



## EEB contribution for Leiden on the issues of:

- ❖ *Prevention and broadening the waste hierarchy to a life-cycle/materials approach*
- ❖ *Consideration of an overall ecological approach in connection with Recovery and Disposal. Classification of R – operations and distinction R1 and D10*

16 March 2006

Building on the EEB's priorities for the discussion of the Commission's proposals on the Waste Strategy and Framework Directive<sup>1</sup> the EEB would like to take the opportunity of the discussions to be hosted in Leiden to offer some more detailed recommendations for your consideration.

### 'Modernising' with Lifecycle Thinking – complimentary to or a substitute to the hierarchy?

The Commission communication states that *“the objectives of waste policies must lead to explicit reference to the requirement of lifecycle thinking”*<sup>2</sup>. It proposes to *“introduce lifecycle analysis in policymaking, which will take into account of all phases of a resource's lifecycle, with an emphasis on the use phase, and not only the early phases (extraction, processing and manufacturing) and the final phase (waste management)”*<sup>3</sup> The way in which this lifecycle thinking (LCT) will be employed in practice is however not clarified, in either the Strategy Communication or the WFD.

#### Prevention and the hierarchy no longer a priority in a LCT focused waste policy...?

The focus on LCT and 'waste as a useful resource' is a **direct undermining of the use of the waste hierarchy and a diversion from the prevention of waste as an objective of waste policy per se**. The use of LCT without any clarification as to how this influences the use of the hierarchy leaves open the possibility that decision makers, at all levels, may ignore the hierarchy and chose instead to justify policy actions, 'starting from scratch', on the basis of LCAs. This approach ignores the reality that in the huge majority of cases the waste hierarchy proves to be a correct assessment of the best environmental option, especially as concerns the life-cycle perspective.

#### Dependence on LCAs can lead to overload, policy paralysis...

The emphasis given to introducing LCT into waste policy, while a theoretically correct approach and of great use when applied and scrutinised adequately, risks to create a high risk of **'proof overload' in policy making (endless 'battles of the studies')** increased emphasis on the lifecycle approach and knowledge base and the associated tendency to use of LCA can easily lead to **policy paralysis**.

<sup>1</sup> See [www.eeb.org/activities/waste/waste\\_strategy/EEB-Preliminary-Waste-Strategy-recommendations-170106-sum.pdf](http://www.eeb.org/activities/waste/waste_strategy/EEB-Preliminary-Waste-Strategy-recommendations-170106-sum.pdf)

<sup>2</sup> see Annex 1 TS, p. 16

<sup>3</sup> see page 7 TS

Despite the emphasis from the Commission that LCT doesn't necessarily mean LC analysis or assessments, LCAs (whether simplified versions or extensive versions) are the only concrete LCT tool that are available. The LCA experts repeatedly stress that LCAS are just a decision making support tool – they are no substitute for the final political decision.

There are multiple reasons for this but two of the most important are:

- the quality of the performance of LCAs are, like any tool, vulnerable to the intentions of the authors (or the interest groups they may be influenced by). Creating a shift towards local/regional/national (as opposed to centralised/EU) assessment processes that are heavily dependant on complex and data heavy tools and hence requiring of people and experts to give local input will be automatically biased in the direction of those interest groups with the most resources. At the local and regional level it is rare that civil society and environmental NGOs have such resources. Hence such processes will tend towards industry interests and will tend to cause local frustration and protest from those that cannot have equal input to the process.
- The quality of LCAs is highly dependant on the quality of impact data available. As an illustration – the biowaste LCAs normally do not take into account important benefits from soil application of organic matter. The Commission indeed recognises that there is “*currently a lack of uniform approach and methodology to apply lifecycle tools*”<sup>4</sup> but does not qualify their usage in any way.

#### National level always best level to make LC decisions on waste policy?

The Commission tends to argue that LC approaches and analyses are more robust at the national and local level. In fact recent assessments of applying LC methodologies in several countries show this not to be the case (JRC). This study illustrates that (even with use of local and National data) the assessments show consistently similar results between very differing countries. The study also shows that the hierarchy is confirmed once again.

#### Loss of enforceability

The Commission proposal implies an increase in the decision making allocated to national level in EU waste policy - disengaging the EU from its responsibility of steering in waste policy. **We do not see how the Commission will be able to follow 25 plus simultaneous LC thinking / assessment processes for whether to burn or recycle different types of waste – for example biowaste.**<sup>5</sup> It seems inevitable that the LCA focus will in fact complicate not solve implementation problems!

In conclusion modernising waste policy decision making with lifecycle thinking must be done in a constructive and additive way, not as an excuse for abandoning the hierarchy and waste stream steering policies or a way to diluting the hierarchy concerning the priority for waste prevention.

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<sup>4</sup> (see Annex 1, p. 16)

<sup>5</sup>Note: The Commission already protests that they don't have the possibility to assess the Waste Management Plans they receive – so how they will assess such complex processes as individual national, regional or local 'LC thinking' assessments. This process is not enforceable and the conclusion can only be that we are shifting waste policy from an enforceable and monitorisable tools (targets) to unenforceable 'soft tools' such as local assessments. Not being able to steer waste to recycling is a significant drop in environmental ambition for EU waste policies

## ACTIONS PROPOSED for

### Response to the Commission Communication on the Strategy:

- Clarify that ‘**Introducing life-cycle thinking in waste policy**’<sup>6</sup> **should be done in an additive fashion** to INFORM policy decisions, but it should be recognised that they will still require a final political choice. For the purpose of ensuring swift policy action the guidance of the hierarchy should be assumed to prevail ie **The HIERARCHY should be INNOCENT until proven guilty and not vice versa.**

However in order to move from principals to implementation of the hierarchy and to adopt the LCT principals it is furthermore equally important to **clarify how LCT should be used with reference to the hierarchy and waste management planning.** This should involve a **commitment to continue to use the hierarchy as a ‘rule of thumb’ policy decision making tool, with however the possibility for derogation** for exceptions. Derogation conditions should require the assessment by LCA and/or the use of CBA. Derogation from the priority options set by the hierarchy should only be allowed where results of assessment **unequivocally** show that show that **the exception** has an equal or better environmental performance than the ‘rule of thumb’. This reflects the European Council’s 1997 conclusions on the Commissions 1996 Waste Strategy that *“recognizes, as regards recovery operations, that the choice of options in any particular case must have regard to environmental and economic effects, but considers that at present, and until scientific and technological progress is made and life-cycle analyses are further developed, reuse and material recovery should be considered preferable”*

- Insist that the Commission recognise that the **waste hierarchy should be clearly differentiated into 5 levels again (article 1 of the FWD)**, reflecting the policy laid down in the 1996 waste strategy (see extracts in annex 2) and repeatedly confirmed by studies and assessments done since then
- **refine and clarify the link made to the Resource Strategy** into an additional not substituting policy driver<sup>7</sup>. The setting of EU resource reduction/efficiency objectives and the prioritisation of particular material flows – once it exists - can indeed be used as orientation for waste policy. (see p8 TS - *Further elaboration of EUs recycling Policy*)
- Reject statements<sup>8</sup> implying that LCA in policy making will contribute to resolving current implementation problems. Request simultaneously that the Commission indeed develop a proper analysis of implementation barriers **and a better enforcement and implementation monitoring work programme**, including the proper evaluation and use of National Waste Management Plans.

### Response to the Commission’s proposal to amend the FWD

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<sup>6</sup> See p16 Strategy

<sup>7</sup> see p 7 of the Strategy *Introduction of life-cycle thinking into waste policy*

<sup>8</sup> See p 6 of TS under heading 4. *Actions*

- Reinststate the **waste hierarchy with a clear differentiation into 5 levels in article 1 of the waste framework directive**
- Introduce into the Framework directive **the approach of using the hierarchy as a 'rule of thumb' policy decision making tool for both EU and National policy processes, with however the possibility for derogation** for exceptions under certain predefined conditions (see above). Address this in particular to any LCT requirements proposed for waste management planning<sup>9</sup>
- Redefine **the objective laid down in article 1 to specify that *minimization not reduction*** of environmental impacts should be the objective of the generation and management of waste. Elaborate the objectives further with the reintroduction of two existing references for what is meant by impact reduction
  - a) reintroducing the existing article 4 environmental parameters now proposed as article 7 *Conditions*
  - b) introducing the concept of reduced use of resources (from the 6EAP wording - *better resource efficiency and the diminished use of resource...*);
- Amend article 3 to provide **clear definitions of**
  - prevention (as the reduction in generation of waste, including reuse activities that lead to prevention)
  - reuse (recognising both its prevention (pre-discard) and waste management components (post-discarding))
  - recycling (excluding energy and chemical feedstock operations)

### **Providing EU level leadership on waste prevention**

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, claiming that quantitative waste reduction does not necessarily mean the reduction of impact and implying that EU targets would also not take into account national production and consumption patterns<sup>10</sup>.” The Commission proposes instead to committing Member States to develop national waste prevention programs<sup>11</sup> (laid down in article 29 of the associated proposal for amending the FWD), to promote the use of the IPPC Directive and other tools to encourage the spread of best practice at EU level and to revisit Integrated Product Policy.

However, its notable that the supporting analysis for the Strategy is almost completely devoid of any serious assessment of different possible approaches to EU waste reduction targets and implementing measures (as requested by the 6EAP to be achieved by 2010).

The main argument used is that such targets would fail to address the complexity of wastes environmental impacts – although given that different options (such as those focusing on impacts, or on particular impacting or indicative waste streams for example) were not investigated we do not see how this claim can be made. The same applies for the ability of

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<sup>9</sup> See recital 17 and the commitment in the Strategy that the EC will publish guidelines for Member States on applying lifecycle thinking to management of biodegradable waste that is diverted from landfill

<sup>10</sup> (see Annex 1, p. 16)

<sup>11</sup> (see page 7)

targets to reflect consumption and production patterns – there is no reason why such factors cannot be reflected (for example targets relative to sectoral production levels or reduction of packaging units relative to total consumption of units. Strangely – despite the supposed inherent failure for prevention targets to address complexity of impacts article 29 of the proposed FWD foresees the setting of such targets (or objectives) however at the national level.

In addition to the lack of engagement in solving the target setting issue the absence of a clear definition of prevention in the Strategy and framework Directive make it almost impossible to implement any waste prevention policies. The Commission sets up one of the pillars in terms of implementation measures (the requirement for national prevention programmes with objectives and indicators) but then fails to follow this through with the other two pillars – the EU level operational measures – in particular the setting of harmonised definitions, indicators, reporting and monitoring and other relevant EU level policy tools such as hazardous substance restriction and a product eco-design policy that should deliver increased lifespan, reusability and recyclability on specific potential end-of life products.

Note: While it is true that product design is crucial to waste prevention there are still significant number of actions in the waste management domain that can be taken to drive waste prevention

#### ACTIONS PROPOSED for

##### Response to the Commission Communication on the Strategy:

- Recognise that the new provision for **national waste prevention programmes (WPP)** is one part of a credible policy but **is not enough by itself**. A comprehensive waste prevention policy framework requires a number of other elements, in particular:
  - reinstate 6EAP vision ie that the EU should achieve “ a significant overall reduction in the volumes of waste generated. Clarify that this should mean starting with the objective of a **stabilisation year (eg 2010)** and followed by the obligation (for the Commission) to set and achieve further reductions towards a kg cap/citizen objective (for example the 5<sup>th</sup> EAP objective of 300 kg/capita) or x % /year
  - A clear definition for prevention
  - An obligation for the Commission to take further EU level operational measures in its power, listed also in annex III alongside the list of actions for national programmes
- Insist that the other two important pillars of waste prevention be properly recognised and promoted by the Strategy , namely
  - a) that active ecological product policy setting minimum requirements, providing best performance benchmarks based on systematic collection product performance information is urgently needed
  - b) a continuation of the hazardous substance restriction and substitution principle aimed at hazardous waste prevention is necessary so long as REACH has not started to deliver relevant substance restrictions

##### Response to the Commission’s proposal to amend the FWD:

➤ **Add a definition of prevention to article 3**

➤ **amend article 29.1** under chapter VI section 2 (chapter VI section 2 *Waste Prevention Programmes*) to reintroduce Commissions draft wording of what the WP should achieve “*Member States shall set waste prevention objectives and take concrete quantitative and qualitative waste prevention measures. Such objectives and measures shall aim to break the link between economic growth and the environmental impacts associated with the generation of waste*”

➤ **add a new article – *EU prevention objectives and supporting operational measures* setting a first preliminary objective of stabilisation of waste generation by 2010, and committing the Commission to a workprogramme with deadlines for deliverables to**

**a) evaluate properly how to set a quantitative EU waste reduction objective** after the stabilisation year and followed by the obligation to achieve further reductions towards a kg cap/citizen objective (for example the 5<sup>th</sup> EAP objective of 350 kg/capita) or x % /year

**b) develop supporting EU measures including** development of a core set of EU indicators and reporting and monitoring templates,

**c) asses** what further EU actions are needed - considering those listed in Annex IV

**and for these purposes set up the EU level working group with involvement of member states and stakeholders**

➤ **Add to Annex IV a chapter on EU measures**, including - further producer responsibility legislation, the possibility of binding eco-design requirements and hazardous substance substitution among others

### An excessively pro-incineration Strategy ?....

Worryingly the Commission's Communication on the Waste Prevention and Recycling Strategy establishes *the aim moving towards a recycling and recovery society*.<sup>12</sup> The common understanding of the hierarchy is a proxy guide to, among other objectives, moving towards a (prevention, reuse and) recycling society (not a recycling and incineration society). This is the underlying logic of the 6EAP highlighting the need for a recycling strategy in the first place. We are deeply concerned that by promoting both recycling and incineration on an equal level the preferential promotion of recycling is greatly diluted.

The Communication further consolidates this worrying trend in political priorities with the focus on "more energy from waste"<sup>13</sup>. Similar worrying trends can be seen emerging in discussion documents from the Commission regarding Biomass and the increasing use of waste as an energy source.<sup>14</sup> Whilst it is certainly of high importance that energy demand should be reduced and energy sources diversified, the priority should be given to the energy demand reduction potential of prevention, reuse and recycling and, as far as possible, the energy recuperation by non-combustion technologies such as anaerobic digestion which allow for multiple uses of the waste and low process waste/emissions. The Strategy does not seem to recognise that there is an increasing tendency to promote incineration (and coincineration) as a renewable energy source. This is however in conflict with a waste policy which seeks to maximise waste reduction, reuse and recycling as the majority of the renewable fraction of waste are the recyclable waste streams- namely wood, paper, textiles and green/ food organics. These fractions should first be managed so as to maximise their reuse and recycling before they are considered for energy recovery through combustion.

Equally of concern is the Communication's (unsubstantiated) claim that the ECJ classification of MSW incinerators as disposal has '*negative implications leading to a degradation of the environment*'.<sup>15</sup> It goes on to stress that "Fixing the level of energy efficiency at BAT would facilitate landfill diversion goals".... "This proposal will promote diversion from landfills and the use of BAT for recovering energy from waste burned in MSW incinerators". This is the basis for the Commission's proposal to classify MSW incinerators as recovery using a defined energy efficiency factor.

These claims are incorrect and misleading.

Firstly, there is no basis for claiming that classifying MSW incinerators as disposal has '*negative implications leading to the degradation of the environment*'. It is true that if MSW incinerators are broadly classified as disposal then there is a tendency to interpret the landfill directive as recommending that the diverted biodegradable waste not go to dedicated MSW incinerators and thus the biowaste should be sent to recycling and /or digestion or GHG

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<sup>12</sup> See page 4 second paragraph of TS

<sup>13</sup> See page 8 of TS

<sup>14</sup> COM(2005) 628 final COMMUNICATION FROM THE COMMISSION **Biomass action plan**, Brussels, 7.12.2005 states: Waste is an **underused** energy resource The Commission is developing a thematic strategy on the prevention and recycling of waste and preparing a proposal on the revision of the waste framework legislation. Options under consideration include: 1.promotion of waste management techniques that reduce the environmental impact of using waste as a fuel;2. taking a market approach to recycling and recovery activities;3. developing technical standards to enable recovered materials to be considered as goods (making it easier to use them for energy purposes);4. encouraging investment in energy-efficient techniques for the use of waste as fuel.

<sup>15</sup> See page 14 second last paragraph of TS

reducing pre-treatment before landfilling<sup>16</sup>. However there is no evidence that there will be any greater degradation of the environment due to this.

The Commission's logic implies that if incineration is not promoted for burning the diverted biowaste member states will ignore the legal requirements of the landfill and simply continue to landfill biowaste (with all the associated emissions) and with no investment in the alternatives! To our knowledge many member states are actively investigating the options of pre-treatment, recycling and also digesting of the diverted biowaste. What is lacking is indeed the legal framework to favour recycling (composting) and separate collection.

Secondly - As to encouraging **better performance** concerning energy efficiency – energy recovery (and also heat recovery) is already required under the waste incineration directive (articles 4.2.b and art 6.6) ‘*as far as practicable*’ and the IPPC BREF are supposed to be applied from 2008 (more or less when WFD would come into force). It appears inappropriate to thus use the Framework Directive to do the WID and IPPC’s job.

It is critical to ask the question ‘how would the status of recovery possibly encourage better energy efficiency in MSW incinerators?’. An incinerator should only have licence to operate (according to the WID) if it is already recovering energy *as far as practicable*... what will the new status change that suddenly makes it ‘practicable’ where it wasn’t before? **It is not acceptable to use the recovery status and all its implications to drive enforcement of the existing requirements of the WID.**<sup>17</sup>

In addition to the Commission’s claim there is the statement (principally from the MSW incinerators) that classifying MSW incinerators as disposal operations would result in **steering the waste into co-incineration**. However, to our knowledge potential diversion of waste to co-incineration will be more due to economic factors (co-incinerators will pay for the wastes or offer reduced ‘treatment’ costs) and drivers for co-incinerators to find alternative (lower GHG emitting) and cheaper fuel sources than it has to do with the classification of MSW incinerators as recovery. These factors will still predominate irrelevant of whether MSW incineration is recovery or not so it will not solve the ‘steering’ problem.

Furthermore setting only energy efficiency without consideration of the best environmental option for a waste stream criteria does not respect the very principles established for the status of recovery in article 5 of the same directive (if appropriately interpreted) – namely to encourage the replacement of resources in the wider sense. **Incineration of reusable/recyclable waste streams** – irrelevant of the energy efficiency levels of the incinerator – does not recognise that greater savings of energy that can usually be achieved through reuse and recycling preventing the use of ‘virgin’ materials and energy.

However, we stress that **replacement of resources in the wider economy is a too simplistic and dangerous approach by itself**. For example by using the simplistic replacement definition proposed capturing landfill gas as a fuel could classify landfill as recovery (the landfill gas indeed substitutes a fuel somewhere else), likewise the landfilling of waste in

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<sup>16</sup> In fact article 5 of the Landfill Directive says SHOULD not SHALL, so it's not an absolute requirement, but it's a strong push towards recycling and maybe energy recovered by anaerobic digestion and other non-combustion technologies instead of simply burning it.

<sup>17</sup> What is needed is indeed an assessment as to whether MSW incinerators are respecting the WID concerning energy efficiency as far as practicable (if not the WID should be strengthened) and b) the real performance of co-incineration needs to be assessed with a view to enforcing and possibly tightening the emission requirements.

mines (replacing other backfilling materials) could also be called recovery under this approach.

**Hence we find the adhoc application of energy efficiency as criteria to reverse the ECJ ruling that MSW incinerators even with energy recovery are disposal as unnecessary and unjustified and with the very real potential to undermine waste reduction, reuse and recycling.**

Finally, classifying MSW incineration as recovery will **increase the possibilities for movement of MSW** (especially partially sorted) and other similar wastes to MSW (commercial, hospital etc) that are burnt in MSW incinerators in other regions and countries other than those in where they are generated. Despite the recent strengthening of the Waste Shipment Regulation only export/import for disposal allows application of the most robust basis for objections to such movements - the proximity and self-sufficiency principles (article 11). The revised Waste Shipment Regulation indeed offers reinforced possibilities for objections to movements for recovery (article 12) or to *mixed municipal waste from private households* in general (article 3.5) but the grounds for objection permitted (lower treatments standards, ratio of recovery, failure to be BAT or reach legal standards, not in accordance with plans), are still open to significant interpretation and are more easily challenged. As can be seen from the recent flood of exports from Germany in to the Czech Republic the pressure for such movements, especially into new Member states with cheaper incineration and disposal facilities is very real.

**In conclusion the Commission's approach seems far more concerned with the promotion of MSW incinerators as such than it is with the promotion of energy savings, GHG abatement waste reduction, reuse or recycling.**

#### **ACTIONS PROPOSED for**

##### **Response to the Commission Communication on the Strategy:**

- **Clearly define the concept of recycling society. Stick only to wording about promoting a recycling society (NOT a recycling and recovery society)**
- **Reject the strategic goal <sup>18</sup>'More... energy recovered from waste'. Focus should indeed be on more recycling and composting but less emphasis should be given to 'more energy from waste'. The Strategy should at the same time recognise the increasing pressure to burn waste as renewable (bio) energy, often in the name of GHG reductions. The Strategy should clarify that reusable, recyclable and mixed municipal and hazardous wastes should not be part of the EUs priorities for (renewable or bio-) energy solutions**
- **Stress the importance of a comprehensive approach to the definition of recovery which should be based on multiple criteria and not simply the replacement or substitution of resources. Reject the Commission's proposal to reclassify MSW incineration as recovery only on the basis of energy efficiency.**

##### **Response to the Commission's proposal to amend the FWD**

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<sup>18</sup> See page 8 of Strategy

- **clarify the hierarchy** concerning recycling and recovery (make material recycling clearly superior, in principal to energy recovery) article 1
- **CHANGE the approach to the definition of recovery** (article 5) and establish the appropriate multiple criteria framework, reject the simplistic ‘replacement’ only approach
- **DELETE the R1 energy efficiency criteria for MSW in annex II** maintaining MSW incinerators as disposal (as defined by ECJ)
- Ensure that end-of-waste criteria in article 11 should never, a priori, apply to waste-as-fuel or for incineration

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Further Reading:

- EEB recommendations for EU waste implementation measures in Annex I of the document at [www.eeb.org/activities/waste/EEB-Position-Paper-on-Towards-Thematic-Strategy-on-Waste-Prevention-and-Recycling-second-session-Dec2003.pdf](http://www.eeb.org/activities/waste/EEB-Position-Paper-on-Towards-Thematic-Strategy-on-Waste-Prevention-and-Recycling-second-session-Dec2003.pdf)
- EEB response to European Commission questionnaire on the potential future changes to the Waste FWD – October 2005 at <http://www.eeb.org/activities/waste/EEB-reactions-to-WFD-questionnaire-version-October2005.pdf>