a). On the basis of this evaluation the EEA should provide the Commission with an assessment report.

Amendment 10

Article 31a, Reporting on plans and programmes

Taking into account the evaluations performed by the European Environment Agency the Commission shall report to the European Parliament and Council, no later than 2 years after each 5 year revision of the plans and programmes foreseen in articles 31 and 26, on the effectiveness of the measures taken therein.

On the basis of this report the Commission will present further measures, other than those foreseen in article 4a, if appropriate.

Justification

On the basis of the EEA evaluations the Commission should also provide a timely report to the European Parliament and Council and if necessary propose further measures in addition to those already foreseen in article 4a and the EU action plan. This ensures that Parliament is regularly involved in assessment of the progress and sufficiency of the measures established in this Directive.

Amendment 11a

Annex IV part b – Waste prevention measures –

Specific measures applicable to the Community level

1. Take measures to establish an EU network of national centres promoting sectoral Best Practice Benchmarks in waste prevention, (similar to the UNEP Cleaner Production Centres) suitable in particular for SMEs

2. Establish EU level guidelines and criteria for implementing Pay-As-You-Throw (PAYT). Evaluate other policies that target consumption and life-style issues as related to waste prevention, including economic policies, that can address counter-productive advertising.

3. Establish a permanent EU level Waste Prevention working group, including member state competent bodies, the Commission and stakeholders, to assist the Commission specifically in the implementation of measures on waste prevention and best practice sharing.

4. In conjunction with the implementation structures of the Thematic Strategy on the Sustainable Use of Natural Resources*, establish a working group to identify, inter alia, which virgin material/product taxes would have the most benefits and which environmentally harmful subsidies need to be addressed

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Justification

The annex should distinguish on those measures that are applicable to National Prevention programmes and those measures specifically applicable to the Community level action plan (as foreseen in article 4a). Specific measures for the Commission to address should at least include:

- the provision of information on waste prevention techniques (pt.5 of Annex IV). This is an important tool that can be achieved through the establishment of national centres identifying how to achieve cleaner and less wasteful products and production systems (similar to the UNEP Cleaner Production Centres) addressing in particular the needs of SMEs

- Pay-As-You-Throw is an important ‘consumption’ focused policy that can support prevention. Addressing one of the main drivers of wasteful consumption – advertising is also critical.

- in recognition of its priority, a permanent EU level Waste Prevention working group, to assist in development of indicators and objectives but also for important best practice knowledge sharing;

- sharing experiences on resource (and product) taxes and identification of subsidies that work against waste prevention should be coordinated with similar work necessary for the Natural Resources Strategy

Amendment 11b
Annex IVc – Methodology for measuring stabilisation

Stabilisation shall be measured taking into account both:

- a) stabilisation of municipal solid waste generation, using as the indicative period the weight of waste generated per capita over the 3 year period 2012-2015, applicable immediately to all Member States with generation of municipal solid waste above 450 kg/capita, and to other Member States within 3 years of reaching this level; and*
- b) stabilisation of at least three priority non-municipal solid wastes or wastes of industrial sectors, chosen on the basis of their volume/weight or hazardousness, using as the indicative period the weight of waste generated per capita in the period 2012-2015*

Justification

Stabilisation requires a monitoring period over a few years to become evident. A 3 year period between 2012-2015 is thus set as the target period. This also allows sufficient time to implement policies (2 1/2 years from the adoption of the first prevention programmes in mid 2009).

The cap of 450 kg/capita municipal solid waste enables new Member States, most of who have not exceeded 450 kg/capita municipal solid waste generation, to effectively be allowed more time to apply this provision, until such time as they exceed this level whereby they will have 3 years to reach stabilisation as well.

Waste prevention should not just apply to municipal solid waste. There are significant potentials for preventing generation of waste in industrial manufacturing processes. Each country should be free to identify those industrial sectors that are most relevant, but three at least should be chosen on the basis of volume or hazardousness.

2) **Establishing a Framework Directive. Defining and setting the framework for an EU (Reuse and) Recycling Society.**

Implementing legislation still necessary

The 6EAP asks specifically for a continuation of use of Recycling Directives⁶ for specific waste streams. The Strategy, under the auspices of the administrative burden being unjustifiable for smaller waste streams or low impact waste streams, rejects out of hand the waste stream approach⁷. At the same time Article 2.2 in the Directive, which foresaw implementing legislation is deleted. This is approach is not comprehensible. Both the waste streams identified in the 6EAP are waste streams of considerable size (construction and demolition waste accounts for, on average, 1/3 of all waste generated, biowaste is typically around 60% of municipal waste) and therefore represent significant potential benefits in terms of material savings (reuse of mineral aggregates) and impact reductions (reducing methane emissions while increasing in soil fertility). However, more remarkable still is that the Commission's own background study⁸ identifies clearly that *"the lack of further recycling targets/policies would potentially have a negative environmental impact compared to further policy measures"*. In the case of a directive on biodegradable waste the establishment of common management and recycling standards and objectives are urgent given the objectives by 2009 and 2016 to divert biodegradable waste from Landfill. As preparatory work has already been undertaken and a draft already exists the Commission should be requested to come forward with a proposal without delay⁹.

Definitions that support recycling targets

A target for recycling is no good if the definition of what can be counted towards this target is not clear. Thus the definition of "recycling" needs to draw the line between material cycling operations and incineration and energy recovery operations ie processes that make use of the materials but do not truly 'cycle' the materials. For example plastics from shredded cars in steel blast furnaces is sometimes called recycling. This can create differences in the interpretation of the End-of-Life Vehicles Directive recycling targets and remove drivers for development of new material recycling processes. (See web link for proposal of the Recycling Coalition¹⁰).

The 'cascade of provisions' to implement the hierarchy and a long-term vision for residual waste

The hierarchy, whilst vital as a guidance for policy development, needs further concrete provisions to put it in action. However it is not feasible to regulate every single waste stream individually therefore horizontal provisions that will capture all waste streams should also be set. These horizontal provisions should address concrete actions on reuse and recycling (equipment reuse networks and separation of waste materials to enable recycling).

To drive the move towards the European Recycling Society and create a long-term vision the framework Directive should establish the general vision of the minimisation of non-reusable and non-recyclable wastes (residual waste minimisation). To implement this a step-wise approach should be established, starting with a concrete deadline (2015) for pre-treatment of all residual waste (linked to maximisation of further removing reusables and recyclables) before all burning or landfilling, and working towards a long-term vision of a shift

⁶ The 6EAP identifies as priority actions "measures aimed at ensuring source separation, the collection and recycling of priority waste streams... further development of producer responsibility.." and "- developing or revising the legislation on wastes, including, inter alia, construction and demolition waste, ... biodegradable wastes".

⁷ Page 18 of the Communication states regarding the use of further Recycling Directives - "... this approach is difficult to justify for application to a new range of waste streams. For smaller waste streams or those which have a lesser environmental impact, such an approach could be heavy in terms of administrative burdens relative to the environmental benefit obtained."

⁸ Page 38 of the EPEC report (the background study to the IA of the Waste strategy) available at http://ec.europa.eu/environment/waste/pdf/epec_report_05.pdf

⁹ For more information on the urgent need for this directive see <http://www.eeb.org/activities/waste/composting/Biowaste-Directive-concerns-060405.pdf> and <http://www.eeb.org/activities/waste/composting/EEB-briefing-note-in-response-to-Commissioner-Dimas-letter-to-biowastecoalition-060905.pdf>

¹⁰ A coalition of 6 organisations, including industries concerned with different waste streams, has proposed a common definition for recycling – see <http://www.eeb.org/activities/waste/Recycling-definition-joint-statement-final-270406.pdf>

away from incineration and landfill by 2025. The level of the Recycling Society should be defined – 70% by 2015.

Text proposed by the Commission

EEB proposed amendment

Amendment 12a

Recital, new

- *Whereas the objectives, definitions and principles of the present Directive should constitute the frame for the other Community waste legislation, in order to ensure the necessary cohesion and consistency of this legislation.*
- *Whereas producer responsibility, in particular individual producer responsibility, is a tool to bring about waste prevention, reuse and recycling by ensuring producers take into account the life-cycle impacts, including end-of-life impacts, of their products and develop appropriate design.*

Justification

The existing Waste Directive article 2.2 foresees implementing waste stream legislation . This is the legislative root not only for future legislation but the basis for existing waste stream directives and gives the Waste Directive its framework nature. This important function of the Directive should be reinstated.

The 6EAP asked specifically as priority actions for the “further development of producer responsibility”. The concept of producer responsibility that seeks to ensure that producers are made responsible not only for the end-of-life costs of their products (collection, treatment etc), but also seek to design for prevention, reuse and recycling of their products, is a n important tool used improve future manageability of products that become waste and stimulate design for prevention. It should continue to be used.

Amendment 12b

New Article 2a,

Implementing Legislation

*This Directive shall constitute a framework for present and future EC legislation in the area of waste management.
Specific rules for particular instances or*

supplementing those of this Directive on the prevention and management of particular categories of waste may be laid down by means of individual Directives.

The Commission shall, no later than end of 2008, report to European Parliament and Council on actions to be taken on further individual waste streams, accompanied where relevant by proposals for legislation after appropriate stakeholder consultation as foreseen in article 36a.

Such proposals shall consider in particular the appropriate mechanisms to stimulate prevention, reuse and recycling of, inter alia, construction and demolition wastes, hazardous household waste products, medical wastes, tyres, furniture, toys and clothing/textiles

As soon as possible and no later than 31 December 2007 the Commission shall present to the European Parliament and Council a directive on the management of biodegradable waste.

Justification

The existing Waste Directive article 2.2 foresees implementing waste stream legislation . This is the legislative root not only for future legislation but the basis for existing waste stream directives and gives the Waste Directive its framework nature. In order ensure continuity and applicability of the general provisions and establish coherency on definitions between this law and the implementing laws it is necessary to reintroduce this article.

The 6EAP asked specifically as priority actions for the “measures aimed at ensuring source separation, the collection and recycling of priority waste streams... further development of producer responsibility.. developing or revising the legislation on wastes, , including, inter alia, construction and demolition waste, .., biodegradable wastes”. Other priority waste streams where significant potential to improve waste management exist should be identified and the Commission should evaluate these.

In the case of a directive on biodegradable waste preparatory work has already been undertaken and a draft already exists therefore the Commission should be requested to come forward with a proposal without delay.

Amendment 13 **Article 3 (g), Definitions**

(g) ‘recycling’ means the recovery of waste into products, materials or substances whether for the original or other purposes. It does not include energy recovery;

(g) ‘recycling’ means the recovery of waste **back into a material cycle by processing waste** into products, materials or substances whether for the original or other purposes. It does not

include , *interalia*, energy recovery, **processes for transformation into fuel, combustion or use as a source of energy, including chemical energy, for processes involving combustion.**

(new) ‘recycled’ or ‘recycling rate’ shall be determined using the quantity of material output from a recycling process that is used as a material in new products, materials or substances

Justification

The definition of “recycling” needs to draw the line between material cycling operations and incineration (combustion), energy recovery operations and other ‘borderline’ processes that make use of the materials but do not truly ‘cycle’ the materials. For example uses of wastes as chemical reducing agents (eg plastics in blast furnaces – sometimes called feedstock recovery).

The definition of recycling will still not resolve the input/output debate when setting recycling targets or reporting about the amount that has been recycled. To clarify this it is necessary to have an additional definition or “recycled”. This definition specifies that it is the output of the recycling process that should be measured and that this output should be actually used to really count as recycled.

Amendment 14a

Article 5 (new paragraphs 3 and 4) ,

Recovery and residual waste minimisation

3. Reuse

Member States shall take measures to promote the reuse of products, notably through the establishment and support of repair and reuse networks and establishing, where necessary, the relevant process and product standards

Member States may take other measures to promote reuse, interalia, use of economic instruments, procurement criteria, quantitative objectives or prohibitions on the placing of the market of certain products.

4. Recycling

Member States shall take measures to promote recycling and set up collection schemes to facilitate this recycling. To this end Member states shall ensure that reusable

or recyclable fractions are collected separately or separated after collection.

By 2015 at least the following priority waste streams should be separated: paper, metal, plastic, glass, textiles, other biodegradable wastes, oil and hazardous wastes. This shall apply without prejudice to existing or future waste stream legislation or the requirements of article 18.

By 2020 Member States shall achieve at least an overall reuse and recycling level of 70%

Member States may take other measures to promote recycling, inter alia, use of economic instruments, procurement criteria, quantitative objectives or prohibitions on the placing of the market of certain products or recycling standards and bans on certain treatment operations.

Justification

The chapter on recovery should indeed set up the framework for maximising the recovery of waste, implementing concretely the ‘cascade’ of options of the waste hierarchy as established in article 1 starting with minimum provisions on both reuse and recycling. This should include as a minimum the promotion of reuse networks and allow Member States to use economic instruments, procurement criteria or other tools necessary to steer the market towards more reusable products without being in breach with internal market rules – for example in the case of refillable packaging. For recycling the minimum horizontal provisions should ensure that reusable or recyclable fractions are collected separately as a general obligation – and specifically at least on 8 commonly collected waste/material streams by 2015. Member States should be allowed to use certain instruments to steer the market towards more recycling without being in breach of internal market rules. A quantitative level for the Recycling Society should be defined.

Amendment 14b Article 5 (new paragraph 5) ,

Recovery and residual waste minimisation

5. Residual waste minimisation

Member States shall, as far as possible, avoid the generation of waste that cannot be reused or recycled.

By 2015 Member states shall ensure that all waste destined for incineration, including

coincineration, or landfill is subject to pre-treatment, to ensure maximum removal of reusable or recyclable fractions. This shall include in particular mechanical and biological treatment in the case of municipal waste.

Member states shall take measures to ensure that all reusable or recyclable material is not landfilled or incinerated, by 2025, unless it is demonstrated by lifecycle and other impact assessments as specified in article 1 paragraph 2, that landfill or incineration is the better environmental option.

Justification

Minimisation of non-reusable and recyclable wastes – and the pre-treatment of waste to maximise further reuse and recycling. – are fundamental components of reducing reliance on disposal options. The Landfill directive - article 6 (a) states “Member states shall take measures in order that only waste that has been subject to treatment is landfilled.” The intention was to ensure that maximal preferable uses the waste should be made to minimise landfill and the impacts of landfilling. Unfortunately however what this (pre)treatment is supposed to achieve is not specified. This directive should apply the same provision upstream of both landfilling and incineration – with clearer specification of what is to be achieved by such treatment– maximum removal or reusable and recyclable fraction, and by when. The 2015 timeline will help to implement the current landfill diversion targets of biodegradable wastes.

Long term objectives are needed in order to implement the hierarchy. The move away from incineration and landfill towards the recycling society should have a timeline to be taken seriously 2025 allows for adequate time and provides a stable perspective for investments by the waste management industry.

3) A definition of recovery with a credible environmental focus. Maintaining municipal waste incineration as disposal

The recovery definition

The main function of the definition of recovery should be to direct different waste streams to the best environmental option. Thus a definition using only the criteria of replacement of resources does not suffice to determine the best environmental option. Such a definition does not capture the bigger resource efficiencies of some replacements compared to others (for example reuse and recycling can save more energy than end-of-pipe incineration can recover). It also ignores other environmental considerations critical to waste management – in particular the minimization of generation and dispersion of hazardous substances¹¹. The definition of recovery should therefore be based on the principle that waste management operations with the better environmental performance for that waste stream are given the classification as recovery. To do this 2 additional criteria to replacement of resources are required:

A) The replacement should result in a lower environmental and health impact than when the replaced resources are used. The lower impact should include particular material/energy savings and prevention of dispersion and formation of hazardous substances and

B) for an operation to have the recovery status it should also be better than the alternative management options for that waste stream, assuming best management practices (eg source separation of recyclables). The definition should apply by waste stream and not to the entire installation, irrelevant of the waste streams that are treated.

In order to be able to evaluate efficiencies in practice it is important ensure input /output accounts (ie the amounts of materials for disposal or recovered coming out of a facility for every kg that goes in). This can be done via permitting.

No environmental basis for municipal incineration to be reclassified to recovery

Classification of municipal ‘mixed-waste mass burn’ incineration (ie incineration of low-calorific value mixed wastes) as recovery will have a number of undesirable effects:

a) It will facilitate continued access of such incinerators to waste ‘supply’ and in particular diverted biodegradable wastes from landfill. In the absence of other drivers to develop infrastructure for collection, recycling and digestion of compostable biowaste, it risks driving investments in the direction of more incineration, undermining use of compost to address desertification¹².

b) Municipal waste incinerators recovering energy as electricity produce 33% more fossil CO₂ than gas power stations, therefore they are not an environmentally ‘efficient’ energy source.¹³

c) Giving mass burn of unsorted waste the ‘greener image’ of recovery will also overly facilitate investment of EU Structural funds in new member states where major infrastructural changes and investments will be made in the near future.

d) Reclassification of municipal waste incinerators as recovery will promote more movements of waste.

In general the Commissions proposal to reclassify municipal waste incinerators based on their energy efficiency does not recognise that installations dedicated to handling mixed wastes with a variable and unpredictable

¹¹ Capture of landfill gas from biowaste to generate energy ‘replaces resources’ (other sources of energy) but composting to produce compost replaces more resources and avoids more emissions. Similarly recycling of paper saves for energy and wood than burning it.

¹² Burning biowaste, in particular the fermentable fractions (approx. 30-50% of municipal waste), makes no sense energetically as it is 90% water.

¹³ By 2020 is estimated that if increasing number of materials in waste – eg paper, wood, biowaste - are recycled municipal waste incinerators recovering energy as electricity will produce similar levels of fossil CO₂ to dirty coal (only 5% less). See study ‘A changing climate from energy from waste’ and the briefing ‘Dirty Truths: Incineration and Climate Change’ at http://www.foe.co.uk/resource/briefings/dirty_truths.pdf

composition should be primarily concerned with the proper environmental treatment (mineralization) of that waste and controlling emissions. Energy (and heat) recuperation should remain a secondary consideration. The energy efficiency formula as the sole criteria for municipal solid waste incineration plants being classified as recovery is not coherent with the multi-criteria approach to the definition of recovery and the primary environmental concern of controlling emissions.

A high level of efficiency?

The level Commission proposes for giving municipal waste incinerators the recovery status can be met by electricity only producing incinerators, ie levels lower than that specified as Best Available Technique (BAT) by the IPPC¹⁴ BAT-Reference documents. BAT for municipal waste incinerators is defined as going beyond producing only electricity to the use of heat as well¹⁵. Promoting lower than BAT energy efficiency for a restricted group of incinerators, and labelling these as 'high efficiency', is undermining the requirement of BAT by the IPPC directive – which is supposed to apply, a priori, to all incinerators from the end of 2007. It is also in contradiction to the Waste Incineration Directive that requires all incinerators to recover heat 'as far as practicable'.

The requirement of municipal waste incinerators to achieve a high level of energy efficiency can be achieved in other ways that establish the same requirements for all incineration, avoiding the development of a two-tier system. Either the Framework Directive's permitting requirements or revision of the Waste incineration Directive can be used.

Clarification or confusion on the status of municipal waste incinerators?

The formula proposed by the Commission does not necessarily create the clarity it claims to. The definition used in the formula are not coherent with those used in the IPPC technical documents, several terms can be interpreted in different ways and the precise scope of its application is not clear.¹⁶

The criteria for classification of mass burn municipal incinerators has already been established by European Jurisprudence that has established that "where the reclamation of the heat generated by the combustion constitutes only a secondary effect of an operation whose principal objective is the disposal of waste, it cannot affect the classification of that operation as a disposal operation." To build extra legal clarity on status of incinerators in the Waste framework Directive it is possible to draw on the language of current jurisprudence (case 458/00).¹⁷

The environmental and other impacts, of the Commission's proposal to reclassify municipal waste incinerators as recovery has not been properly assessed so far. The Commission's Impact Assessment does address this precise legislative proposal properly. The potential negative disbenefits are significant and the benefits in terms of clarity are not evident. Energy efficiency is better promoted through other policy tools and the Waste Incineration Directive will be revised shortly. Therefore, for both environmental reasons and in the interests of continuity the EEB recommends that the existing criteria for classification of incineration are maintained.

¹⁴ Directive 96/61/EC on Integrated Pollution Prevention and Control (IPPC)

¹⁵ **For more details see Okopol Technical Briefing on the energy efficiency formula at**

¹⁶ **<http://www.eeb.org/activities/waste/incineration/Index.htm>**

¹⁷ ECJ case 458/00 (pt 32) clarifies "that provision [principal use] should be interpreted as meaning that it covers the combustion of household waste if, first, the main purpose of the operation concerned is to enable the waste to be used as a means of generating energy". The 'principal' purpose is not satisfied by operations where "the reclamation of the heat or power generated by the combustion constitutes only a secondary effect of an operation whose principal objective is the disposal of waste" (pt 43 of the same case 458/00) as is the case in the majority of cases of municipal waste incineration. Case 458/00 (pt 44) provides further criteria to distinguish 'principal objective' namely that "the waste in question was intended for a plant which, unless it was supplied with waste, would have had to operate using a primary energy source, or, that the waste was to have been delivered to the processing plant in exchange for payment by the plant operator to the producer or holder of the waste".

Amendment 15
Recital, new

- *Whereas European Jurisprudence has established that where the reclamation of the heat generated by the combustion constitutes only a secondary effect of an operation whose principal objective is the disposal of waste, it cannot affect the classification of that operation as a disposal operation.*
- *Whereas the same Jurisprudence has established that absence of principal objective can be determined further by the fact that the waste in question was intended for a plant which, unless it was supplied with waste, would have had to operate using a primary energy source, or that the waste was to have been delivered to the processing plant in exchange for payment by the plant operator to the producer or holder of the waste*

Justification

The current Waste framework Directive establishes that incineration of a waste stream shall only be considered recovery where its use in the process is intended mainly for use as a fuel or to generate energy. So far the Commission has provided no convincing basis, environmental or otherwise, that the ‘principal objective’ approach should be abandoned.

To establish extra legal clarity on when to grant the recovery status to incinerators the language of current jurisprudence (case 458/00) can be used. The two ‘test’ criteria that are established there are: if you stopped using the waste to generate energy would you replace it with a virgin fuel? and, if you stopped using the waste as a fuel would you pay for another one to replace it?

(see also amendments to article 6.2 and to annex II)

Amendment 16
Article 3 (new) – Definitions

- (ia) ‘recovery’ is any final waste treatment operation in which a waste stream is processed in such a way that it is proven that it serves a useful purpose in replacing resources in the plant or in the wider*

economy, provided that the replacement results in a lower environmental and health impact than when the substituted resources are used and there are no environmentally preferable alternative management options available, assuming best management practices, according to the waste hierarchy in article 1

(ib) 'disposal' operations are those operations that do not fulfil the conditions of recovery.

Justification

The definition of recovery is needed to give preference for the 'better environmental option' for a waste and is linked to targets and steering waste streams up the hierarchy. Using only the criteria of 'replacement of resources' is insufficient in terms of environmental protection. Capture of landfill gas to generate power 'replaces resources'. The definition of recovery should therefore include the principle that the replacement should result in a lower environmental and health impact, and resource savings than when the replaced resources are used. It should also recognise that for two potential waste recovery options (if both substitute resources) the environmentally preferable one should be given the recovery status eg burning of paper suitable for recycling (assuming best management practices- ie separation) should not be called recovery.

The definition should apply by waste stream and not to the entire installation for all waste streams that are treated. Burden of proof should be on the operators not the authorities and interim (non-final) operations alone should not be considered recovery.

Disposal is defined as everything that is not recovery

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Amendment 17 **Article 3 (new) – Definitions**

(ic) Use principally as a fuel or other means to generate energy by incineration shall mean that the principal objective, for a particular waste in that facility, is to generate energy, whereby:

- *the waste in question is intended for a facility which, unless it was supplied with waste, would have had to operate using a primary energy source, or*
- *the waste was to have been delivered to the facility in exchange for payment to the producer or holder of the waste*

Justification

The current Waste framework Directive establishes that incineration of a waste stream shall only be considered recovery where its use in the process is intended mainly for use as a fuel or to generate energy. So far the Commission has provided no convincing basis, environmental or otherwise, that the ‘principal objective’ approach should be abandoned.

*To establish extra legal clarity on when to grant the recovery status to incinerators the language of current jurisprudence (case 458/00) can be used. The two ‘test’ criteria that are established there are: if you stopped using the waste to generate energy would you replace it with a virgin fuel? and, if you stopped using the waste as a fuel would you pay for another one to replace it?
(see also amendments to article 6.2 and to annex II)*

Amendment 18

Article 5, paragraph 1, Recovery and residual waste minimisation

1. Member States shall take the necessary measures to ensure that all waste undergoes operations that result in *it serving a useful purpose in replacing, whether in the plant or in the wider economy, other resources which would have been used to fulfil that function, or in it being prepared for such a use, hereinafter “recovery operations”*.

They shall regard as recovery operations at least the operations listed in Annex II.

1. Member States shall take the necessary measures to ensure that, all waste undergoes operations, *in accordance with the hierarchy established in article 1, the requirements of article 3a and the measures laid down below*, that result in recovery.

They shall regard as recovery operations at least the operations listed in Annex II *provided that they fulfil the conditions of recovery as defined in article 3.*

Justification

The definition of recovery is moved to article 3. The definition of recovery should not be limited to the simple substitution of resources irrelevant of the environmental implications. Recovery should be promoted along the lines of the ‘cascade’ of options set out in amendments to article 5 introducing new paragraphs 3,4 and 5

Recovery operations listed in Annex II should all have to fulfil the conditions of recovery as established in article 3ia

Amendment 19a
Article 6, paragraph 1

Disposal

1. Member States shall ensure that, where recovery in accordance with Article 5(1) is not possible, all waste undergoes disposal operations.

1. Member States shall ensure that, where ***prevention, reuse, recycling or other*** recovery in accordance with Article 5 is not possible, all waste undergoes ***safe*** disposal operations ***in accordance with the requirements of article 3a.***

They shall prohibit the abandonment, dumping or uncontrolled disposal of waste.

Justification

When prevention, reuse, recycling and other useful recovery purposes cannot be found safe disposal should be undertaken. Disposal should be done in accordance with the environmental objectives and parameters defined in article 3a.

The prohibition of the abandonment, dumping or uncontrolled disposal of waste is better kept as a general principle established in article 3a . The terms abandonment and dumping are anyway in contradiction to the concept of proper disposal.

Amendment 19b
Article 6, paragraph 2

Disposal

2. Member States shall regard as disposal operations at least the operations listed in Annex I, even where the operation has as a secondary consequence the reclamation of substances or energy.

2. Member States shall regard as disposal operations at least the operations listed in Annex I, even where the operation has as a secondary consequence the reclamation of substances or energy.

In particular Member States shall regard as disposal incineration operations where the waste is not used principally as a fuel or other means to generate energy.

Member States may apply and invoke the principles of proximity and self-sufficiency in relation to any waste destined for disposal or destined for incineration or co-incineration.

Disposal operations classified as D 11 and D7 shall be forbidden.

Justification

(see justification of amendment 17b, new definition of 'principal use' in the case of incineration)

To ensure that there is a 'level playing field' between co-incineration and other types of incineration and their 'access' to waste the principles of proximity and self-sufficiency should be applied to any kind of incineration or co-incineration.

Incineration at sea – D11, and release into seas/oceans including sea beds should be prohibited.

Amendment 20a **Article 19, paragraph 1**

Permits

1. Member States shall require any establishment or undertaking intending to carry out disposal or recovery operations to obtain a permit from the national competent authorities.

Such permits shall specify the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical requirements relevant to the site concerned;
- (c) the security precautions to be taken;
- (d) the method to be used for each type of operation.

Permits may specify additional conditions and obligations.

1. Member States shall require any establishment or undertaking intending to carry out disposal or recovery operations to obtain a permit from the national competent authorities.

Such permits shall specify the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical requirements relevant to the site concerned;
- (c) the security precautions to be taken;
- (d) the method to be used for each type of operation.
- (e) *input/output mass flow accounts***

Permits may specify additional conditions and obligations.

Justification

Input/output mass flow accounts should be established, to ensure transparency and enable comparisons of the efficiency of different processes and expose 'sham-recovery' (very low efficiency) operations.

Amendment 20b **Article 19, paragraph 4**

Permits

4. It shall be a condition of any permit covering ***energy recovery that*** the recovery of energy is

4. It shall be a condition of any permit covering ***the use of waste as an energy source that the***

to take place with a high level of energy efficiency.

recovery of energy take place with a high level of energy efficiency.

For dedicated municipal waste incineration facilities a high level of energy efficiency shall mean the combined recovery and use of heat and power.

The Commission shall, after a proper assessment of and consultation on the best way to do so, define these levels, either in appropriate implementing legislation, or in an Annex of this directive in accordance with the procedure foreseen in Article 21

Justification

The text should avoid the use of the word “energy recovery” because this could imply that the requirement for energy efficiency is not applicable to installations, but only those that are classified as recovery.

The requirement of MSW incinerators to achieve a certain level of energy efficiency can be achieved in other ways than through the recovery status. It should establish the same requirements for all incineration. The Waste Incineration Directive requires all incinerators to recover energy ‘as far as practicable’. The Waste Incineration IPPC BREF specifies that for municipal waste incineration this should mean the recovery of both heat and electrical energy. To promote efficient use of heat in particular it is necessary fully assess the best way to do so (how to account for the different levels appropriate to different climatic regions). These levels can be defined and set using this directive's own procedure for setting minimum standards for permits or alternatively integrated into the appropriate implementing legislation – such as the Waste Incineration Directive (soon to be revised) .

4) Amendment 21 Annex II – Recovery operations

R1 Use principally as a fuel or other means to generate energy.

R1 Use principally as a fuel or other means to generate energy.

This includes incineration facilities dedicated to the processing of municipal solid waste only

where their energy efficiency is equal to or above:

– 0.60 for installations in operation and permitted in accordance with applicable Community legislation before 1 January 2009,

– 0.65 for installations permitted after 31 December 2008,

Energy efficiency := (Ep - (Ef + Ei)) / (0.97 x (Ew + Ef))

Ep means annual energy produced as heat or electricity. It is calculated with energy in the form of electricity being multiplied by 2.6 and heat produced for commercial use multiplied

Ef means annual energy input to the system from fuels contributing to the production of steam

Ew means annual energy contained in the treated waste calculated using the lower net

Ei means annual energy imported excluding Ew and Ef (GJ/year)

0.97 is a factor accounting for energy losses due to bottom ash and radiation.

Justification

The Commissions proposal to reclassify municipal waste incinerators based on their energy efficiency does not recognise that installations dedicated to handling mixed wastes with a variable and unpredictable composition should be primarily concerned with the proper environmental treatment (mineralization) of that waste and controlling emissions. Energy (and heat) recuperation should remain a secondary consideration. The energy efficiency formula as the sole criteria for municipal solid waste incineration plants being classified as recovery is not coherent with the multi-criteria approach to the definition of recovery and the primary environmental concern of controlling emissions.

The level set – 0.6 can be met by electricity only producing incinerators, ie levels lower than that specified as BAT by the IPPC BREF which require going beyond producing only electricity to the use of heat as well. Promoting such efficiency levels for a restricted group of incinerators is undermining the requirement of BAT – which is supposed to apply, a priori, to ALL incinerators. It is also in contradiction to the Waste Incineration Directive that requires ALL incinerators to recover heat ‘as far as practicable’.

5) Scope, end-of-waste criteria and limiting movements and exports of waste

Text proposed by the Commission

EEB proposed amendment

Amendment 22 Article 2, Scope

This Directive shall not cover gaseous effluents emitted into the atmosphere.

1. It shall not cover the following categories of waste, as regards certain specific aspects of those categories which are already covered by other Community legislation:

- (a) radioactive waste;
- (b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;
- (c) faecal matter and other natural, non-**dangerous** substances used in farming;
- (d) waste waters, with the exception of waste in liquid form;
- (e) decommissioned explosives;
- (f) unexcavated contaminated soil.

2. It shall not cover animal carcasses or animal by-products intended for uses in accordance with Regulation (EC) No 1774/2002 without prejudice to the application of the present Directive to the treatment of biowaste that contains animal byproducts.

3. It shall not cover faecal matter, straw and other natural non-hazardous substances from agricultural production that are used in farming or for the production of energy from biomass through using processes or methods which do not harm the environment or endanger human health.

4. 'animal carcasses' as referred to in paragraph 2 means animals that die other than by being slaughtered, including animals killed to eradicate an epizootic disease, in the context of agricultural or farming practices.

This Directive shall not cover gaseous effluents emitted into the atmosphere.

1. It shall not cover the following categories of waste, as regards certain specific aspects of those categories which are already covered by other Community legislation:

- (a) radioactive waste;
- (b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;
- (c) faecal matter, **straw** and other natural, non-**hazardous** substances **from agricultural production used or occurring** in farming;
- (d) waste waters, with the exception of waste in liquid form;
- (e) decommissioned explosives;
- (f) unexcavated contaminated soil.

Justification

The text of paragraph 2 is a legal contradiction – there is no ABP that are not biowaste to our knowledge, therefore the wording ‘without prejudice to the application of this Directive to the treatment of biowaste that contains animal by products’ means all animal by products are covered.

The text of paragraph 3 is a duplication of article 1.c. Inclusion in the ‘partial exclusion’ list of article ensures that substances such as manure (that occurs and is used in farming) are not covered by this directive so long as other Community legislation does cover them, for example the nitrogen emissions and application levels allowed are covered by the Nitrogen application directive in the case of manure. Landfilling, incineration or anaerobic digestion of manure is however not covered by the nitrogen directive and should therefore remain under the general environmental protection framework, traceability and permitting requirements of the Waste Directive. As indeed should such treatment of biomass if an agricultural or forestry waste and not a product.

Amendment 23a

Article 11 – Secondary products materials and substances

1. With a view to determining whether it is appropriate to deem certain waste to have ceased being waste, to have completed a re-use, recycling or recovery operation, and to reclassify that waste as secondary products materials or substances, the Commission shall assess whether the following conditions are met:

Delete

- (a) reclassification would not lead to overall negative environmental impacts;
- (b) a market exists for such a secondary product, material or substance.

2. On the basis of its assessment pursuant to paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 36(2), adopt implementing measures in respect of a specific product, material or substance category of waste, specifying the environmental and quality criteria to be met in order for that waste to be deemed to have become a secondary product material or substance.

3. The criteria set pursuant to paragraph 2 shall be such as to ensure that the resulting secondary product, material or substance meets the necessary conditions to be placed on the market.

The criteria shall take into account any risks of environmentally harmful use or shipment of the secondary material or substance, and shall be set at a level that guarantees a high level of

protection for human health and the environment.

Justification

The necessity of end-of-waste criteria to facilitate recycling is not proven. The two main waste streams considered – biowaste compost and demolition waste aggregates could better be regulated in dedicated implementing legislation where such standards could be set, including the appropriate verification, reporting and traceability requirements adapted to each waste stream. In addition to which this article creates excessive use of comitology procedures to make decisions on non-technical issues.

The possibility of end-of-waste status for combustible wastes for example creates a significant risk of escape of incineration and co-incineration activities from the requirements of the Waste Incineration Directive. The end-of-waste status should, a priori , not apply to wastes for incineration.

Amendment 23b

Recital, new

- ***Whereas movements of waste should be reduced and the Member States may take necessary measures to that end***

Justification

Reinstates recital 10 of the existing Waste framework Directive . The proximity principle and the reduction of movements of waste are essential precautionary elements to keep control on how waste is managed. If a population has to deal with the consequences of its own waste management it will be more inclined to find the best environmental solution – in particular prevention, source separation to maximise recycling etc.

Amendment 23c

Article 27a, new

Member States may take the measures necessary to prevent movements of waste which do not comply with their waste management plans. They shall inform the Commission and the Member States of any such measures.

Justification

Reinstates article 7.4 of the existing Waste framework Directive. The prevention of movements of waste in accordance of management plans is a useful element of regional and national waste controls.

6) Governance, enforcement and implementation

The Implementation of the 15 plus pieces of framework, installation and waste stream legislation – plus all the generated commission decisions, lists and reporting and notification requirements – is a phenomenally complicated area to maintain overview of. Coordination of implementation, sharing of best practice of implementation and other informal exchanges on the progress of implementation can greatly help to achieve a more harmonised and coherent use of legislation and should be a fundamental component of ‘Better Regulation’.

In addition to national implementation progress, the evolution of the Commission’s thinking and planning on revisions, reviews, studies, development of new legislation, and the progress of Technical Adaptation Committees are another important area to be under scrutiny of ‘correct implementation’. It is crucial therefore that, like has been done in other environmental policy fields such as Air and Water, a proper Forum be established for these purposes. This EU level forum, essentially a Waste Management and Implementation Consultation Committee should include both Member State Competent Bodies and stakeholders and should be used also for specific duties of scrutiny, not only to oversee technical comitology procedures, but also to participate in the development of implementing measures as far as possible and relevant.

Text proposed by the Commission

EEB proposed amendment

Amendment 24a **Article 19, paragraph 3**

Permits

3. Where the national competent authority considers that the intended method of treatment is unacceptable from the point of view of environmental protection, it shall refuse to issue a permit.

3. Where the national competent authority considers that the intended method of treatment is unacceptable from the point of view of environmental protection *or achieving the objectives of this directive, in particular articles 1, 3a and 5*, it shall refuse to issue a permit.

Justification

Permits – and their contents - are one of the most important enforcement tools available. Permitting of waste installations should be specifically in line with the objectives of promoting prevention, reuse and recycling and respecting the environmental framework as specified in article 3a.

The national authority should still have the right to exercise its rights to refuse to grant a licence to that installation, at least for the waste management purposes where method of treatment is unacceptable from the point of view of environmental protection.

Amendment 24b **Article 20, Permits under Directive 96/61/EC**

Article 19(1) of this Directive shall not apply

Article 19 (1) of this Directive shall not apply

in the case of an establishment or undertaking which has obtained a permit under Directive 96/61/EC.

in the case of an establishment or undertaking which has obtained a permit under Directive 96/61/EC , *provided that the permit includes the elements listed in article 19 (1).*

Justification

The IPPC permits accepted as alternatives to waste installation permits should ensure that the waste management aspects of the installations activities are covered and specified– in particular the quantities of waste and the input/output mass flow accounts which an IPPC permit for installations not dedicated to waste treatment (eg paper mills) may not specify.

Amendment 25

Article 36 a, Waste Management Consultation Forum

1. The Commission shall set up a Consultation Forum on waste management.

2. The task of the Consultation Forum shall be to supply the Commission with opinions, either at the request of the Commission or on its own initiative

(a) on the formulation of a policy on waste management, having regard to the need to ensure the best use of resources, the prevention of waste generation and the environmentally sound management of waste.

(b) the different technical, economic, administrative and legal aspects concerning waste management ;

(c) the implementation of EC legislation on waste management , including plans, programmes and reporting on progress, and the formulation of fresh proposals of legislation in this area.

3. The Consultation Forum shall be composed, in a balanced way, by member States' representatives and all interested groups concerned with waste management issues, such as industry including SMEs and craft industry, trade unions, traders, retailers, environmental protection groups and consumer organisations.

4. The members of the Consultation Forum shall be appointed by the Commission.

5. The Committee shall meet at least three times a year. It shall be convened by the Commission. the Commission shall chair the meetings. If appropriate, adhoc working groups may be convened and meet more frequently.

6. The Commission shall adopt the internal rules of the Consultation Forum.

Justification

The Implementation of the 15 plus pieces of framework, installation and waste stream legislation – plus all the generated commission decisions, lists and reporting and notification requirements is a phenomenally complicated area to maintain overview of. Coordination of implementation, sharing of best practice of implementation and other informal exchanges on the progress of implementation can greatly help to achieve a more harmonised and coherent use of legislation and should be a fundamental competent of ‘Better Regulation’.

It is crucial therefore that a proper Forum be established for these purposes, as has been done in other environmental policy fields such as Air and Water This EU level forum, essentially a Waste Management and Implementation Consultation Committee should include both Member State Competent Bodies and stakeholders and should be used also for specific duties of scrutiny, not only to oversee technical comitology procedures, but to participate in the development of implementing measures as far as possible and relevant.

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