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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.1.2008
COM(2007) 863 final

2005/0281 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Directive of the European
Parliament and of the Council on waste (the Waste Framework Directive)**

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(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2005)667 final – 2005/0281COD): 26 December 2005

Date of the opinion of the European Economic and Social Committee: 19 June 2006

Date of the opinion of the European Parliament, first reading: 13 February 2007

Date of adoption of the common position: 20 December 2007

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The overall aim of this proposal is to optimise the provisions of the Waste Framework Directive (75/442/EEC) whilst maintaining its essential structure and key provisions.

The principle objectives of the revision are to:

- simplify and modernise the Waste Framework Directive as well as Directive 75/439/EEC on the disposal of waste oils and Directive 91/689/EEC on hazardous waste, that are proposed for repeal and partial integration into the Waste Framework Directive,
- implement a more ambitious and more effective waste prevention policy, notably through the obligation for the Member States to develop waste prevention programmes,
- encourage the re-use and recycling of waste.

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission accepted in full, in part or in principle 48 of the 120 amendments proposed

by the European Parliament in its first reading. 54 amendments have now been incorporated, either verbatim or in spirit, in the common position.

The Commission accepted all the amendments which sought to clarify definitions usefully, or added new definitions for terms that are used in the articles. The Commission accepted amendments that clarified the notion of a five step waste hierarchy and the principle of producer responsibility, and in principle, amendments that introduced further recycling and re-use targets. The Commission did not accept amendments which narrowed the scope of the Directive, weakened the environmental protection offered by the directive, created disproportionate administrative burdens, such as amendments related to the definition of recovery or the hazardous waste elements, or that sought to change entries in the annexes that are subject to international agreements.

The Council has now agreed to incorporate in spirit most of the Parliamentary amendments relating to by-products, producer responsibility, the polluter pays principle, and additional definitions.

The Commission considers that the Common Position adopted on 20 December 2007 does not alter the approach or aims of the Proposal and can thus accept it as it stands.

3.2 Detailed comments

3.2.1 Parliamentary amendments accepted in full, in part or in principle by the Commission and incorporated in full, in part or in principle in the common position

Amendments 1, 7, 8, 14, 19, 20, 21, 23, 25, 27, 28, 30, 31, 34, 40, 44, 45, 47, 56, 64, 66, 77, 78, 90, 94, 101, 112, 131, 157, 168 and 173 have been incorporated to varying degrees. They added additional recitals or definitions, provided clarifications, incorporated the revised comitology wordings, specified a five step waste hierarchy with flexible implementation, and introduced articles on biological waste and enforcement and sanctions. Amendment 141 has been partly incorporated as regards the promotion of separate collection of waste. Art 35 on (extended) producer responsibility was accepted by the Commission in principle in a way that respects the need to ensure the proper functioning of the internal market.

3.2.2 Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position

Amendment 5 concerning re-use was rejected by the Commission as it focused the recitals on erroneous environmental objectives and its practical implications were not clear, but has been partly incorporated in the common position in a form that is clearer in its application and in line with the five step waste hierarchy.

Amendments 15, 134, 102, 123 and 126 relate to the scope of the Directive. They were rejected by the Commission, but have been partly incorporated in the common position in a form that is more limited or more precise in its application and the resulting text is therefore acceptable.

Amendments 39, 81, 82, 86 and 158 were rejected by the Commission as they were incompatible with the international obligations of the Community. They have been partly reflected in the common position by adding clarifications in Annexes and recitals.

Amendment 59 on permits was rejected by the Commission, but the spirit of this amendment

has been incorporated in the common position in a way that is acceptable.

Amendments 107 and 121 were rejected by the Commission, but the spirit of these amendments (an article on by-products) has been incorporated into the common position in a way that matches the Interpretative Communication on waste and by-products produced by the Commission on this subject in February 2007¹, and is therefore acceptable.

Amendments 67 and 151 were rejected by the Commission as they simply repeated existing text from the Waste Shipment Regulation, but the spirit of these amendments has been incorporated in a way that is legally meaningful and therefore acceptable.

Amendments 4, 24, 36, 89 and 115 were rejected by the Commission for various reasons, such as being too vague, adding no advantage to the text, creating legal uncertainty or unnecessary administrative burden. Certain elements of these amendments have been, however, incorporated to a limited extent into the common position.

3.2.3 Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

Amendments 2, 3, 9, 10, 12 and 13 were rejected by both institutions and not incorporated. These amendments proposed recitals that were focused on erroneous environmental objectives or were too vague, or deleted recitals that explained elements retained in the common position.

Amendments 17, 26, 29 and 32 were rejected by both institutions and not incorporated as they either related to additional definitions for terms not used in the common position text, or confused existing definitions.

Amendments 169, 48, 170 and 171 were rejected by both institutions and not incorporated because there is no advantage in annexing the European waste list to the Directive or in making it directly applicable, and because the list is designed for waste classification rather than data collection purposes.

Amendment 37 was rejected by both institutions and not incorporated as the waste prevention targets are too blunt – too difficult for some Member States and not challenging enough for others. Amendment 70 was rejected as it is important that the progress of the national waste prevention programmes can be measured.

Amendments 84, 85, 87 and 88 were rejected by both institutions and not incorporated as they are incompatible with the international obligations of the Community.

Amendments 41, 103, 138 and 153 were rejected by both institutions and not incorporated as they infringed the Commission's right of initiative.

Amendments 43, 46, 52, 53, 54, 58, 65, 83, 91, 93, 108, 109 and 127 were rejected by both institutions and not incorporated as they would create legal uncertainty and were likely to create unnecessary litigation, or were unworkable or inappropriate for this Directive.

¹ COM(2007)59 final.

Amendments 50, 51, 52, 60, 61, 68, 71, 72, 79, 80, 161, 172 and 188 were rejected by both institutions and not incorporated as they would create disproportionate administrative burden.

Amendments 98 and 113 were rejected by both institutions and not incorporated as they posed risks to human and animal health and would remove a ban on the feeding of such catering waste to pigs that is laid down in animal and human health legislation.

3.2.4 Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position

Amendments 6, 11, 33, 38, 49, 62, 63, 69, 74, 92, 95-97, 104 and 140 were accepted in full, in part or in principle by the Commission but not incorporated. They related to language in the recitals, presentational changes, additional definitions for terms not used in the common position text, procedural requirements, the promotion of preparation for re-use, additions to the annex IV listing examples of waste prevention measures, timing of the waste prevention programmes, waste prevention and recycling targets, and the duration for which records of hazardous waste must be kept.

3.2.5 Additional changes made by the Council to the Proposal

In Article 2, as well as the changes corresponding to Parliament's amendments, the exclusions for unexcavated contaminated soil, radioactive waste, decommissioned explosives and certain agricultural materials are made unconditional and an additional exclusion is added for sediments that are relocated inside of surface waters. In addition, the exclusion for certain agricultural materials is extended to forestry. In Article 2, animal by-products are excluded from the scope of the Directive, except those which are destined for incineration, landfilling or use in a biogas or composting plant. In the framework of the forthcoming revision of Regulation (EC) No 1774/2002 on animal by-products, the Commission will clarify the distinction between the use of tallow as a fuel for combustion in a thermal boiler and the disposal of tallow with regard to the application of the Waste Incineration Directive.

In Article 3, the definition of 'preparing for re-use' is added to clarify the distinction between re-use of products as a waste prevention activity, and re-use of waste as a waste management operation.

In Article 3c, the relationship between the end of waste procedure and the recycling targets under other relevant waste legislation is specified, as is the situation for determining end of waste where no Community wide end of waste criteria are set.

In Article 5, an obligation to separately collect waste is introduced where this facilitates recovery and is technically, environmentally and economically practical.

In Articles 5 and 6, the comitology procedures introducing a mechanism that would have allowed for further efficiency criteria to be set and for the relegation of environmentally doubtful recovery operations to disposal have been deleted.

In Article 7a, as well as the five step waste hierarchy corresponding to Parliament amendments, the text specifies that the hierarchy should be applied with reference to life cycle thinking and overall environmental impacts taking into account the principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts.

Articles 8 and 9 are amended to make it clear that Member States may make producers of products responsible for the costs of managing such products when they become waste, or may hold them responsible for any mismanagement of this waste.

Article 10 is amended to allow Member States to block shipments of waste to municipal incinerators that are considered as recovery operations, where it has been established that such shipments would have the consequence that national waste would have to be disposed of or that waste would have been treated in a way that is not in coherence with their national waste management plan. It also clarifies that the principles of proximity and self-sufficiency do not mean that each and every Member State must possess the full range of final recovery facilities.

A new Article 18 (2a) specifies that Member States may apply measures in order to preserve a national priority for the regeneration of waste oils, including restricting shipments out of their territory of waste oils for combustion.

Article 19 is amended to integrate the original Article 20 and specify that the Member States may integrate the waste permit with other environmental permits where the requirements in Article 19 are respected.

Article 25a is amended to introduce greater precision in the mandate for the Commission to take implementing measures.

Article 26 is reorganised, with a number of elements for the waste management plans being made optional.

Article 26a is amended to make waste prevention targets for the national waste prevention programmes optional, although benchmarks for such programmes are made obligatory. The timing for the first programmes is delayed to five years after the entry into force of the Directive.

Article 35 provides for a new implementing measure, the specification of the formula in Annex II R1 to local climatic conditions, if necessary.

4. CONCLUSION

The changes introduced by the Council help to clarify the proposal in a number of important areas. Although they weaken the proposed simplification potential in certain areas, and the Articles on waste prevention, waste management plans, as well as certain aspects of the internal market relating to products and waste for recovery, the overall text remains acceptable. The Commission therefore accepts the common position adopted on 20 December 2007.