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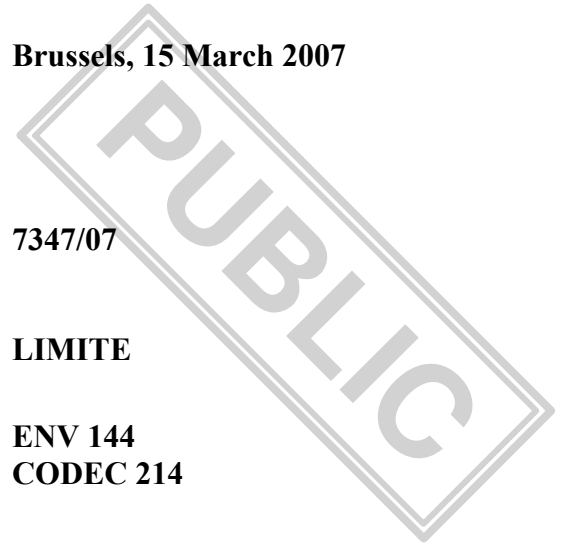
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NOTE

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Subject : Proposal for a Directive of the European Parliament and of the Council on **waste**

Delegations will find attached a compilation of Member States' comments referred to in 7328/07.

WASTE OIL PACKAGE

**AMENDMENTS OF BELGIUM, GREECE, ITALY, POLAND, PORTUGAL AND SPAIN
TO ARTICLES 7A AND 18 OF THE PROPOSED WASTE DIRECTIVE.**

*Article 7a (formerly part of Article 1)
Waste hierarchy*

1. The following five steps waste hierarchy shall apply as a general rule in waste management and for legislative measures:
 - a. prevention;
 - b. re-use;
 - c. recycling;
 - d. other recovery,
 - e. disposal.

2. When applying the waste hierarchy referred to in paragraph 1, in their waste management policy, Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, environmental justification of the waste management measures concerned, conservation of resources as well as their overall environmental, economic, and social impacts without endangering human health, in accordance with Articles 1 and 7. In case of, as a result of taking into account all these considerations, a Member State concludes that a deviation from waste hierarchy is justified for a specific waste stream, it will inform the Commission explaining the studies, such as impact assessments, life cycle analysis, cost-benefit analysis, waste management plans, etc., that support that conclusion. The Commission shall inform accordingly the Committee of Art.36.

3. With a view to promoting recycling in relation to specific materials, the Commission shall present a proposal to this effect at the latest 2 years after the entry into force of this Directive.

Rationale:

- (A) *7a.1: “policy” has been changed with “management”, as per French request and according to the wording of the Council conclusions and “guiding principle” has been changed to “general rule” as per Council conclusions.*

- (B) *7a.2, first paragraph: The original proposal of the 5 MSs has been used with some rewording according to the Irish comments and the addition of the term “in their waste management policy”.*

- (C) *7a.2, second paragraph: We believe there should be no discrimination for waste oils or any other waste stream, especially since we are discussing a general, framework directive. Thus this paragraph has been reintroduced in art. 7a.2. It must be clear when and how a MS can deviate from the waste hierarchy for a specific waste stream. This way it is clear that the MS that wants the derogation, carries the burden of proof. Furthermore, waste management plans are prescribed as one possible way of justifying the derogation. We believe this is a major differentiation compared to our previous proposal and it will hopefully allow all MSs to agree. At the same time, a procedure of informing the Commission and the MSs is described, without having any approving process.*
- (D) *7a.3, To promote the vision of a “recycling society” from an environmental perspective it should be interesting to ask the Commission to present concrete proposal in a short period of time.*

Article 18 – Waste Oils

1. Without prejudice to the obligations related to the management of hazardous waste laid down in Article 16 and Art. 17, Member States shall ensure that waste oils:
- 1) are collected separately where this is technically feasible and
 - 2) are treated in accordance with Article 7a.

Rationale: *It remains in essence the same as per Presidency proposal while deleting the reference to waste hierarchy that might be troublesome for some countries.*

2. It is prohibited to mix waste oils of different characteristics or to mix waste oils with other different kinds of waste or substances, if it impedes their treatment, in accordance with Articles 7 and 7a, namely for the purpose of regeneration.

Rationale: *In the Portuguese point of view, this wording proposal underlines the principle related to the prohibition of mixing waste. If the five steps waste hierarchy principle are taken into account concerning the waste oils treatment option, the prohibition focused only in the cases of “incineration of waste oils that have been collected separately for the purpose of regeneration”, has a very restricted reach.*

In order to avoid this disproportioned approach, the prohibition shall be focused in the separate collection phase, previously to the treatment operation, which is determining in regard to the waste oil quality. In fact, and considering the hierarchy principle stated in article 7a, this is the key factor within the option process of the treatment operation.

Thus, if this broader approach focused on the separate collection requirements is not accepted by the other MS involved in this package proposal, it will be difficult for PT to maintain the support to article 18 as it presently stands.

3. "Regeneration" means any process whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, oxidation products and additives contained in such oils;

Rationale: *Regeneration is not yet defined in this directive. It might be an option to move the definition in art. 3 together with the other definitions.*

4. To ensure implementation of this Article, Member States may apply additional measures, such as producer responsibility, voluntary agreements or economic instruments.

Rationale: *It practically remains as per Presidency last text.*

PRESIDENCY PROPOSAL ON THE WASTE DIRECTIVE
(doc. 14750/06)

PRELIMINARY DANISH COMMENTS

Summary

This paper presents Denmark's comments and proposals for alternative wording on the entire package as presented by the Presidency in document 14750/06.

Denmark welcomes the Presidency's efforts to create a common proposal for the Directive on waste. DK is pleased to see many new formulations which we support. However, on a number of points, we still have major concerns. These points are:

- 1) Definition of recovery – Article 3(j). See pages 6-7 of this paper.
DK is concerned that the definition is based only on substitution. Further, we maintain that a multi-criteria approach is needed based on resource substitution, genuine purpose, efficiency criteria and environmental impact.
- 2) Distinction between recovery and disposal - Article 3b – page 10 of this paper.
DK is concerned that criteria for the distinction between recovery and disposal are placed in Article 3b and not in the Article that defines "recovery". It is legally uncertain if these other criteria are relevant for the definition of recovery as such or only in case of uncertainty about the distinction between recovery and disposal.
- 3) Scope of the principles of proximity and self-sufficiency – Article 10 – page 14 of this paper
To avoid a situation where we cannot ensure the necessary incineration capacity in order to accommodate the incineration need for domestically produced waste, DK wishes to either a) classify such operations as disposal operations in accordance with the principles of the cases C-485/00 and C-228/00 or b) to invoke the principles of proximity and self-sufficiency in relation to shipments of waste destined for incineration with energy recovery.
- 4) Secondary products and substances – end of waste – Article 3c – page 11 of this paper
In general, Denmark considers that the exercise of determining when a waste ceases to be a waste is equivalent to determining the waste definition itself and therefore a political question and therefore politically and legally far beyond the scope of comitology.
- 5) Distinction between waste and bi-product – Article 3a – pages 8-9 of this paper.
DK favours a guideline reflecting the current jurisprudence of the ECJ. As regards the criteria proposed by the Presidency several elements from rulings of the ECJ are missing: not discard situation, foreseeable use in the short term, complete use, subject to product legislation, and resource saving.

- 6) Definition of hazardous waste – Article 3(b) – pages 6-7 of this paper
It is imperative that the definition of hazardous waste is based both on the hazardous properties and the limit values originating from the chemicals legislation. This is currently the case, and that legal situation should be maintained.
- 7) Mixing ban of hazardous waste – Article 16 – pages 15 of this paper
Two important elements are still missing namely 1) the ban on mixing of hazardous waste with the same properties and 2) the current reference to safety during treatment.
- 8) Waste oils – Article 18 – page 16 of this paper
If a Member State based on technical, economic and organisational assessments has decided to require regeneration of waste oils, it must be possible for the Member State to prohibit export of these waste oils for incineration. This amendment is necessary if regeneration is not a requirement in all Member States/in this Directive.

Article 1
Subject matter

Presidency text (31 Oct. 2006)	DK proposal
This Directive lays down measures to protect the environment and human health from negative impacts of the generation and management of waste, and thereby to make better, environmentally sound use of resources.	This Directive lays down measures to protect <u>reduce the negative impacts on</u> the environment and human health from negative impacts of the generation and management of waste, and thereby to make better, environmentally sound use of resources.

JUSTIFICATION: DK wishes to underline the need for a reduction of the negative impact from waste and resource use on the environment and human health. “Reduce” includes also protection – and is therefore preferred to “protect”. DK supports the UK proposal on article 1. DK supports moving the waste hierarchy to a new article 7 a.

Articles 2
Scope

Presidency text (31 Oct. 2006)	DK proposal
(c) faecal matter, straw and other natural non-hazardous agricultural or forestry wastes that are used in farming;	(c) faecal matter, straw and other natural non-hazardous agricultural or forestry wastes that are used in farming <u>or for the production of energy from biomass through using processes or methods which do not harm the environment or endanger human health;</u>
(d) (ii) animal by-products in accordance with Regulation (EC) No 1774/2002, except animal by-products, which are foreseen for incineration in accordance with Directive 2000/76/EC, landfilling or use in a biogas or composting plant;	(d) (ii) animal by-products <u>covered by and intended for uses</u> in accordance with Regulation (EC) No 1774/2002, except animal by-products, which are foreseen for incineration in accordance with Directive 2000/76/EC, landfilling <u>in accordance with the Directive 1999/31/EC</u> or use in a biogas or composting plant <u>or for use as organic fertilizer or soil improvement;</u>
(e) (iii) carcasses of animals die other than by being slaughter, including animals killed to eradicate epizootic disease.	(e) (iii) carcasses of animals die other than by being slaughter, including animals killed to eradicate epizootic disease.

JUSTIFICATION:

In paragraph 2, point (c) it is important for DK to keep the reference to energy production from biomass.

In paragraph 2, point (d) (ii) a reference to the Landfill Directive is added in the same way as the point include a reference to the incineration directive.

In addition the use of ABP as organic fertilizer or as soil improvement is added to the list of usage NOT excluded from the scope of the Waste Directive. Regulation 1774 does not include demands for environmental safeguarding when animal by-products are used as organic fertilizer or soil improvement but covers only the veterinary aspects (human health, danger of infection, animal deceases, hygienic demands etc.).

Article 3
Definitions

Presidency text (31 Oct. 2006)	DK proposal
<p>(b) "hazardous waste" means waste which displays one or more of the hazardous properties listed in Annex III, without prejudice to Article 4;</p> <p>(g) "collection" means the gathering of waste for the purposes of transport to a waste treatment facility, including the preliminary sorting or mixing of waste, for the purpose of transport only;</p> <p>(j) "recovery" means any operation listed in Annex II as well as any other operation provided that it results in waste serving a useful purpose in replacing, whether in the plant or in the wider economy, other materials which would have been used to fulfil that function, or in it being prepared for such a use;</p>	<p>(b) "hazardous waste" means:</p> <p>i) waste which displays one or more of the hazardous properties listed in Annex III, without prejudice to Article 4; <u>in concentrations above the limit values listed in Annexes II and III of Directive 99/45/EEC on dangerous preparations;</u> or</p> <p>ii) <u>waste that are marked with an asterix in the list of waste established in accordance with Article 4 and that displays one of more of the properties listed in Annex III in concentrations above the limit values listed in Annexes II and III of Directive 99/45/EEC on dangerous preparations</u></p> <p>(g) "collection" means the gathering of waste for the purposes of transport to a waste treatment facility, including the preliminary sorting or mixing of waste, for the purpose of transport only, <u>exchange during transport and interim storage prior to collection or during transport;</u></p> <p>(j) "recovery" means any operation listed in Annex II as well as any other operation provided that:</p> <p>1) it results in waste serving a useful purpose in replacing, whether in the plant or in the wider economy, other materials which would have been used to fulfil that function, or in it being prepared for such a use;</p> <p><u>2) results in waste serving a genuine useful purpose by the substitution</u></p> <p><u>3) meets certain efficiency criteria, as relevant, established in accordance with Article 5 and</u></p> <p><u>4) ensures that the overall environmental impact is not increased by the use of waste as a substitution for other resources</u></p> <p>(p) <u>"bio waste" means....</u></p>

JUSTIFICATION:

DK strongly supports the Presidency's text in art. 3 (a) which means no change in the definition of waste. In our opinion a change in the definition of waste will lead to new uncertainty.

Hazardous waste: In art. 3 (b) we find it important that the definition of hazardous waste is based both on the hazardous properties and the limit values (originating from the chemicals legislation). This is currently the case, and that legal situation should be maintained. The limit values (some of them) are currently listed in Commission Decision 2000/532, but it would be more appropriate legally to give reference to the more comprehensive list of limit values of Annexes II and III of Directive 99/45/EEC (see Articles 6,1 (a) and 7, 1 (a) of that Directive) on dangerous preparations and to do it more transparently in the body of this Directive.

Collection: In art. 3 (g), DK finds it relevant to be clear on all types of operations covered by the term collection. Therefore, we propose to include "exchange during transport and interim storage prior to collection or during transport".

Recovery: In art. 3 (j) DK considers that the proposed definition of recovery, with emphasis on resource substitution, is too narrow and proposes three additional criteria: genuine purpose, efficiency criteria and environmental impact. More criteria might be considered.

Precise efficiency criteria may be introduced by Member States until common EU-criteria have been established. The criteria on environmental impact are in accordance with the intention of the hierarchy – recovery should be a better solution than disposal from an environmental point of view. The purpose of this proposal is to avoid sham-recovery.

Bio-waste: Art. 3 (p): If the term "bio-waste" is used in the text of this Directive, this term should be defined in article 3.

Article 3 a
Distinction between waste and by-product

Presidency text (31 Oct. 2006)	DK proposal
<p>1. For a substance or object, resulting from a production process, the primary aim of which is not the production of that item, and which the holder does not wish to discard but wishes to use or sell for use, to qualify as a by-product and not as a waste, the following conditions shall be met:</p> <p>(a) further use of the substance or object is certain;</p> <p>(b) the substance or object can be used directly without any further processing;</p> <p>(c) further use of the substance or object is an integral part of a production process; and</p> <p>(d) further use is lawful, e.g. the substance or object fulfils all relevant product and environmental requirements for the specific application.</p> <p>2. The Commission may, on the basis of the conditions laid down in paragraph 1, in accordance with the procedure referred to in Article 36(2), adopt guidelines specifying the circumstances to be met in order for a specific substance or object to be regarded as a by-product and not as a waste.</p>	<p>1. For a substance or object, resulting from a production process, the primary aim of which is not the production of that item, and which the holder does not wish to discard but wishes to use or sell for use, to qualify as a by-product and not as a waste, the following conditions shall be met:</p> <p>(a) further use of the substance or object is certain;</p> <p>(b) the substance or object can be used directly without any further processing;</p> <p>(c) further use of the substance or object is an integral part of a production process; and</p> <p>(d) further use is lawful, e.g. the substance or object fulfils all relevant product and environmental requirements for the specific application.</p> <p>2. The Commission may, on the basis of the conditions laid down in paragraph 1, in accordance with the procedure referred to in Article 36(2), adopt guidelines specifying the circumstances to be met in order for a specific substance or object to be regarded as a by-product and not as a waste.</p>

JUSTIFICATION: Generally DK wishes to safeguard the current waste definition – and to maintain a broad application of the definition in accordance with the jurisprudence of the ECJ. DK favours addressing the issue of by-products in a guideline and not in the directive. Implicit changes to the definition of waste by new definitions on e.g. by-products will not bring more clarification. On the contrary, the quite detailed jurisprudence of the ECJ (and national Courts) will lose its validity.

As regards the criteria proposed by the Presidency, DK believes that we should ensure application of a precautionary approach and proper safeguarding of the environment. Further we believe that a wording should take full account of the current court cases from the ECJ. To do so the following elements are missing:

- a) the holder, undertaking etc. does not discard nor intends to or is required to discard the subject or object within the meaning of Article 3 (a) but intends to exploit or market on terms which are advantageous to it (see para. 34 and 37 of C-9/00).
- b) the further use must be certain and foreseeable in the short term (see para. 38 of C-9/00)
- c) the use is complete (see para. 40 and 41 of C-114/01)
- d) is subject to product legislation (see para. 35 of C-235/02)
- e) the further use is saving resources from an overall perspective (see para. 43 of C-235/02)

A wording reflecting the full jurisprudence of the ECJ could read like this:

1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may qualify as a by-product and not as a waste if the following conditions are met:

(x) the holder, undertaking etc. does not discard nor intends to or is required to discard the subject or object within the meaning of Article 3 (a) but intends to exploit or market on terms which are advantageous to it;

(a) further use of the substance or object is certain and foreseeable in the short term;

(x) the use is complete;

(b) the substance or object can be used directly without any further processing;

(c) further use of the substance or object is an integral part of a production process; ~~and~~

(d) further use is lawful and subjected to product legislation, e.g. the substance or object fulfils all relevant product and environmental requirements for the specific application and

(x) the further use is saving resources from an overall perspective.

2. The Commission may, on the basis of the conditions laid down in paragraph 1, in accordance with the procedure referred to in Article 36(2), adopt guidelines specifying the circumstances to be met in order for a specific substance or object to be regarded as a by-product and not as a waste.

Article 3 b
Distinction between recovery and disposal

Presidency text (31 Oct. 2006)	DK proposal
<p>1. The distinction between recovery and disposal referred to in Article 3 paragraphs (j) and (m) shall be based on the principal objective of the operation, the ecological suitability of the type of waste, the hazard minimization and the type of treatment plant.</p> <p>2. The Commission may, in accordance with the procedure referred to in Article 36(2) and taking into account the criteria set out in paragraph 1 adopt guidelines for the interpretation of the definitions of recovery and disposal.</p>	<p>1. The distinction between recovery and disposal referred to in Article 3 paragraphs (j) and (m) shall be based on the principal objective of the operation, the ecological suitability of the type of waste, the hazard minimization and the type of treatment plant.</p> <p>2. The Commission may, in accordance with the procedure referred to in Article 36(2) and taking into account the criteria set out in paragraph 1 adopt guidelines for the interpretation of the definitions of recovery and disposal.</p> <p><u>2. A list of examples of recovery and disposal operations shall be established by means of an individual Regulation/Directive and shall include efficiency criteria appropriate.</u></p>

JUSTIFICATION:

DK is concerned that the separation of the definition in Article 3 b and the criteria presented in this Article is legally uncertain. It is not at all clear if the criteria apply to the definition of recovery generally or if it only applies on cases where the distinction based on substitution causes problems. To avoid this uncertainty, we therefore strongly recommend to add the criteria to the definition explicitly. As mentioned in relation to Article 3(j) DK considers that the proposed definition of recovery, with emphasis on resource substitution, is too narrow and proposes three additional criteria: genuine purpose, efficiency criteria and environmental impact. Further the criteria propose by the Presidency are unclear; and therefore difficult to apply.

Regarding paragraph 2, DK does not find it appropriate to establish guidelines for the distinction between recovery and disposal. DK is of the opinion that the classification as recovery or disposal is one of the cornerstones of waste policy and it has huge economic and regulatory implications. DK therefore considers that further criteria shall be subject to political scrutiny. DK therefore proposes an obligation to establish examples of recovery and disposal operations and including efficiency criteria, in a separate legal act (preferably a Regulation) – as opposed to annexes to this Directive and a new guideline. The establishment of a separate legal act would first of all ensure political scrutiny. Secondly such a procedural de-coupling from this directive would ensure the necessary flexibility and dynamic in terms of establishment and further development.

Article 3 c
Secondary products materials and substances (EOW)

Presidency text (31 Oct. 2006)	DK proposal
<p>1. For a waste to cease being a waste, it must have undergone a complete non-interim recovery operation. In addition, the following conditions shall be met:</p> <p>(a) the resulting secondary product material or substance is commonly used for the specific purpose and a market exists for such a secondary product material or substance;</p> <p>(b) the secondary product material or substance is technically feasible for the specific purpose;</p> <p>(c) the use of the secondary product material or substance would not lead to overall negative environmental or health impacts; in particular, the secondary product material or substance must not have a significantly higher content of pollutants than the comparable primary products, materials or substances; and</p> <p>(d) the secondary product material or substance can be directly used.</p> <p>2. The Commission may, on the basis of the conditions laid down in paragraph 1, in accordance with the procedure referred to in Article 36(2), adopt measures in respect of a specific product, material or substance category of waste, specifying the scope of application and the environmental and quality criteria, including limit values for pollutants where necessary, to be met in order for that waste to be reclassified as a secondary product material or substance.</p>	<p>1. For a waste to cease being a waste, it must have undergone a complete non-interim recovery operation. In addition, the following conditions shall be met:</p> <p>(a) the resulting secondary product material or substance is commonly used for the specific purpose and a market exists for such a secondary product material or substance;</p> <p>(b) the secondary product material or substance is technically feasible for the specific purpose;</p> <p>(c) the use of the secondary product material or substance would not lead to overall negative environmental or health impacts; in particular, the secondary product material or substance must not have a significantly higher content of pollutants than the comparable primary products, materials or substances; and</p> <p>(d) the secondary product material or substance can be directly used.</p> <p>2. The Commission may, on the basis of the conditions laid down in paragraph 1, in accordance with the procedure referred to in Article 36(2), adopt measures in respect of a specific product, material or substance category of waste, specifying the scope of application and the environmental and quality criteria, including limit values for pollutants where necessary, to be met in order for that waste to be reclassified as a secondary product material or substance.</p>

JUSTIFICATION: In general, Denmark considers that the exercise of determining when a waste ceases to be a waste is equivalent to determining the waste definition itself. Denmark further considers that the waste definition is one of the key elements of this directive and waste legislation and policy in general. Denmark therefore considers that such legislation/regulation cannot and should not be developed under comitology. Therefore, Denmark does not support the Presidency's proposal to Article 3 c.

Article 7 a
Waste hierarchy

Presidency text (31 Oct. 2006)	DK proposal
<p>1. The following waste hierarchy shall apply as a general rule in waste management and for legislative measures:</p> <p>(a) prevention;</p> <p>(b) reuse;</p> <p>(c) recycling;</p> <p>(d) other recovery, e.g. energy recovery; and</p> <p>(e) disposal.</p> <p>2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the option that deliver the best overall environmental outcome.</p> <p>Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, conservation of resources as well as the overall environmental, economic, and social impacts, without endangering human health, in accordance with Articles 1 and 7.</p>	<p>1. The following waste hierarchy shall apply as a general rule in waste management and for legislative measures:</p> <p>(a) prevention;</p> <p>(b) reuse;</p> <p>(c) recycling;</p> <p>(d) other recovery, e.g. energy recovery; and</p> <p>(e) disposal.</p> <p>2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the option that deliver the best overall environmental outcome.</p> <p>Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, conservation of resources as well as the overall environmental, economic, and social impacts, without endangering human health, in accordance with Articles 1 and 7.</p> <p><u>2. When life cycle assessment and cost benefit analyses indicate clearly that an alternative treatment option shows a better record for a specific waste stream, Member States may depart from the priorities established in paragraph 7a, paragraph 1. If necessary, the Commission will draw up guidelines for the application of such assessment and analyses.</u></p>

JUSTIFICATION:

DK supports the wording of the waste hierarchy. We still think that the wording “(d) other recovery, e.g. energy recovery” is incorrect, since some of the operations with energy recovery can be classified as a disposal operation depending of the energy efficiency in the future. Therefore, DK suggests the last part of the sentence to be deleted.

Regarding paragraph 2, second subsection, Denmark does not support the Presidency’s proposal of wording. Alternatively we propose a wording presented by Caroline Jackson.

Article 10
Principles of self-sufficiency and proximity

Presidency text (31 Oct. 2006)	DK proposal
<p>1. The Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste subject to Article 3(5) of Regulation (EC) No 1013/2006, taking into account of best available techniques.</p> <p>2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in recovery of mixed municipal waste, and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.</p> <p>3. The network shall enable waste to be disposed of or mixed municipal waste to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.</p>	<p>1. The Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations, <u>waste incineration facilities</u> and of installations for the recovery of mixed municipal waste subject to Article 3(5) of Regulation (EC) No 1013/2006, taking into account of best available techniques.</p> <p>2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal, <u>waste incineration</u> as well as in recovery of mixed municipal waste, and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste. <u>To allow for adequate national planning of treatment capacity, Member States may apply and invoke the principle of proximity and self-sufficiency in relation to waste destined for incineration with energy recovery.</u></p> <p>3. The network shall enable waste to be disposed of, <u>incinerated</u> or mixed municipal waste to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.</p> <p><u>4. Member States may introduce the relevant instruments, including economic instruments, in order to apply the principles of proximity and self-sufficiency.</u></p>

JUSTIFICATION: To avoid a situation where we cannot ensure the necessary incineration capacity in order to accommodate the incineration need for domestically produced waste, DK wishes to either:

- 1) Classify such operations as disposal operations in accordance with the principles of the jurisprudence of the EJC (C-485/00 – Luxembourg and C-228/00 - Germany)

or

- 2) Invoke the principles of proximity and self-sufficiency in relation to waste destined for incineration with energy recovery in dedicated facilities. Together with Article 12 of the Waste Shipment Regulation, this will allow Member States to object to imports of waste for incineration at dedicated facilities if it jeopardises the possibility of incineration of nationally produced waste. Member States may introduce the relevant instruments, including economic instruments, in order to apply the principles of proximity and self-sufficiency.

In this context, DK welcomes the Presidency's proposal of wording of R1 in Annex II.

Article 16
Mixing ban of hazardous wastes

Presidency text (31 Oct. 2006)	DK proposal
<p>1. Member States shall take the necessary measures to ensure that hazardous waste is not mixed, either with other hazardous waste possessing different properties or with other waste, substances or materials.</p> <p>2. By way of derogation from paragraph 1, Member States may allow mixing provided that:</p> <p>(a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit or has been registered in accordance with Articles 19, 20 or 25;</p> <p>(b) the conditions laid down in Article 7 are complied with;</p> <p>(c) the negative impact of the waste management on the environment is not increased; and</p> <p>(d) such an operation conforms to best available technique.</p> <p>3. Subject to technical and economical feasibility criteria to be determined by the Member States, where hazardous waste has been mixed, in a manner contrary to paragraph 1, with other hazardous waste possessing different properties or with other wastes, substances or materials, separation shall be effected where possible and necessary in order to comply with Article 7.</p>	<p>1. Member States shall take the necessary measures to ensure that hazardous waste is not mixed, either with other hazardous waste possessing different properties or with other waste, substances or materials.</p> <p>2. By way of derogation from paragraph 1, Member States may allow mixing provided that:</p> <p>(a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit or has been registered in accordance with Articles 19, 20 or 25;</p> <p>(b) the conditions laid down in Article 7 are complied with;</p> <p>(c) the negative impact of the waste management on the environment is not increased; and</p> <p>(d) such an operation conforms to best available technique;</p> <p><u>(e) safety during recovery and disposal is ensured.</u></p> <p>3. Subject to technical and economical feasibility criteria to be determined by the Member States, where hazardous waste has been mixed, in a manner contrary to paragraph 1, with other hazardous waste possessing different properties or with other wastes, substances or materials, separation shall be effected where possible and necessary in order to comply with Article 7.</p>

JUSTIFICATION:

DK welcomes very much the Presidency text, which we believe is a huge improvement. However two important elements are still missing namely 1) the ban on mixing of hazardous waste with the same properties and 2) the current reference to safety during treatment.

The current regime bans any mixing of hazardous waste with other hazardous waste or with other waste, substance or material. This regime should be maintained. Further it is only allowed by way of derogation if certain conditions are met and in particular if the security during recovery and disposal is improved, see Article 2(2) of the Hazardous Waste Directive. DK believes that this reference should be maintained too.

Article 18

Waste oils

Presidency text (31 Oct. 2006)	DK proposal
<p>1. Without prejudice to the obligations related to the management of hazardous waste laid down in Articles 16 and 17, Member States shall ensure that waste oils are collected separately in a way that facilitates the intended treatment, where this is technically feasible. Member States shall ensure that waste oils are treated in accordance with general environmental conditions and the waste hierarchy referred to in Articles 7 and 7a.</p>	<p>1. Without prejudice to the obligations related to the management of hazardous waste laid down in Articles 16 and 17, Member States shall ensure that waste oils are collected separately in a way that facilitates the intended treatment, where this is technically feasible. Member States shall ensure that waste oils are treated in accordance with general environmental conditions and the waste hierarchy referred to in Articles 7 and 7a.</p>
<p>2. In order to guarantee adequate collection and proper treatment of waste oils, Member State may apply producer responsibility, economic instruments or set up voluntary agreements with the producers.</p>	<p><u>2. It is prohibited to incinerate waste oils that have been collected separately for the purpose of regeneration, unless they cannot be regenerated in accordance with article 7.</u></p>
	<p><u>3. “Regeneration” means any process whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, oxidation products and additives contained in such oils.</u></p>
	<p>42. In order to guarantee adequate collection and proper treatment of waste oils, Member State may apply producer responsibility, economic instruments or set up voluntary agreements with the producers.</p>

JUSTIFICATION: DK proposes in a new paragraph 2 that it shall be prohibited to incinerate waste oils that have been collected separately specifically with the purpose of regeneration. If a Member State based on technical, economic and organisational assessments has decided to require regeneration of waste oils, it must be possible for the Member State to prohibit export of these waste oils for incineration. This amendment is necessary if regeneration is not a requirement in all Member States/this Directive.

Article 26
Waste management plans

Presidency text (31 Oct. 2006)	DK proposal
<p>1. Member States shall ensure that their competent authorities establish, in accordance with Articles 7, 7 a and 10, one or more waste management plans.</p> <p>Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.</p> <p>2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve waste prevention and environmentally sound re-use, recycling, recovery and disposal of waste.</p> <p>3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, the following:</p> <p>(a) the type, quantity and origin of waste generated, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;</p> <p>(b) existing waste collection schemes and major disposal and recovery installations including any special arrangements for waste oils, hazardous wastes or waste streams addressed by specific Community legislation; an assessment of the need for new collection schemes, additional waste treatment infrastructure and the investments related there to shall be included, if necessary;</p> <p>(c) general waste management policies, including planned waste management technologies and methods or other waste posing specific management problems;</p> <p>(d) organisational aspects related to waste management including allocation of responsibilities between public and private actors carried out the waste management;</p>	<p>1. Member States shall ensure that their competent authorities establish, in accordance with Articles 7, 7 a and 10, one or more waste management plans.</p> <p>Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.</p> <p>2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve waste prevention and environmentally sound re-use, recycling, recovery and disposal of waste.</p> <p>3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, the following:</p> <p>(a) the type, quantity and origin of waste generated, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;</p> <p>(b) existing waste collection schemes and major disposal and recovery installations including any special arrangements for waste oils, hazardous wastes or waste streams addressed by specific Community legislation; an assessment of the need for new collection schemes, additional waste treatment infrastructure and the investments related there to shall be included, if necessary;</p> <p>(c) general waste management policies, including planned waste management technologies and methods or other waste posing specific management problems;</p> <p>(d) organisational aspects related to waste management including allocation of responsibilities between public and private actors carried out the waste management;</p>

<p>(e) possible application of the principles of proximity and self-sufficiency for the network of waste treatment installations, covered by Article 10;</p> <p>(f) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;</p> <p>(g) an evaluation how the plan will support the implementation aims and provisions of this Directive.</p> <p>4. Waste management plans shall be in accordance with the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.</p>	<p>(e) possible application of the principles of proximity and self-sufficiency for the network of waste treatment installations, covered by Article 10;</p> <p>(f) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;</p> <p>(g) an evaluation how the plan will support the implementation aims and provisions of this Directive.</p> <p>4. Waste management plans shall be in accordance with the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.</p> <p><u>5. Member States may take the measures necessary to prevent shipment of waste which are not in accordance with their waste management plans. They shall inform the Commission and the other Member States of any such measures</u></p>
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JUSTIFICATION: DK supports the Presidency's amendment in paragraph 3 (a) concerning "an evaluation of the development of waste streams in the future". This is the basic idea of planning. DK is proposing to re-introduce the text of the current Article 7(3) that establish that Member States may take measures to prevent shipments of waste that does not comply with their waste management plans and that Member States are obliged to inform the Commission and other Member States of such possible measures.

Article 26 a
Waste prevention programmes

Presidency text (31 Oct. 2006)	DK proposal
<p>1. Member States shall establish, in accordance with Articles 1 and 7a, waste prevention programmes not later than [<i>three years after the entry into force of this Directive</i>]. Such programmes shall either be integrated into the waste management plans provided for in Article 26, or in to other environmental policy programmes, as appropriate, or shall function as separate programmes. If such a programme is integrated in to the waste management plan or in to other programmes, the waste prevention measures shall be clearly identified.</p> <p>2. The programmes provided for in paragraph 1 shall set out waste prevention objectives. Member States shall evaluate the usefulness of measures indicated in Annex IV or other appropriate measures.</p> <p>Such objectives and measures shall be aimed to break the link between economic growth and the environmental impacts associated with the generation of waste.</p> <p>3. Member States shall determine specific qualitative or quantitative targets or indicators for waste prevention measures adopted in order to monitor and assess the progress of the measures.</p> <p>4. The Commission may, in accordance with the procedure referred to in Article 36(2), adopt indicators for waste prevention measures.</p>	<p>1. Member States shall establish, in accordance with Articles 1 and 7a, waste prevention programmes not later than [<i>three years after the entry into force of this Directive</i>]. Such programmes shall either be integrated into the waste management plans provided for in Article 26, or in to other environmental policy programmes, as appropriate, or shall function as separate programmes. If such a programme is integrated in to the waste management plan or in to other programmes, the waste prevention measures shall be clearly identified.</p> <p>2. The programmes provided for in paragraph 1 shall set out waste prevention objectives. Member States shall evaluate the usefulness of measures indicated in Annex IV or other appropriate measures.</p> <p>Such objectives and measures shall be aimed to break the link between economic growth and the environmental impacts associated with the generation of waste.</p> <p>3. Member States shall determine specific qualitative or quantitative targets or indicators for waste prevention measures adopted in order to monitor and assess the progress of the measures.</p> <p>4. <u>With a view to supporting the national determination of indicators in Member States as prescribed above, the Commission may shall, in accordance with the procedure referred to in Article 36(2) and at the latest 2 years after the entry into force of this Directive, adopt a list of indicators for waste prevention measures in Annex IV a that shall be used by Member States to monitor and assess the progress of national measures.</u></p>

JUSTIFICATION:

DK considers that the establishment of EU indicators is a key factor in the development of an EU waste prevention policy. It is considered that national indicators – and national waste prevention policies - is an important step in the right direction. However, it is also considered that the Commission should play an active role in supporting national policy development. It is therefore proposed that the Commission – in parallel to national efforts – shall work on indicators. A new Annex IV a is established for that purpose. The monitoring and assessment of progress according to an agreed methodology will enable the further elaboration of prevention policies at Community level.

Article 34
Reporting and reviewing

Presidency text (31 Oct. 2006)	DK proposal
<p>1. At intervals of three years Member States shall inform the Commission of the implementation of this Directive, in the form of a sectoral report. This report shall also contain information concerning the management of waste oil.</p> <p>The report shall be drawn up on the basis of a questionnaire or outline established by the Commission in accordance with the procedure referred to in Article 6 of Directive 91/692/EEC. The report shall be made to the Commission within nine months of the end of the three year period covered by it.</p> <p>2. The Commission shall send the questionnaire or outline to the Member States six months before the start of the period covered by the report.</p> <p>3. The Commission shall publish a Community report on the implementation of this Directive within nine months of receiving the reports from the Member States in accordance with paragraph 1.</p> <p>4. In the first report that intervenes [five] years after the entry into force of this Directive the Commission will review the implementation of the Directive and will present a proposal for revision if appropriate. It will assess the existing Member State waste prevention targets and indicators and will review the opportunity of Community level targets and indicators.</p>	<p>1. At intervals of three years Member States shall inform the Commission of the implementation of this Directive, in the form of a sectoral report. This report shall also contain information concerning the management of waste oil.</p> <p>The report shall be drawn up on the basis of a <u>electronic</u> questionnaire or outline established by the Commission in accordance with the procedure referred to in Article 6 of Directive 91/692/EEC. The report shall be made to the Commission within nine months of the end of the three year period covered by it.</p> <p><u>The report drawn up by the Member States pursuant to this article shall be submitted to the Commission in an electronic version.</u></p> <p>2. The Commission shall send the questionnaire or outline to the Member States six months before the start of the period covered by the report.</p> <p>3. The Commission shall publish a Community report on the implementation of this Directive within nine months of receiving the reports from the Member States in accordance with paragraph 1.</p> <p>4. In the first report that intervenes [five] years after the entry into force of this Directive the Commission will review the implementation of the Directive and will present a proposal for revision if appropriate. It will assess the existing Member State waste prevention targets and indicators and will review the opportunity of Community level targets and indicators.</p>

JUSTIFICATION: DK thinks that it must be clarified in the article that the reports drawn up by Member States are to be submitted electronically and that the questionnaire is to be created as an electronic questionnaire as well. This will minimise the workload of this task and facilitate the possible further extraction of data.

Article 35
Adaptation to technical progress

Presidency text (31 Oct. 2006)	DK proposal
The Commission shall, in accordance with the procedure referred to in Article 36(2), adopt the amendments necessary for adapting the Annexes to scientific and technical progress.	The Commission shall, in accordance with the procedure referred to in Article 36(2), adopt the amendments necessary for adapting the Annexes III, IV and IV a to scientific and technical progress.

JUSTIFICATION: Annexes I and II of this directive play an important role for the future scope of waste legislation. As pointed out in relation to Articles 3 b, DK is against a guideline developed in comitology in relation to these elements of the Directive and advocate a separate legal act (preferably a Regulation). It is thus generally important to recognise that adapting Annexes I and II of this Directive, to scientific and technical progress, requires a political and not only a technical debate.

Article 36
The Committee

Presidency text (31 Oct. 2006)	DK proposal
1. The Commission shall be assisted by a committee, hereinafter "the Committee".	1. The Commission shall be assisted by a committee, hereinafter "the Committee".
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.	2. Where reference is made to this paragraph, <u>Articles x and x of Decision 2006/512/EC</u> shall apply, having regard to the provisions of Article <u>x thereof</u> .
The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.	The period laid down in Article <u>x of Decision 2006/512/EC</u> shall be set at x months.
3. The Committee shall adopt its rules of procedure.	3. The Committee shall adopt its rules of procedure.

JUSTIFICATION:
The Article needs to reflect Decision 2006/512.

Updated Swedish comments on the waste framework directive

Article 2, Scope

<p>2. This Directive shall not cover:</p> <p>c) faecal matter, straw and other natural non-hazardous agricultural or forestry [...] <u>material that are used in farming, forestry or for the production of energy from biomass through using processes or methods which do not harm the environment or endanger human health</u></p>	<p>2. This Directive shall not cover:</p> <p>(New) carbon dioxide separated from energy generation or other processes with the intention of permanent storage in deep geological formations as a part of a CCS (Carbon Capture and Storage) system.</p> <p>c) faecal matter, straw and other natural non hazardous material of biological origin, generated in agriculture, animal husbandry, forestry or industries processing products from agriculture or forestry, that are foreseen to be used as a fertilizer, a soil improver, as raw material in industry or for production of energy from such material through using processes or methods which do not harm the environment or endanger human health.</p> <p><i>SE open to improve and if possible shorten the above text.</i></p>
<p>(d) the following categories of waste to the extent that they are already covered by other Community legislation:</p> <p><u>(ia) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, in accordance with Regulation (EC) No 1774/2002;</u></p>	<p>(d) the following categories of waste to the extent that they are already covered by other Community legislation:</p> <p>(ia) to be deleted, already covered by (ii), or could be merged with (ii) for better clarity. The intention is not clear.</p> <p>(new)By-products according to article 3 a</p>

Article 3, definitions

<p><u>(j)(ca) biowaste</u></p> <p><u>(j) recovery" means any operation listed in Annex II as well as any other operation provided that it results in waste serving a useful purpose in replacing, whether in the plant or in the wider economy, other materials which would have been used to fulfil that function, or in it being prepared for such a use;</u></p> <p>(k) preparing for re-use.</p>	<p>(ca) “Biowaste” if the intention is biological treatment, SE considers the definition must be a narrow definition as proposed in 15882/06 not including paper and cardboard as suggested..... (see further comments under art18 a)</p> <p>3 (j)_recovery’ means any operation listed in Annex II as well as any other operation provided that it results in waste serving a useful purpose in replacing, both from a functional and environmental perspective, whether in the plant or in the wider economy, other materials which would have been used to fulfil that function, or in it being prepared for such a use;</p> <p>(k) preparing for re-use.</p>
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Article 3 a, Distinction between waste and by-products

SE considers the presidency proposal not sufficient SE considers the distinction between waste and by-products shall be clear without overlapping between with the waste definition. Such distinction shall not either lower the environmental protection.

SE is open to discuss different solutions on this matter but SE sees difficulties to come up with an article that both is clear about the scope and promote the use of by-products and at the same time have a high environmental protection. An example could instead be to include a list of by-products that could be excluded from the directive.

Article 3 c, End of waste

<p>1.:</p> <p>(a) the resulting secondary product material or substance is commonly used for the specific purpose and a market exists for such a secondary product material or substance;</p> <p>(b) the secondary product material or substance is technically feasible for the specific purpose <u>and meets the applicable environmental and quality requirements</u></p> <p>(d) the secondary product material or substance can be directly used.</p>	<p>1.</p> <p>(a) the resulting secondary product material or substance is commonly used for the specific purpose and a market or demand exists for such a secondary product material or substance;</p> <p>(b) the secondary product material or substance is technically feasible for the specific purpose <u>and meets the applicable environmental and quality requirements</u></p> <p>(d) –</p>
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Article 7, General environmental conditions

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health and without harming the environment, and in particular:	Member States shall take the necessary measures to ensure that waste management is carried out ensuring a high level of protection for human health and the environment... ".
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Article 7 a, Waste hierarchy

Sweden prefers the Presidency proposal in 14750/06.

Article 18, Waste oils

SE prefers the presidency proposal in 14750/06 but can accept the presidency proposal in 15882/06.

Article 18a, Bio-waste

According to our understanding the purpose of this article was to encourage biological treatment and the use of high quality products from biological treatment. SE is positive to encourage biological treatment if a narrow and precise definition of biowaste, as the presidency proposal in 15882/06, also is linked. SE believes the "bio-waste" must clearly be separated by an explicit definition from other wastes of biological matter.

SE prefers to use incineration with energy recovery for wastes that can not be source separated or are of such quality that it can not be utilized in farming. SE can not accept to lay down requirements for biological treatment for such material. It is therefore important for SE that the definition of bio-waste is a narrow definition to facilitate biological treatment of source separated waste with high quality.

However, if the purpose of this article would be to encourage separate collection of certain flows of material SE could also be open to such proposals but would then require amendments in the article and definition to further clarify such interpretation. SE considers the definition of bio-waste is linked to the purpose the article.

Article 22, Exemptions from permit requirements

SE suggests including the following:

1 -	1 c) establishment or undertakings with negligible environmental impact that carry out waste disposal.
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Article 26, waste management plans

<p>2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve [...] environmentally sound <u>preparing for</u> re-use, recycling, recovery and disposal of waste.</p> <p>3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, the following:</p>	<p>2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve [...]environmentally sound preparing for re-use, recycling, recovery and disposal of waste.</p> <p>3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:</p>
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Article 35 a, Implementation measures

SE is not in favour to adopt guidelines within the comitology process, SE would like to lay down measures.

SE considers the EOW criteria **shall** be developed.

Annex I

-	Chapeau with a statement about that D7 and D11 is forbidden within EU
D 4 Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons, etc.)	D 4 To be deleted

Annex II

SE cannot accept the presidency proposal to delete the formula in R1.

Annex IV

<p>1. The use of planning measures, or other economic instruments affecting the availability and price of primary resources.</p> <p>11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.</p> <p>16. The promotion of the reuse and/or repair of appropriate discarded products, notably through the establishment or support of repair/reuse networks.</p>	<p>1. The use of planning measures, or other economic instruments affecting the availability and price of primary resources. The use of economic instrument, when they are cost effective, have proven to be and should be effective in achieving waste prevention and management objectives</p> <p>11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers or element of packaging that would otherwise be provided free of charge.</p> <p>16. The promotion of the reuse and/or repair of appropriate discarded products.</p>
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Comments from the UK

Chapter I

Subject matter, scope and definitions

Article 1 *Subject matter*

This Directive lays down measures to protect the environment and human health by preventing or reducing as far as possible the adverse [...] impacts of the generation and management of waste, and by contributing to the reduction of the overall impacts of resource use and to the improvement of the efficiency of such use [...].

Article 2 *Scope*

1. This Directive shall apply to the prevention, generation and management of waste. [...]

The UK considers this provision is unnecessary (subject matter is the correct place to explain what is covered by the Directive) and introduces an element of uncertainty. It does not refer to everything covered by individual Articles and may suggest, therefore, that it limits the scope of the proposal. As with Article 1, there is no reference to “the abandonment or uncontrolled disposal of waste” of Article 9. Rather confusingly this Article refers to prevention whereas Article 1 does not. The UK suggests this provision is omitted and that Article 1 simply refers to the “adverse impact of waste”.

2. The following shall be excluded from the scope of this Directive:

The UK considers that a clear distinction is needed between exclusions which are conditional on the existence of other legislation and those which are not. The former are needed for waste streams whose special characteristics mean a different regulatory regime is more suitable. The latter are more declaratory in nature – to make clear that the substances concerned should not be regarded as waste at all.

- (a) gaseous effluents emitted into the atmosphere;

(b) unexcavated contaminated soil [...];

Moveable Property/Unexcavated Soil

The Presidency suggests a recital stating "Effective and consistent rules on waste treatment should be applied, subject to certain exemptions, to movable property which the holder discards or intends or is required to discard." in addition to an exclusion for unexcavated contaminated soil.

The UK considers that the provision of both a recital and an exclusion for unexcavated contaminated soil would imply that the recital does not restrict the scope of the Directive to moveable property.

The UK's view is that land should not be regarded as waste (so it falls within the second category outlined above and should be subject to a simple exclusion). The WFD regime is not adapted to management of land. If it were to be included, the legislative scheme would need to cover issues such as land use, regeneration and remediation of land. We would ask how notions such as "discard", "storage" "collection" and "prevention" are intended to apply to land?

A narrow exclusion for particular types will imply that everything not included is covered by the WFD whenever it is "discarded". In the UK's view, the exclusion proposed by the Presidency in article 2(2)(b) is not sufficient.

Some Member States have suggested that "moveable property" is too unclear a term. The UK's concern is the opposite – that the existing state of the law is too unclear. ECJ case law adopts a wide interpretation of the discard test (which does not depend on contamination). It is clear that the waste regime is not adapted to immovable property. For example, should buildings which have been derelict for more than 3 years be regarded as landfills? Following an event like the collapse of a mining tailings pond, should soil be regulated differently to other types of land contaminated by the event?

The UK has previously suggested a recital to clarify the notion of moveable property. If it is felt an alternative phrase is needed, we would suggest an inclusive definition e.g. "This directive does not apply to land. 'Land' for these purposes includes buildings but excludes waste deposited on or in land."

(ba) radioactive waste;

Radioactive waste

This exclusion is for a waste stream that exhibits special characteristics. The exclusion should therefore be dependent on the existence of other legislation. The UK therefore disagrees with the proposal for a simple exclusion in the Presidency proposal (which takes us back to the 1975 version of the Directive).

The Presidency has explained that this waste stream is listed here because Community legislation is not in place to cover all the aspects necessary. This is exactly the UK's point in relation to the exclusion and why we say it should be based on the existence of "other legislation".

(Bb) decommissioned explosives;

Decommissioned explosives

This exclusion is for a waste stream that exhibits special characteristics. The exclusion should therefore be dependent on the existence of other legislation. The UK therefore disagrees with the proposal for a simple exclusion in the Presidency proposal (which indeed takes us back to the 1975 version of the Directive). The exclusion should be based on the existence of “other legislation” for the reason stated above.

(c) faecal matter, straw and other natural non-hazardous agricultural or forestry [...] material that are used in farming, forestry or for the production of energy from biomass through using processes or methods which do not harm the environment or endanger human health;

Faecal matter, straw and forestry matter

This concerns materials that it seems are quite properly regarded as not being waste where they are used in certain ways. This exclusion is in the nature of a clarification. However, the UK considers that the Presidency proposal for is not sufficiently clear. We have submitted alternative wording but will come back with another proposal to clarify this.

(d) The following categories of waste to the extent that they are already covered by other Community legislation as follows:

For this category of excluded waste streams, the legislation would be clearer if the wording in Article 2(1) of the current WFD were to be retained. The ECJ has developed a clear interpretation which it has applied in a number of cases and which ensures protection for the environment and human health. Community legislation does not cover all of the categories of waste that should be excluded. Article 2(2) (d) needs therefore to retain the existing reference to “other legislation”. The alternative it seems is a straight exclusion for waste streams where Community legislation does not provide adequate coverage. We consider that is a less desirable solution.

- (I) waste waters and waste in liquid form, [...] covered by Directives 2000/60/EC, 2006/xxx/EC* and 91/271/EEC;

Waste water and waste in liquid form

This is a waste stream the exclusion of which is dependent on the existence of other legislation.

The Presidency text broadens the existing exclusion by applying it to waste in liquid form. This would for instance enable the re-injection of imported liquid waste in mining operations where authorised under water pollution legislation. This may otherwise be prohibited under the Landfill Directive. The UK is not sure of the intention behind the extension of this exclusion.

The text also narrows the exclusion. There is no longer any potential exclusion for sewage sludge used in agriculture in accordance with Directive 86/278/EEC (the recitals to that Directive make clear the waste is excluded from the WFD). The UK's view is that the only applicable exclusion for this waste stream is waste waters (sewage sludge is faecal matter but it is not agricultural waste). The exclusions in Article 2 are to be interpreted as applying to material which derives from the excluded waste stream so that sewage sludge is included in waste waters. A reference is therefore needed to Directive 86/278/EEC if the Presidency approach of including references to other legislation is followed (the UK considers a better approach would be to require the Commission to maintain an up-to-date list). If no reference is included, this will be interpreted as later legislation intended to remove an earlier exclusion. The result will be both regimes will apply and we do not consider that is consistent with the simplification agenda.

* On groundwater.

- (ii) animal by-products [...] including processed products covered by Regulation (EC) No 1774/2002, except animal by-products which are foreseen for incineration, [...] landfilling or use in a biogas or composting plant;

Animal By-Products

A separate exclusion should clarify that animal by-products which are not considered waste are not within the scope of the Directive. The exclusion should therefore be moved so that it is not dependent on the existence of other legislation. A distinction should be kept in mind between waste being covered by other legislation (which excludes if the legislation meets a legal test) and material being used in accordance with legislation (which is just a matter of whether the material is being used lawfully).

The Presidency text excludes too much – for instance the Animal By-products Regulation permits digestive tract contents to be spread directly to land without the need for any processing but this looks like a waste operation.

Again the wording is unclear. The Animal By-products Regulation requires that material is processed before being landfilled. It is not clear whether the intention is to regard the processing prior to landfill as a waste operation or not. Nor is it clear whether the intention is to regard the outputs from biogas or composting plant as waste or not. Presumably these should be subject to the same criteria as compost under the end-of-waste procedure.

- (ii) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, in accordance with Regulation (EC) No 1774/2002;

Animal Carcasses

The disposal of animal carcasses in the event of disease outbreak clearly involves a waste operation but one which should be subject to special rules. The exclusion should therefore depend on “other legislation” and should be distinguished from the exclusion for animal by-products which are not waste. The purpose of the exclusion is different and it will be interpreted differently.

- (iii) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries [...] covered by Directive 2006/21/EC.

The UK also considers that the existing distinction, between legislation which excludes waste from the WFD regime and legislation which supplements the Directive, should be preserved. This is in accordance with the interpretation of the ECJ expressed in Case C-114/01. The UK therefore supports footnote 9 though we consider it would be helpful to clarify that the scope of such legislation is the same as the WFD. We therefore suggest the addition of the following wording, “Such Directives shall in principle remain subject to the provisions of this Directive, including its scope.”

UK Footnote: The UK sets out alternative text for Article 2 in the Appendix to this paper which deals with the issues for footnoting raised above.

Article 3
Definitions

The UK considers there is still some work to do on the definitions which will become clearer as we progress through the Directive. There are a few issues which we would raise now.

- (g) "collection" means the gathering of waste, [...] including the preliminary sorting and storage of waste [...] for the purposes of transport to a waste treatment facility;

The UK's concern is to ensure that an activity that is properly regarded as incidental to collection should not render that activity subject to a permit requirement as a disposal or recovery operation. Imposing such a requirement would hinder effective collection. For example, a pharmacy may collect used medicines from patients (and may effectively mix different medicines together in doing so) but should not be regarded as a waste transfer operation; or a school may encourage its pupils to bring in recyclable waste for collection.

In such cases, the reality is that any storage is incidental to what is essentially a collection activity conducted before the waste enters waste management proper where it will be handled by professionals. If this is regarded as storage, as the waste will not be produced on site, no permit exemption would be possible under Article 22 of the Presidency's text for disposal operations (or for any operations involving hazardous waste). This would act as a disincentive to activities which are sensible and do not present a significant environmental risk.

- (j) "recovery" means any operation listed in Annex II * as well as any other operation provided that it results in waste serving a useful purpose in replacing, whether in the plant or in the wider economy, other materials which would have been used to fulfil that function, or in it being prepared for such a use;

The UK's concern is that the Presidency's text is too concerned with the debate on municipal waste incineration. Not all recovery operations occur in a plant. In our view, the definition should apply equally well to all recovery operations so we should use the more general wording noted at footnote 13 below.

The definition should retain the basic distinction between disposal and recovery. This has most recently been set out by the ECJ in the following terms:

“41 The essential characteristic of a waste recovery operation, such as is apparent from Article 3(1)(b) of Directive 75/442 and from the fourth recital to that directive, is that its principal objective is that the waste can serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources (see, inter alia, ASA paragraph 69; Case C-458/00 Commission v Luxembourg [2003] ECR I-1553; and Case C-103/02 Commission v Italy [2004] ECR I-9127, paragraph 62).”

* Cf. deletion of Article 3b and new Article 3a(b).

42 That characteristic is extraneous to the consequences which the waste recovery operations as such can have on the environment. As the Advocate General pointed out in paragraphs 54 to 56 of his Opinion, those operations, like those for waste disposal, are capable of having significant effects on the environment. Moreover, Directive 75/442, in Article 4, obliges Member States to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.”

The key therefore is that the principal objective of the operation is to save resources. The definition should therefore include a reference the “principal” objective or result so that recovery operations can be distinguished from disposal operations involving some useful but secondary purpose. This would address the concern raised in Commission’s footnote 21. If the activity only results in resources being saved as a secondary consequence, it will not be recovery and hence will be disposal.

The list in Annex II is not exhaustive and it should be clear that the underlying definition of recovery must be met. The definition should set the principle down and the application of the list should be included in a separate provision.

UK Footnote: The UK proposes for the definition of “recovery” the alternative text which is set out in the Appendix to this paper and requests that our concerns are recorded in a footnote or footnotes to the Presidency’s text.

(k) " preparing for re-use [...]" means any recovery operation by which products or components that have become waste are prepared to be used again for the same purpose for which they were conceived;

The UK supports this definition as it makes the distinction between recovery operations leading to re-use and re-use itself much clearer. We understand some Member States are concerned that this wording is not sufficiently certain. The UK suggests that “components that have become waste are prepared so that they will be used again....” will address this. If the competent authority is not satisfied that there will be eventual re-use, they will not authorise this as preparation for re-use.

(l) "recycling" means any recovery operation in which [...] waste materials are reprocessed into products, materials or substances for the original purpose or for other purposes. It does not include energy recovery;

The UK has two comments on the definition of “recycling”. The first is to note that it does not affect the definition included in specific waste stream Directives (e.g. the Packaging Waste Directive). This means that existing recycling targets are not affected.

The second is to note that its significance, therefore, lies mainly in relation to the question of when waste ceases to be waste. The definition is therefore relevant to the debate on Article 3c. A substance that is subject to a recycling operation must be considered waste (as it still needs to be subject to a recovery operation). Does this mean that the WFD is to be interpreted as regarding all secondary raw materials as waste until they are processed into products? Or is it sufficient that they cease to waste if they are recovered so that they are equivalent to other raw materials which are subject to similar processing in order to turn them into products?

(m) "disposal" means any operation listed in Annex I as well as any other [...] operation which is not recovery;

In the UK's view, the Presidency's definition of "disposal" does not indicate the nature of a disposal operation. For example, is the deposit of waste onto land without a permit a disposal operation carried out contrary to Article 19 or "the abandonment or uncontrolled disposal of waste" contrary to Article 9? In the UK's view, the definition of "disposal" should enable Member States and their competent authorities make a clear distinction between these two types of activity. The difference between the two is that a disposal operation is carried out with the intention of meeting Article 7 objectives. The definition should make that clear.

UK Footnote: The UK proposes for the definition of "disposal" the alternative text which is set out in the Appendix to this paper and requests that this proposed text is recorded in a footnote to the Presidency's text.

Article 3a
[...] By-products

[...] For a substance or object, resulting from a production process, the primary aim of which is not the production of that item [...] to qualify as a by-product and not as a waste as referred to in Article 3(a), the following conditions shall be met:

- (a) further use of the substance or object is certain;
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;
- (c) further use of the substance or object is an integral part of a production process; and
- (d) further use is lawful, e.g. the substance or object fulfils all relevant products₂ [...] environmental and health protection requirements for the specific application.

The UK agrees that it would be helpful to recognise the notion of a “by-product” in the revised WFD.

In the UK’s view, the distinction between a product and a by-product is that the former is intended to be produced whereas the latter, like a production residue, is not intended to be produced. If a competent authority decides that a substance is intentionally produced, it is a product and, in principle, is not waste. If a substance is not intentionally produced, then the competent authority needs to assess whether it is properly regarded as a production residue which is being discarded or a by-product which is to be used. If the competent authority considers a substance to be a by-product the consequence is that it has the same legal status as a product.

In the UK’s view, the issue for consideration in relation to the revised WFD is what to say about how the distinction is to be made between production residues and by-products. In other words, it is about settling the boundary between waste residues and non-waste by-products. There is no overlap with product legislation by referring to by-products in the revised WFD.

Some Member States support the Commission proposal to deal with this issue by means guidelines. The proposed guidelines will be non-binding and will need to reflect ECJ case law. The UK considers that it would be helpful to include something in the revised WFD which sets down principles which the Court should follow. This will limit scope for “surprises” such as the Opinion of the Advocate General in Case C-176/05 which states that meat and bone meal (MBM) sent for incineration is not waste provided the use is considered to be probable or certain –“What is crucial here is whether that use was economically advantageous or whether the meat-and-bone meal would nevertheless have been a burden”. There is no reference in the Advocate General’s Opinion to the suitability of MBM as fuel or to its environmental performance. If the Opinion is followed by the Court, then the guidelines will need to reflect it – though we consider it will be difficult at that point to provide sensible guidelines to distinguish MBM from other waste derived fuels.

The Presidency approach is to set down some conditions which must be satisfied before a substance can be considered a by-product. The UK is concerned that such an approach will disrupt case law and lead to uncertainty - and will not necessarily make it easier to decide what is a by-product. It seems unlikely that it will be possible to encapsulate the case law in an agreed list and it seems inevitable that compromises will be struck and, as a consequence, the law will be changed. (In that event it will be necessary also to revisit existing cases). Indeed, many of the conditions which the Court refers to in individual cases are ignored in subsequent cases – but this will not be possible if the conditions are laid down in the manner proposed. At most the factors identified by the Court should be seen as factors to be taken into account and not as conditions that must be met.

In terms of the conditions proposed by the Presidency, the reference to ‘integral part of the production process’ is not suitable as a condition for by-products. This is because this condition is not always applied by the Court and so should not be laid down as a condition in the revised WFD.

There are other factors which are addressed on by the Presidency text. For example, if a residue is able to be burned as a fuel, its use will be certain but the question is whether the Waste Incineration Directive (2000/76/EC) should apply or not. If it is not waste, it is unlikely that equivalent requirements will apply under any specific product legislation. The Presidency text does not help make this necessary distinction. We suspect for instance that the LUWA bottoms which were the subject of the Arco Chemie case law would pass the conditions laid down by the Presidency text.

The UK proposal is a compromise between these two positions. We seek to retain the existing case law by including a simple definition of a by-product based on the approach in ECJ case law and draft Commission guidelines. We also include a recital which sets down the main principles which should be borne in mind when distinguishing between by-products and residues. This will limit the possibility of divergent decisions from the Court. This could be supplemented by guidelines or by measures subject to a comitology procedure.

UK Footnote: The UK proposes a new Recital and for the proposed Article on “By-Products” the alternative text which is set out in the Appendix to this paper; and requests that this proposed text is recorded in a footnote(s) to the Presidency’s text.

Article 3c
Secondary products materials and substances

[...] Certain specified waste shall cease to be waste as referred to in Article 3(a) when they have undergone a [...] recovery operation and comply with specific criteria to be developed in the framework of Article 35a (c) according to the following conditions [...]:

- (a) the resulting secondary product material or substance is commonly used for the specific purposes and a market exists for such a secondary product material or substance;
- (b) the secondary product material or substance is technically feasible for the specific purpose and meets the applicable environmental and quality requirements;
- (c) the use of the secondary product material or substance would not lead to overall adverse [...] environmental or health impacts; [...] and
- (d) the secondary product material or substance can be directly used.

The UK supports the introduction of a provision to ascertain through comitology the point at which the recovery of specified waste streams is complete and they cease to be waste. But the Presidency text raises some concerns for the UK. For example, the UK considers that in adopting the revised WFD the Council should be clear on the question of whether or not the proposed provision is constrained by the definition of “waste” in the WFD. If it is so constrained then it will not be possible for the comitology procedure to be used to over-rule case law where the ECJ has made the end-of-waste point clear already; and if it is so constrained it will not be possible for the comitology procedure to over-rule ECJ case law on the definition of waste.

In the context of scrap metal packaging waste, the ECJ has determined that:

“Accordingly, Directive 94/62 must be considered to be special legislation (a *lex specialis*) vis-à-vis Directive 75/442, so that its provisions prevail over those of Directive 75/442 in situations which it specifically seeks to regulate.....

, the interpretation of the concept of recycling which results from paragraphs 63 to 69 of this judgment removes any ambiguity as to the point at which packaging waste must be regarded as recycled and thereby makes it possible to discount the risk of a number of processing operations in respect of the same waste each being taken into account as a recycling operation for the purpose of application of the percentages laid down in Article 6(1) of Directive 94/62....”

Furthermore, recycling is not defined in Directive 75/442. Should that term, as envisaged by Directive 75/442, not have the same meaning as the term appearing in Directive 94/62, only the latter term would be applicable to packaging waste. As is clear from paragraphs 53 and 57 of this judgment, even though Directive 75/442 is the framework legislation and is relevant when interpreting and applying Directive 94/62, that does not prevent the provisions of the latter, as special legislation, from prevailing over those of Directive 75/442.”

In light of this, if the intention is move the end of waste point for the purposes of the WFD, will the point at which recycling targets under the Packaging Waste Directive are met be affected or not? If the intent is to do this, the UK considers changes are needed and will come forward with proposals.

UK Footnote: At present, the UK has a reservation over the current wording because it is unclear as to how the provision will work. The UK requests that the need for the Council to be clear on the question of whether or not the proposed provision is constrained by the definition of “waste” in the WFD is recorded in a footnote(s) to the Presidency’s text.

Article 7

General environmental conditions

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health and without harming the environment, and in particular:

- (a) without risk to water, air or soil, or to plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

Case 236/92 Lombardia held that the equivalent provision in the original WFD did not have direct effect - it was to be seen as a framework for the action to be taken by Member States:-

“in setting out the objectives which the Member States must observe in their performance of the more specific obligations imposed on them by other provisions of the directive, merely indicates a programme to be followed. It defines the framework for the action to be taken by the Member States regarding the treatment of waste and does not require, in itself, the adoption of specific measures or a particular method of waste disposal. It is therefore neither unconditional nor sufficiently precise and thus is not capable of conferring rights on which individuals may rely as against the State.”

In the UK's view, therefore, the heading of Article 7 should reflect that this provision sets a general objective. Article 7 is aspirational (i.e. it is not possible to dispose of or recovery waste without any risk). The Court has consistently referred to the Article as an objective to be aimed at. The wording of the Article should reflect that (e.g. paragraph 67 of Case 365/97 San Rocco or Case C-494/01 Ireland). The alternative would be to qualify the wording in some way – but this will lead to disputes over interpretation and accusations that the Directive is being diluted. The UK suggests the alternative text in the Appendix to this paper.

The Court has interpreted the Article in light of Treaty provisions. This may be helpful in any recital used to clarify the intention of Article 7. In cases C-175/98 and 177/98 Lirussi and Bizzaro, the Court was asked whether Article 4 applied to activities taken prior to any disposal and recovery operations (which is when most of the more specific provisions of the Directive kick in). The answer was “yes” and in paragraph 51 of the judgment, the Court explained that:-

“Article 4 of Directive 75/442, adopted on the basis of Article 130s of the EC Treaty, is intended to implement the principles of precaution and preventive action contained in the second sentence of the second paragraph of Article 130r of the Treaty. By virtue of those principles, it is for the Community and the Member States to prevent, reduce and, in so far as is possible, eliminate from the outset, the sources of pollution or nuisance by adopting measures of a nature such as to eliminate recognised risks”.

The UK suggests the text in the Appendix to this paper.

UK Footnote: The alternative text which the UK proposes for Article 7 and a new Recital are set out in the Appendix to this paper; and the UK requests the inclusion of a footnote which refers to these proposals.

*Article 7a
Waste hierarchy*

1. The following waste hierarchy shall apply as a guiding principle in waste prevention and management legislation and policy [...]:
 - (a) prevention;
 - (b) preparing for re-use;
 - (c) recycling;
 - (d) other recovery, e.g. energy recovery; and
 - (e) disposal.

2. [...] When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require for specific waste streams departing from the hierarchy where this is justified by life cycle thinking on the overall impacts of the generation and management of such waste:

Lifecycle thinking is not a very exact methodology and the UK would therefore be concerned at requirements to justify decisions on the basis of such methodology. Competent authorities may be faced with several studies pointing in different directions and this will not contribute to effective decision making. Certainly departures may be justified in terms of lifecycle thinking, but that should not be a pre-condition.

UK Footnote: The UK requests the inclusion of a footnote which records its objection to the effective imposition of an obligation to justify departures from the waste hierarchy on the basis of life cycling thinking.

Article 8
Costs

1. In accordance with the polluter pays principle the costs of waste management must be borne by the waste producer, current waste holder or the previous waste holders.
2. Member States may decide [...] that the costs of waste management must be borne partly or wholly by the producer of the product from which the waste came and that distributors of such products participate in these schemes.

The principle that the costs of pollution should be borne by the person responsible for causing the pollution is one of the key objectives of European environmental policy enshrined in Article 174 of the EC Treaty. The UK therefore agrees that direct reference to that principle should be made in the provision as it is in article 15 of the existing WFD.

In applying this principle, the objective of the WFD should be to remind Member States that they should not subsidise the costs of disposal or recovery in a manner which will distort international trade and investment or prevent the proper allocation of resources. The WFD will not be able, however, to provide for the allocation of costs in every case and the proposal does not seek to do that. Member States will not in any case need to allocate costs – the rules on liability and the market will do so unless Member States take action to intervene in some way e.g. by taxation or subsidies. The focus should be on making sure Member States do not skew the proper allocation in a manner which would go against the public interest.

The Commission proposal omitted any reference to the idea of producer responsibility. The UK agrees with the Presidency that producers should be referred to in this Article but it does not see this as a derogation from the polluter pays principle.

The UK suggests the alternative text in the Appendix to this paper.

UK Footnote: The alternative text which the UK proposes for Article 8 is set out in the Appendix to this paper and the UK requests the inclusion of a footnote which reflects this proposal.

Article 10
Principles of self-sufficiency and proximity

1. The Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste [...] collected from private household, including where such collection also covers such waste from other producers, taking into account of best available techniques.

In the UK's view, the reference to "best available techniques" (BAT) in Article 10(1) is unclear and inconsistent with other provisions of the WFD. Article 10(3) provides guidance as to the methods and technologies used in the installations in which waste is to be treated. Any such installations which are not covered by the IPPC Directive will not be subject to best available techniques and therefore will not be able to be included in the network. The reference to BAT should therefore be removed.

UK Footnote: The UK requests the inclusion of a footnote which records that the imposition of a requirement for an integrated and adequate network of disposal installations etc to take account of BAT is neither legally feasible nor practicable because the only installations which are subject to a requirement for BAT are those subject to control under the IPPC Directive.

Article 18a
Bio-waste

Member States shall take measures, as appropriate, and in accordance with the Articles 7 and 7a, to [...] encourage:

- (a) the separate collection of biowaste;

UK Footnote: The UK requests to be associated with the footnote which records "PL/EL find this difficult to apply".

Article 20
Permits under Directive 96/61/EC

Article 19(1) of this Directive shall not apply in the case of an establishment or undertaking which has obtained a permit for the installation concerned under Directive 96/61/EC provided that the permit covers the requirements of Article 19 [...].

The UK considers the provision made in Article 20 to be unnecessary as it is already open to Member States to put in place one permitting regime that meets the requirements of both the WFD and the IPPC Directive. In the UK's view, there is no requirement for separate permits. The Commission explain that this provision is introduced to deal with problems created by Member States' implementation of the Directives. However, it creates an unhelpful implication that there is a need to disapply double permitting requirements if they are not to apply automatically. The provision may also cause further confusion e.g. is there a need for a separate authorisation to comply with the Groundwater Directive; and do the Waste Incineration Directive and the Landfill Directive create separate permitting requirements? And if an undertaking has an IPPC Directive permit in relation to waste, does it need comply with any obligations in the WFD? What is the position on permit exemptions under the WFD? Should Article 22 refer to the establishments and undertakings which are permitted other than in accordance with article 19(1)? There are many other obligations which apply to establishments and undertakings referred to in article 19 which also would seem not to apply to sites with IPPC Directive permits by virtue of this provision.

One solution would be to introduce into article 19 wording contained in the Mining Waste Directive (Directive 2006/21/EC):-

“Subject to compliance with all requirements under this Article, any permit produced pursuant to other national or Community legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority.”

That said, it would seem to make more sense to clarify this by means of a recital if we are not seeking to change the law. This would make it crystal clear that it is open to Member States to use existing permit regimes to meet the requirement in the other Directives as long as the permit concerned meets the requirements of the WFD.

The UK suggests the alternative text for a Recital in the Appendix to this paper.

UK Footnote: The alternative text which the UK proposes for Recital is set out in the Appendix to this paper and the UK requests the inclusion of a footnote which refers to this proposal as an alternative to Article 20 and, as a consequence, the omission of Article 20.

Article 22
Exemptions from permit requirements

1. Member States may exempt the following from the requirement laid down in Article 19(1):
 - (a) establishments or undertakings carrying out their own waste treatment at the place of production; or
 - (b) establishments or undertakings that carry out waste recovery.

Where an establishment or undertaking carries out both disposal and recovery, it may be exempted only in respect of its recovery operations.

2. In the case of hazardous waste, Member States may allow the exemption under paragraph 1 only of establishments or undertakings that carry out recovery operations.

In the UK's view, the highlighted text that reads, "Where an establishment or undertaking carries out both disposal and recovery, it may be exempted only in respect of its recovery operations" appears to be a drafting error. In our view, there is no reason to limit permit exemptions to recovery in the case of undertakings that carry out both disposal and recovery.

It is true that in the case of hazardous waste, only recovery activities may be exempted under the terms of the current proposal – but that is dealt with in Article 22(2). However, in the UK's view, there is a case for enabling certain low risk disposal operations involving hazardous waste to take place under the terms of a permit exemption registered with the competent authority. A particular example of such an operation is D15 and the storage pending disposal of used hypodermic syringes.

UK Footnote: The UK requests the inclusion of footnotes which (a) record that the words , "Where an establishment or undertaking carries out both disposal and recovery, it may be exempted only in respect of its recovery operations" appear to be a drafting error; and (b) that Article 22(2) is amended to read, "In the case of hazardous waste, Member States may allow the exemption under paragraph 1 only of establishments or undertakings that carry out recovery operations or storage pending disposal."

Article 23
Conditions for exemptions

1. Where a Member State wishes to allow exemptions, as provided for in Article 22, it shall ensure that the competent authorities lay down, in respect of each type of activity, general rules specifying the types and quantities of waste that may be covered by an exemption, and the method of treatment to be used.

Those rules shall be based on best available techniques and shall be designed to ensure that waste is treated in accordance with Article 7.

The UK's view is that permit exemptions are provided by Member States to help Member States fulfil their obligation under Article 3 of the existing WFD to take appropriate measures to encourage the recovery of waste by means of recycling, re-use or reclamation. Our view is that the imposition of a requirement for general rules to be based on BAT would make them more prescriptive and therefore have an adverse impact on recovery/recycling and a disproportionate impact on small and medium-sized enterprises (SMEs) – and would result in unnecessary and undesirable departures from the waste hierarchy as cheap disposal options are preferred. In the UK's view, it is sufficient and proportionate that the general rules adopted by Member States ensure waste is treated in compliance with Article 7 of the WFD.

UK Footnote: The UK footnote here should record that the requirement for Member States' general rules for permit exemptions to be based on BAT is unnecessary and disproportionate and should be deleted.

2. In addition to the general rules provided for in paragraph 1, the Member States shall lay down specific conditions for exemptions relating to hazardous waste, including limit values for the content of hazardous substances in the waste, emission limit values, types of activity, as well as any other necessary requirements for carrying out different forms of recovery.

On Article 23(2), there will not always be an environmental need to specify conditions covering all the examples listed. This will depend on the activity concerned. A storage activity involving solid hazardous waste will have conditions ensuring that the storage is secure and does not give rise to a risk of pollution. But it will not be sensible to apply emission limit values to such an activity. The examples given should therefore be applied where appropriate. UK footnote: The examples of conditions in Article 23(2) should be applied only "where appropriate".

Article 26
Waste management plans

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 7, 7 a and 10, one or more waste management plans.

Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve [...] environmentally sound preparing for re-use, recycling, recovery and disposal of waste.

3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, the following:
- (a) the type, quantity and source [...] of waste generated, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
 - (b) existing waste collection schemes and major disposal and recovery installations including any special arrangements for waste oils, hazardous wastes or waste streams addressed by specific Community legislation; an assessment of the need for new collection schemes, additional waste treatment infrastructure and the investments related there to shall be included, if necessary;
 - (c) general waste management policies, including planned waste management technologies and methods or other waste posing specific management problems;
 - (d) organisational aspects related to waste management including allocation of responsibilities between public and private actors carrying out the waste management;
 - (e) [...] application of the principles of proximity and self-sufficiency for the network of waste treatment installations, covered by Article 10;
 - (f) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;
 - (fa) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;
 - (g) an evaluation how the plan will support the implementation of the aims and provisions of this Directive.

The UK wants avoid over prescription and bureaucracy in the proposals on Waste Management Plans.

We consider that the existing proposals do not give enough discretion to local authorities to decide what needs to be included in their plans. Too many details are prescribed and too much information is notified to the Commission. For instance, we do not agree with those who consider it is useful for the Commission to be made aware of the location of every waste facility in the Community. The Commission will not be able to process such information and it should not therefore be sent to them. We would agree with those Member States who object to an obligation to evaluate economic instruments in waste plans. Fiscal policy is a Member State competency and decisions taken in relation to it are not taken within waste management plans. If the Finance Ministry has made its decision, a requirement to evaluate options will not be a useful exercise.

Article 26a
Waste prevention programmes

1. Member States shall establish, in accordance with Articles 1 and 7a, waste prevention programmes not 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 in to other environmental policy programmes, as appropriate, or shall function as separate programmes. If such a programme is integrated in to the waste management plan or in to other programmes, the waste prevention measures shall be clearly identified.

2. The programmes provided for in paragraph 1 shall set out waste prevention objectives. Member States shall evaluate the usefulness of the examples of measures indicated in Annex IV or other appropriate measures.

Such objectives and measures shall be aimed at breaking [...] the link between economic growth and the environmental impacts associated with the generation of waste.

3. Member States shall determine specific qualitative or quantitative targets or indicators for waste prevention measures adopted in order to monitor and assess the progress of the measures.

The UK wants avoid over prescription and bureaucracy in the proposals on Waste Prevention Programmes.

We are very concerned that this provision will add to bureaucratic requirements to report on and evaluate waste prevention measures without actually contributing very much. Many of the examples in Annex IV are measures the UK is already taking - placing the requirements in these programmes will attach a bureaucratic structure to those measures. It is much easier to come up with a waste prevention measure than devise a programme and evaluate it. We do not therefore consider the proposal is consistent with the principles of better regulation and simplification. We would therefore join those Member States with a reservation over Article 26a. We are for waste prevention but sceptical that these programmes are the best way of achieving meaningful progress.

Our concerns are greatest with any requirement for mandatory targets for waste prevention measures. Waste prevention is very hard to assess and very often any target will be outside a Member State's control. We therefore take special exception to the requirement for targets in Article 26a(3).

Article 35a
Implementing measures

1. The following measures related to the implementation of this Directive may be adopted in accordance with the procedure referred to in Article 36(*).
- (a) guidelines specifying the circumstances to be met in order for a specific substance or object to be regarded as a by-product and not as a waste, on the basis of the conditions laid down in Article 3a;
 - (b) guidelines for the interpretation of the definitions of recovery and disposal in Article 3 paragraphs (j) and (m) taking into account the principle objective of the operation, the ecological suitability of the type of waste and the hazard minimization and the type of treatment plant; **
 - (c) measures in respect of certain specified waste, defining the scope of application and the environmental and quality criteria, including limit values for pollutants where necessary, to be met in order for that waste to be reclassified as a secondary product material or substance on the basis of the conditions laid down in Article 3c;
 - (d) guidelines for permits and registration referred to in Articles 19 and 25;
 - (e) indicators for waste prevention measures referred to in Article 26a.
 - (f) the format for notifying the information referred to in Article 28.

The UK does not consider that guidelines should be developed through the comitology procedure. If guidelines are a suitable tool then they do not need to be made subject to the comitology procedure – as is the case with the guidelines which the European Commission proposes to publish on the distinction between production residues as waste and by-products as non-waste. This consideration applies to Article 35(1)(a), (b) and (d).

On Article 35(1)(f), the UK's concern is that too much information on waste management plans is required to be sent to the Commission for no apparent commensurate benefit to the environment and human health and the information has to be sent too often.

* Note: for each of these implementing measures, the appropriate wording and applicable comitology procedure will have to be decided. Accordingly, different headings with reference to one of the procedures in Article 36 will have to be included: paragraph 1a which refers to the regulatory procedure with scrutiny, paragraph 2 which refers to the regulatory procedure or, possibly, paragraph 2a which refers to the advisory procedure.

** Cf. Article 3b of previous document (14750/06).

The Commission have explained that the comitology procedure for the format for notification is intended to allow for notification by email. In the UK's view, it is unnecessary to provide a comitology procedure to achieve that – we can simply make provision for electronic notification. Doing so will remove one comitology provision (which may be helpful in the context of negotiations with the European Parliament) and will save time and effort in discussing a format for notification. The UK suggests the alternative text for inclusion in article 28 in the Appendix to this paper.

UK Footnote: The UK requests the inclusion of a footnote which records (a) that the provision of guidelines through the comitology procedure is not appropriate in relation to Article 35(1)(a), (b) and (d); and (b) the alternative text in the Appendix this paper on notification by electronic means.

APPENDIX to UK comments

New recital (a) (see comments on Article 7)

In order to implement the principles of precaution and preventative action contained in article 174(2) of the Treaty, it is necessary to set general environmental objectives for the management of waste within the Community. By virtue of those principles, it is for the Community and the Member States to establish a framework to prevent, reduce and, in so far as is possible, eliminate from the outset, the sources of pollution or nuisance by adopting measures of a nature such as to eliminate recognised risks.

New recital (b) (see comments on Article 3a)

There is no reason to apply this Directive to goods, materials or raw materials that are by-products of a production process and such goods, materials or raw materials are therefore not subject to this Directive. The classification of a substance as a by-product and not a production residue can only be done where it is consistent with the protection of the environment and human health and where there is sufficient certainty that the material concerned will be used without needing to be processed as a waste. Economic value may indicate that there is greater certainty that a material will be used but it will not by itself determine whether the material is a by-product and not a residue. In particular, the competent authority must be satisfied that the material does not present an environmental risk which derives from its status as a residue and that the proposed use of the material is not in reality a means of discarding the material.

New recital (c) (see comments on Article 20)

The general permit requirements of this Directive may overlap with other national and Community permit regimes. In such cases, subject to compliance with all requirements of this Directive, any permit required under this Directive may be delivered through permit regimes put in place pursuant to other national or Community legislation. Indeed, delivery through a single permit is to be encouraged where it avoids unnecessary duplication of information and the repetition of work by the establishment or undertaking carrying out the operation or the competent authority.

Article 2
Scope

1. This Directive does not apply to land. ‘Land’ for these purposes includes buildings but excludes waste deposited on or in land.

2. It shall not cover the following categories of waste covered by other legislation:

- (a) radioactive waste;**
- (b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;**
- (c) animal carcasses;**
- (d) waste waters;**
- (e) decommissioned explosives.**

3. The Commission shall maintain a list of Community legislation referred to in article 2(2) in accordance with the procedure referred to in article 36(2).

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.

5. It shall not cover animal by-products used as pet food, feed material or technical products in accordance with Regulation (EC) 1774/2002 with the exception of animal by-products:

- (a) used as a fuel;**
- (b) organic fertilizer; or**
- (c) soil improvers.**

6. It shall not cover:

- (a) faecal matter, straw and other natural non-hazardous agricultural materials that are used in farming;**
- (b) natural non-hazardous forestry waste that is used in forestry;**
- (c) straw, natural non-hazardous wood waste or other similar wastes from agriculture or forestry that are used for the production of energy from biomass.**

7. Specific rules for particular instances, or supplementing those of this Directive, on the management of particular categories of waste or for particular waste treatment operations, may be laid down by means of individual Directives. Such Directives shall in principle remain subject to the provisions of this Directive, including its scope.

Article 3
Definitions

“Recovery” means a waste treatment operation in which the principal result of the operation is that waste replaces other resources that would have been used to achieve a particular purpose (whether as part of the individual operation or more generally), or in its being prepared for such a use.

“Disposal” means a waste treatment operation the purpose of which is to dispose of waste in accordance with the objectives of Article 7.

“By-products” means products, materials and substances resulting from a production process, the primary aim of which is not the production of that item, and which the holder does not discard but wishes at the time of production to use or sell for use.

Article 7
General environmental framework

Member States shall take the necessary measures with the objective of ensuring that waste management is carried out without endangering human health and without harming the environment, and in particular:

- (a) without risk to water, air or soil, or to plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

Article 8
Costs

Member States shall in accordance with the “polluter pays” principle ensure that the costs entailed in the disposal or recovery of waste are reflected in the prices paid for its disposal or recovery by those responsible for the waste (whether that is the holder, previous holder, waste producer or, in accordance with the principle of producer responsibility, the producer of the product).

Article 28
Information to be submitted to the Commission

2. Notification may be by electronic means.

**REVISED WASTE FRAMEWORK DIRECTIVE
INFORMAL UK PAPER ON RE-USE AND PREPARING FOR RE-USE**

Introduction

1. At the Working Group on 9 January, Spain intervened in the context of the discussion on Article 7a (waste hierarchy) of the Finnish Presidency's compromise proposal of 14 December 2006 (16574/06) to express concern about the proposed reference to "preparing for re-use" which, it was suggested, had originated from an amendment proposed by the United Kingdom (UK). In response, the UK's representative offered to discuss the matter bilaterally with Spain.
2. At the end of the Working Group an informal discussion was held between the UK and Spanish delegations; and the UK undertook to set out its views more fully in writing. This informal paper is intended to fulfil that commitment. As the issue is of wider interest, the paper is being circulated also to the Presidency, other Member States and the European Commission.

"Re-use" and "Preparing for re-use"

3. The main objectives of the proposals tabled by the UK on this issue are clarity and legal certainty – for Member States, their competent authorities and economic operators. With the aim of fulfilling these objectives, the UK's proposals seek to distinguish as clearly as possible between the concepts which are to be used in the revised Waste Framework Directive (WFD).
4. The UK's original concern was that the Commission's proposal for a revised WFD defines "re-use" in a way that is inconsistent with the definition of the term in other EU waste legislation. For example, the Packaging Waste Directive (94/62/EC) provides **(a)** that "re-use" means "any operation by which packaging...is refilled or used for the same purpose for which it was conceived" and **(b)** that re-used packaging only becomes **packaging waste** "when no longer subject to re-use". However, the Commission's proposal for a revised WFD provides that "'re-use' means any recovery operation by which products or components that have become waste are used again for the same purpose for which they were conceived."
5. In the UK's view, it is clear that there are two kinds of re-use, each describes a very different situation, and that a clear distinction is needed between the two kinds of re-use. A clear distinction is necessary not least because one kind of re-use needs to be regulated under the WFD and the other does not – and using the same term to describe both creates confusion rather than providing clarity and legal certainty.
6. As is the case with packaging, the UK considers that if something continues to be used for the same purpose for which it was conceived, then it is not waste and should not be subject to regulation under the WFD. Designing something so that it can be used and re-used a number of times is a waste prevention measure.

7. Alternatively, something that is waste may be subject to a recovery operation so that it can be re-used - but once it is actually being re-used it has ceased to be waste and is not subject to regulation under the WFD. In this context, the term “re-use” does **not** describe the recovery operation which precedes the actual re-use. Such a preceding operation might involve repair, refurbishment or sorting – and each such operation would be subject to regulation as a waste recovery operation under the WFD. But it is not helpful to describe such waste recovery operations in terms of their eventual objective i.e. to refer to such waste recovery operations as the ‘re-use of waste’. Doing so also blurs the point at which waste ceases to be waste as references to ‘re-use’ might or might not refer to waste management operations. In the UK’s view, it is more helpful to describe the activity which is to be carried out and which is subject to regulation under the WFD – and in this case the activity is some form of preparation or processing prior to the actual re-use.
8. In the UK’s view, it would provide greater clarity and legal certainty to include two definitions in the revised WFD:-
- (a) One for re-use which is not regulated under the WFD; and
 - (b) One for preparing for re-use - which is regulated under the WFD.
9. These two definitions might read something along the lines of the following:-
- “re-use’ means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived (whether as a waste prevention measure or following a recovery operation which has prepared the waste for re-use).”*
- “preparing for re-use’ means any recovery operation by which products or components that have become waste are prepared so that they will be re-used.”*
10. In terms of the waste hierarchy and Article 7a of the Finnish Presidency’s compromise text, “re-use” would be included at the top under “**(a) prevention**” and if re-use is not possible without some form of preparation then it would fit under “**(b) preparing for re-use**” and would be subject to regulation under the revised WFD as a waste recovery operation.
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Comments by Belgium

1. Article 2

- 1) We are still not in favour of excluding immovable properties. However, by way of compromise we could live with article 2 (b) reworded as:

“(b) buildings or constructions not temporarily connected with land, that do not pose environmental risks”

- 2) Add unexcavated contaminated soil in a separate paragraph that reads as

“3a (new) Unexcavated contaminated soil shall be excluded from the scope of the Directive to the extent that its environmental aspects are already covered by other Community legislation or other national legislation.”

Motivation

- To avoid any confusion about the wording “immovable property” we prefer not to use this wording and simply state the objects that we intend to exclude from the directive. Apart from abandoned buildings and constructions we cannot think of any other properties that we want to exclude. Landfills, for instance, although rather immovable, still need to be covered by the Waste Framework Directive.
- We only want to exclude buildings or constructions that do not pose environmental risks. Abandoned chemical installations, for instance, need to be covered by the WFD.
- Unexcavated contaminated soil can only be excluded on the condition that there is other legislation in place (national or European) that covers its environmental aspects.

2. Article 3a on byproducts

We still prefer the deletion of article 3a and instead the development of guidelines by the Commission on the basis of existing jurisprudence.

However, we could live with this article if the following amendments are made to the presidency proposal

"1. For a substance or object, resulting from a production process, the primary aim of which is not the production of that item in order to qualify as a ~~by~~-product and not as a waste as referred to in Article 3(a), **at least** the following conditions shall be met:

- (a) further use of the substance or object, **in particular its application and destination, is known to the competent authority and** certain ;
- (b) the substance or object ~~can be~~ **is** used directly **and in its entirety** without any further processing other than normal industrial practice **as a replacement of primary materials without creating any additional environmental or health risks;**

- (c) further use of the substance or object is an integral part of the production process, [i.e. is part of the same continuing production process or is part of a production process in the wider economy]; and
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific application.

(e) there are no specific end of waste criteria available on European or Member State level for this substance or object

(f) the substance or object is not to be used as a fuel

2. The Commission shall develop guidelines specifying the criteria laid down in paragraph 1.

3. Member States shall ensure that above conditions are met when production residues are qualified as a product."

Motivation

- *We do not want to use the term "byproduct" as this has no clear legal meaning. We only talk about products and wastes.*
- *It is up to the competent authorities of the Member State to ensure that production residues are only classified as a product when above conditions have been met, it is not left to the judgement of the producer.*
- *Destination and application should be known to the competent authority; only then there is clarity about the certainty that the product will be used in environmentally sound conditions and only then can be guaranteed that condition (d) is fulfilled.*
- *The object needs to be used in its entirety to avoid any loopholes for wastes that still need to be sorted for instance, before being used.*

The distinction between waste and product needs to be made on a case by case basis, starting from the waste definition. Therefore we think it will be difficult to come to an agreement in comitology about what material streams need to be regarded as a product or a waste in all cases. Therefore we prefer option 1. Apart from that, we propose to reformulate option 1 in such a way that it becomes possible to deviate from the conditions in paragraph 1 for specific substances when laid down in a specific directive.

"3. The Commission may submit proposals for individual Directives which determine the specific substances or objects and the standards they need to fulfill to qualify as a by-product, **regardless of paragraph 1.**"

For the recital we propose the following formulation:

"There is no reason to apply this Directive to goods, materials or raw materials that are by-products of a production process and such goods, materials or raw materials are therefore not subject to this Directive. The classification of a substance as a by-product and not a production residue can only be done where it is consistent with the protection of the environment and human health and where there is sufficient certainty that the material concerned will be used without needing to be processed as a waste **and without creating additional environmental or health impacts when substituting primary materials.** Economic value may indicate that there is greater certainty that a material will be used but it will not by itself determine whether the material is a by-product and not a residue and whether the proposed use is not in reality a means of discarding the material."

3. End of waste status and future implementation tasks

The concept of the article proposed by the presidency is different from the original concept in article 11 that was proposed by the Commission. The presidency proposal tries to set criteria for recycled products. Although this idea is good in principle, it does not solve the problem which was intended to be addressed initially.

We see the following problems with the above article.

- 1) Wastes can be recycled into hazardous products. For instance, contaminated xylene (used as a solvent) can be cleaned by a distillation process. The resulting material is pure xylene. This is a product that can be used as a solvent, but we cannot guarantee that the use of this solvent will not lead to overall adverse environmental and health impacts.
- 2) There are waste streams that do not need any treatment before they can be used as a product on the condition that they fulfill a certain set of environmental and quality criteria. For instance,
 - some filtration residues from the food industry can be directly used as a soil improver without receiving any treatment on the condition that they fulfill certain criteria.
 - Some selectively collected demolition wastes can be directly used as a construction material without receiving any specific treatment.
 - Excavated non-contaminated soils can be used as soil in another location without receiving any specific treatment.

For these kinds of wastes the wording used in paragraph 1 is problematic because a waste can only lose its status of waste when it has gone through a final recovery operation. But what if there is no final recovery operation needed?

Therefore we propose to reformulate the presidency proposal as:

1. A waste shall only cease to be waste as referred to in Article 3(a) when it has completed a final recovery operation.

2. As an exemption to paragraph 1, certain waste streams can lose their status of waste before being finally recovered, when at least the following conditions have been fulfilled:

- (a) the specific purpose for which it will be used is known**

- (b) the material or substance is commonly used for the specific purpose
- (c) a market or a demand exists for such a material or substance;
- (d) technical and environmental criteria exist that guarantee that the material or substance will be used for the specific purpose in accordance with article 7; these criteria shall fully take into account the possible presence of contaminants and characteristics of the waste in so far as relevant to the intended use
- (e) member states have taken the necessary measures to guarantee that these criteria are fulfilled when a waste ceases to be waste.

- 4. The Commission may submit proposals for individual directives which determine criteria that need to be fulfilled for a specific waste to cease being a waste after it has gone through a final recovery operation.
- 5. The Commission may submit proposals for individual directives which determine the criteria mentioned in paragraph 2.

Above proposal allows the Commission to set European minimum recycling standards for both wastes that need to go through a treatment operation and for wastes that can be directly used without any treatment.

4. Reintroduction of articles 5 and 6

The priority given to the different steps of the waste treatment hierarchy as stated in article 7a should not be touched. The importance of the priority of recycling above other recovery operations is as important as the priority of other recovery operations above disposal. The presidency proposal for introducing articles 5 and 6 is trying to reintroduce the 3 step hierarchy. However, we do think it is worth stressing the importance of selective collection. Apart from prohibiting uncontrolled disposal activities, we should also prohibit uncontrolled recovery. Therefore we propose to reformulate articles 5 and 6 as

- 1. Member States shall take the necessary measures, such as landfill and incineration bans, economic instruments and producer responsibility schemes, to ensure that all waste undergoes treatment operations in accordance with articles 7 and 7a.**
- 2. Where necessary to comply with the provisions of paragraph 1, Member States shall ensure that wastes are selectively collected so as to allow for their treatment in accordance with article 7a.**
- 3. Member States shall prohibit the abandonment, discharge and uncontrolled disposal and recovery of waste."**

5. Producer responsibility

We support the introduction of the new article 5a.

6. Articles 8 and 9

We support the reworded articles 8 and 9.

Comments by Spain

ARTICLE 2 PARAGRAPH 2(b)

"(b) immovable property, i.e. land (in situ) including unexcavated soil (whether contaminated or not), and buildings or constructions not only temporarily connected with land."

General comment:

SCRUTINY RESERVATION. Spain kindly requests to the Presidency further clarification on the proposal.

ARTICLE 3a (BY-PRODUCTS)

"1. For a substance or object, resulting from a production process, the primary aim of which is not the production of that item, in order to qualify as a by-product and not as a waste as referred to in Article 3(a), the following conditions shall be met:

- (a) further use of the substance or object is certain ;
- (b) the substance or object is used directly without any further processing;
- (c) further use of the substance or object is an integral part of the production process; and
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific application.

2. Specific substances or objects which could be considered as a by-product, for specific applications, should be determined, on the basis of the conditions laid down in paragraph 1, through individual Directives proposed by the Commission."

Article 35a will be amended accordingly.

- **Add a new recital:**

"There is no reason to apply this Directive to goods, materials or raw materials that are by-products of a production process and such goods, materials or raw materials are therefore not subject to this Directive. The classification of a substance as a by-product and not a production residue can only be done where it is consistent with the protection of the environment and human health and where there is sufficient certainty that the material concerned will be used without needing to be processed as a waste. Economic value may indicate that there is greater certainty that a material will be used but it will not by itself determine whether the material is a by-product and not a residue and whether the proposed use is not in reality a means of discarding the material."

General comments on Art. 3a (By-products):

The proposal put forward through this note has two aims: to better align the conditions in paragraph 1 with those established in the ECJ rulings, and to enhance the legal certainty of the use of this article through a positive regulatory action from the EU institutions (Commission / Parliament / Council).

As through the regulatory procedure in Article 36(1a) only measures on non essential aspects of the Directive can be addressed (Decision 2006/512/CE), Option 1 for paragraph 2 would be the soundest option.

Notwithstanding, as this article is, in practical terms, an exemption from the scope of the Directive, those thinking to evade the compliance with waste legislation will have a tendency to take advantage of an article of this nature, if not properly drafted. So, the concept, its location in the text of the Directive (definition?, article?, recital?) should be considered carefully.

In other case, it could be better just to delete any reference to by-products throughout the Directive

ARTICLE 3c (END OF WASTE STATUS)

*"Article 3c
End of waste Status*

1. A waste ceases [...] to be waste as referred to in Article 3(a) when it has completed a final [...] recovery operation and the material or substance resulting from that operation complies [...] with the following conditions:
 - (a) the [...] material or substance is commonly used for the specific purposes [...]
 - (aa) a market or a demand exists for such a [...] material or substance;
 - (b) the [...] material or substance fulfils the technical requirements [...] for the specific purpose and meets the applicable [...] environmental requirements; and

- (c) the use of the material or substance will not lead to overall adverse environmental and human health impacts according to Art. 7.

[...]

Option 2: "3. On the basis of the conditions laid down in paragraph 1 measures may be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 36(1a) which determine for specific waste streams when the waste ceases to be waste."

Article 35a will be amended accordingly.

Comment on Art. 3c.1.(b): technical requirements include functional quality requirements, but not always environmental requirements

ARTICLE 5 (RECOVERY) AND ARTICLE 6 (DISPOSAL)

General comment: SCRUTINY RESERVATION

NEW ARTICLE 5a (EXTENDED PRODUCED RESPONSIBILITY), ARTICLE 8 (COSTS) AND ARTICLE 9 (RESPONSIBILITY FOR WASTE MANAGEMENT)

General comments to new Art. 5a (Extended producer responsibility):

Although it is interesting to have the new Art. 5a on EPR, as proposed, SPAIN HAS A GENERAL SCRUTINY RESERVATION ON THE TEXT.

In any case, a reference to costs bearing aspects should be retained (as in former Art 8.2. and Art. 9.3.), either in the new Art. 5a, in Art. 8 or/and Art. 9

Comments by Finland

A new para 2a to article 5a (new)

2a. If a Member State establishes in accordance with paragraphs 1 and 2 an extended producer responsibility scheme, it may also decide that the costs of waste management must be borne partly or wholly by the producer of the product from which the waste came and that distributors of such products participate in these schemes.

Comments by Austria

In the case of an establishment or undertaking which is an installation concerned under Directive 96/61/EC only one permit shall be issued provided that the permit covers the requirements of Article 19 of this Directive and of the permit under Directive 96/61/EC.

Explanation

In the case an establishment or undertaking requires a permit under the Waste Framework Directive and under the IPPC-Directive - to avoid unnecessary duplication of work - both permits shall be merged into one permit. It shall not make a difference which permit is issued provided that this permit meets all the requirements.

Proposal for an article on electronic data management

New Article xx (after Article 17)

Electronic data management

- (1) Member States may require documentation, recording and reporting in accordance with this directive in an electronic form and the exchange of information, and documents in accordance with this directive by means of electronic data interchange.
- (2) Establishments or undertakings which produce, collect, transport or treat waste on a professional basis as well as waste quality assessment establishments or undertakings may be integrated in electronic data processing, including their identification/authentication.

Explanation

The possibility to use electronic data management should be taken into account and stated explicitly in the Waste Directive.

Paragraph 2 ensures transparency in who are the players in the field of waste management.

Comments by Belgium on 6891/07 Articles 1 – 3a

1. Article 2.2(c)

We wish to move this indent to paragraph 3 and formulate it as

faecal matter, straw and other natural non-hazardous agricultural or forestry material that are used in farming and forestry and that do not leave the farm or forest from which they originate ~~or for the production of energy from biomass through [...] processes or methods which do not harm the environment or endanger human health~~

Motivation

- For reasons of simplification, we do think it is reasonable to exclude agricultural and forestry materials that do not leave the farm or forest. However, we do not see the reason why agricultural or forestry materials that are discarded outside the farm or forest from which they originate should be excluded from the framework directive. They can cause as much problems as biowaste that comes from households. It would be illogical to exclude biowaste from farmers from the waste legislation on the one hand and to prescribe specific rules for the management of biowaste from households on the other hand.
- For the same reason we do not wish to exclude agricultural or forestry waste materials that are incinerated.

2. Article 2.3

We still support our footnote 7, but we are flexible on it.

3. Article 2.3(b)

We still support our footnote 8, but we are flexible on it.

We want to be added to footnote 8 of DK.

4. Article 2.3a

We propose to reformulate this as

“The relocation of non contaminated sediments inside of surface waters for the purpose of managing waters and waterways and construction of bridges or windmill farms in the marine area or of preventing floods or mitigating the effects of floods and droughts shall be excluded from the scope of this Directive on the condition that the sediments are not used for backfilling water bottoms on locations where sediments were removed, the sediments are relocated in the same water or waterway as from which they come and relevant Community or national legislation exists covering the environmental impacts of this relocation.”

Motivation

There is an important difference between hazardous and contaminated. The limit values for hazardousness are a lot higher than for contaminated with the result that almost any sediment relocation would be excluded from the scope of this directive if we were only to exclude non hazardous sediments.

We support the suggestion from DK, regarding windmill farms and bridges.

We want to avoid that underwater landfilling is excluded from the directive. Examples of underwater landfilling are:

- taking out non contaminated sediments from water bottoms (for placing them on the market) and replacing them by other sediments
- taking out sediments from a water bottom and using them for filling up a lake

5. Article 3(j)

We propose to reformulate this definition as

“recovery” means any operation provided that it results, as a principal objective, in waste serving a useful purpose by replacing, ~~whether in the plant or in the wider economy~~, other materials which would otherwise have been used to fulfil a particular function, or in it being prepared to fulfil that function without creating higher overall environmental or health impacts by this replacement. Annex II sets out a non-exhaustive list of recovery operations and clarifies for some specific operations which criteria need to be fulfilled for being considered to be replacing materials as a principal objective.”

Motivation

The notion of “principal objective” needs to be inserted so as to avoid that a too wide range of waste treatment activities (such as landfilling with recuperation of landfill gases) are to be considered as recovery. This addition is also in line with footnotes 17, 18 and 19 and the amendment of the Parliament.

The addition of “without creating higher overall environmental or health impacts” is necessary because we are not only concerned about reducing quantities of resource use, but also impacts.

Clarifications in the annex (for instance to be further developed via a comitology procedure) are necessary to avoid conflicts about different interpretations of the word “principal objective”.

6. Article 3(k)

We still support our footnote 20, but we are flexible on it.

7. Article 3a

We maintain our footnote 22.

If this article cannot be deleted, we propose to reformulate it as

Member States may decide, on a case by case basis, that a substance or object, resulting from a production process, the primary aim of which is not the production of that item, is to be considered as a byproduct, falling under product legislation, and not as waste as referred to in Article 3(a), if they ensure that at least the following conditions are met:

- (a) further use of the substance or object, in particular its application and destination, is known, certain and foreseeable in a short term;*
- (b) the substance or object is used directly and in its entirety without any further processing other than normal industrial practice and without creating any additional environmental or health risks in case primary materials are replaced;*
- (c) further use of the substance or object is an integral part of a production process covered by an environmental permit whether in the same continuing production or in the wider economy;*
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific application.*
- (e) There are no specific end of waste criteria available for this substance or object*
- (f) The classification of the substance or object as a byproduct will not lead to a lower level of environmental protection taking into account all relevant product and waste legislation*
- (g) The substance or object is not be used as a fuel*

2. On the basis of the conditions laid down in paragraph 1, measures may be adopted, in accordance with the regulatory procedure with scrutiny referred to in Article 36(1a), which determine the specific substances or objects that shall or shall not be regarded as a by-product.

Motivation

- We want to make sure that byproducts are considered as products so that we are not creating a third category of materials that fall out of both product and waste legislation.
- If Member States classify certain materials as byproducts they should also ensure that the conditions for this classification have been met
- Destination and application should be known to the competent authority; only then there is clarity about the certainty that the product will be used in environmentally sound conditions and only then can be guaranteed that condition (d) is fulfilled.

- Our addition in indent (c) meets partly the concerns in footnote 27 of NL
 - The object needs to be used in its entirety to avoid any loopholes for wastes that still need to be sorted and partly disposed for instance, before being used. For the same reason the use of the byproduct should not lead to higher environmental or health impacts if it is used as a replacement for primary materials. In this case this would be an indication that the byproduct is a waste and the producer tries to avoid waste legislation.
 - We have to make sure that a classification as a byproduct does not lower the level of environmental protection, otherwise this would jeopardise the objectives of article 1. This is also in line with jurisdiction that says that the waste definition was designed to protect the environment from the environmental impacts of waste.
 - EU-rules for classification as byproduct or waste should work in two directions: say what materials shall be considered byproducts and say what materials will be considered wastes.
-

Comments by Greece on Articles 1-10 of Waste Directive

1. Art. 2.3a.: The relocation of sediments inside of surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts shall be excluded from the scope of this Directive to the extent that relevant legislation exists covering the environmental impacts of this relocation **unless it is proven that the sediments are hazardous**.

Justification: We welcome the inclusion of an exemption for sediments inside of surface waters. However, we believe it is excessive to have the a priori obligation to prove that sediments are non hazardous in each and every case so that the exemption is granted. In many cases there are no reasons to believe that the sediments are contaminated with hazardous materials. We think that it is more practicable if we inverse the idea and the proof of non hazardous sediments is required only if there are suspicions (by the authorities or citizens) that this might be the case. Only in such a case the exemption should be granted upon presentation of proof that there the sediments are non-hazardous.

2. Art. 3d: We support ft. 13
3. Art. 3g: We support the inclusion of a definition for temporary storage (ft. 15)
4. Art. 3g: "collection" means the gathering of waste, including the **temporary** storage of waste for the purposes of transport to a waste treatment facility

Justification: Sorting should be considered as a treatment, otherwise it is exempted from the permit obligation (chapter V) and only registration is required. We believe that sorting centers should be subject to permit requirements. Obviously the "treatment" definition should be modified accordingly. Otherwise, we propose the modification of art. 19 so that sorting centers are included in the scope of art. 19.

5. Art. 3a: Delete (ft. 22) because in practice it adds a new grey area between products and wastes (i.e. two new interfaces: by-product/waste and by-product/product), not to mention the confusion with the "end of waste status". In any case, if we finally keep it we propose the following changes:

- (c) further use of the substance or object in the same continuing production or in the wider economy; and

Justification: (c) this term doesn't mean anything and the fact that the ECJ has used it in its decisions can be considered as a solid argument in favor of its use.

(d) Anyway only lawful uses are allowed. This provision is superfluous

6. Art. 3c.1: Certain specified waste **stream** shall cease to be waste as referred to in Article 3(a) when they comply with specific criteria to be developed in accordance with the regulatory procedure with scrutiny referred to in Article 36(1a) **and** in accordance with the following conditions:

(b) the material or substance fulfils the technical requirements for the specific purpose; and

Justification: - (Introductory phrase) The current wording excludes a number of waste streams that do not need any treatment before they can be used as a product (see Belgian comments in doc. 99/07). It is too restrictive and as a result it reduces significantly the usefulness of this article. Furthermore, there seems to be no clear distinction between art. 3c and 3a.

- (b) technical requirements include quality requirements, so the specific reference to them is superfluous

7. Art. 4a

In order to strengthen the prevention and recovery of waste, Member States shall, if necessary and appropriate, take legislative or non-legislative measures to ensure that **those legal or physical persons** who professionally develop, manufacture, process and treat or sell products **have** producer responsibility.

Such measures shall include, inter alia, an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent recovery or disposal of the waste.

2. Member States shall take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste takes place according to Art. 7 **and 7a**.

Such measures **may** include, inter alia, the development, production and marketing of products that are suitable for multiple usage, that are durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

8. Art. 5 & 6:

Art. 5 Recovery **and disposal**

1. **Member States shall take the necessary measures to ensure that all waste undergoes waste treatment operations in accordance with Articles 7 and 7a. They shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.** 2. Where necessary to facilitate or improve recovery, wastes **may** be kept separately and shall not be mixed with other waste or other material with different properties.

Justification: The current proposal is very strict and absolute. We propose to merge 5 and 6 in one article and reintroduce art.9.1 because it is more flexible, without losing anything in substance. Furthermore, we propose the replacement of the word “shall” with “may” in 5.2 to give more flexibility to MSs to take the appropriate measures in accordance with their specificities.

9. Art. 7a.1: The following waste hierarchy shall apply as a **general rule** in waste prevention and management legislation and policy
10. Art. 7a.2:
When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require for specific waste streams departing from the hierarchy where this is indicated by life-cycle thinking on the overall impacts of the generation and management of such waste;

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources in accordance with Articles 1 and 7 as well as the overall economic and social impacts,.

11. Art. 9.2: Member States shall take the necessary measures to ensure that any waste producer or other holder carries out the **management** of waste himself or has the treatment handled by a broker or dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector

Justification: All the steps of waste management must be carried out properly and according to the law. In many cases, the collection is more problematic and “difficult” than the treatment itself.

12. Art. 9a.
Member States shall provide for adequate penalties imposed to those bearing the responsibility for waste management according to art. 9, to be applicable in the event of infringement of the national legislation adopted pursuant to this Directive. These penalties must be effective, proportionate and dissuasive.

Justification: A similar provision exists in 93 directives (3 of which are environmental directives, i.e. 99/13 on VOCs, 98/20 on the limitation of the operation of airplanes & 79/831 on classification, packaging and labelling of dangerous substances). This exact wording (with the exception of the part “imposed to those bearing the responsibility for waste management according to art. 9,”) is taken by the Directive 2006/25/EC on workers protection from artificial optical radiation. We believe it is useful to reinforce MS ability to impose proper penalties to those bearing the responsibility for the waste management.

We propose that this new article should be accompanied by a relevant recital.

Recital (new)

Member States shall provide for effective, proportionate and dissuasive penalties imposed to those bearing the responsibility for waste management, such as waste producers, holders, brokers, transporters, collectors, treatment facilities, waste management systems etc. These penalties can be criminal law sanctions, administrative and financial sanctions as well as other types of sanction. They may also take the necessary measures so that the cost of damage to the environment and public health is covered.

Comments by Belgium on 6891/07
Articles 3b – 10

1. Article 3b

We think we need a mechanism, via separate legislative proposals, to further clarify what operations need to be classified as recovery or disposal on the basis of the definitions in article 3, in particular what we understand by “principal objective”. These clarifications should be limited to those situations where different interpretations have the potential to give rise to high environmental or economic damage.

2. Article 3c

We propose to reformulate this article as

1. *Certain specified waste may cease to be waste as referred to in Article 3(a) and be deemed to have been recovered when they comply with specific criteria to be laid down in a Directive addressing the difference between waste and non waste in accordance with the following conditions:*
 - (a) *the object, material or substance is commonly used for the specific purposes;*
 - (aa) *a market or demand exists for such an object, material or substance;*
 - (b) *the object, material or substance fulfils the technical requirements for the specific purpose and meets the applicable quality requirements in order to be placed on the market ; and*
 - (c) *the criteria guarantee that the use of the object, material or substance will not lead to overall adverse environmental or human health impacts according to Article 7;*
 - (d) *member states have taken the necessary measures, such as a quality assurance systems, to guarantee that these criteria are fulfilled when a waste ceases to be waste*
2. *Member States may decide case by case on the basis of the conditions in par. 1 whether a certain waste for which criteria have not been set at Community level under the procedure set out in paragraph 1, has ceased to be a waste. They shall be notified to the Commission.*

Motivation

- The “shall” needs to be turned into a “may” because Member States should still have the right not to declassify certain wastes even if they fulfill the criteria, if they feel environmental protection is not guaranteed. This is a logical consequence of having art. 175 as the legal basis of this directive.
- Criteria should be laid down in codecision and not in comitology.
- Some wastes can be directly used as a product without receiving any treatment; in that case they should be regarded as recovered as soon as they have been declassified.
- We are not only talking about materials or substances, but also about objects that can be reused and that at some stage will have reached the end of “preparing for reuse” stage.
- We have taken on board footnote 34 of FR.
- Environmental protection requirements in indent (c) should be guaranteed by the criteria
- Member States should take measures, such as setting up quality assurance systems, for ensuring that criteria are fulfilled.
- If Member States lay down criteria for declassifying certain wastes, they should also fulfill the conditions in par. 1. They should be notified to the Commission for two reasons:
 - o On the basis of received notifications the Commission can take the initiative to set criteria on a European level
 - o The Commission can check whether the level of environmental protection has been guaranteed.

We support footnote 30 of NL. It is better to set criteria for declassifying agricultural wastes instead of simply excluding them from the WFD.

3. Article 4

We propose the deletion of “the classification system of the list of waste is binding.”

Motivation

- This line is in contradiction with par. 2 and 3 that gives Member States the opportunity to make amendments to the list.
- There are still a lot of practical problems connected with the use of the list of wastes as was mentioned by several Member States in expert meetings. Before these problems have been solved we cannot allow this list to become binding. For instance, the presence of the ... 99 codes (wastes not otherwise specified) is problematic, because it does not give competent authorities enough information about the characteristics of the waste, in particular about its hazardousness.

4. Article 4a.2

We would like to make reference to article 7a at the end of par. 1.

We propose to add to this paragraph

“

- Member States and the Community shall, in order to reinforce producer responsibility, introduce the obligation to provide publicly available information as to the extent to which the product is repairable, reusable and recyclable.
- The Commission shall, following consultation of all stakeholders, submit proposals for the formulation of a product eco-design policy addressing both the generation of waste and the presence of hazardous substances in waste, with a view to promoting technologies focusing on durable, repairable, re-usable and recyclable products.”

Motivation

- This is part of amendment 35 adopted in the EP, adding the aspect of reusability and recyclability. Many products are sold without any possibility to obtain spare parts or to have it repaired. Consumers can only throw it away or in the best case return it for a new product.
- This is part of amendment 37 adopted in the EP introducing new art. 4a. Ecodesign should not only be focused on energy-use, but also on life-span and possibility of expansion of life-span of the product, reduction of hazardous substances in waste and increasing recyclability.

5. Article 5 - 6

We maintain footnote 38.

We want to stress that it is very important to us that the directive contains provisions that will contribute to more recycling in the European Union. Therefore we insist on having the obligation for Member States to set up selective collection schemes, where this is necessary in accordance with article 7a.

6. Article 7

As an alternative to our footnote 39 we propose to add to this article:

“Member States shall ensure that when classifying substances, objects or materials as non wastes, this will not lead to a lower level of environmental or human health protection.”

Motivation

The discussion on byproducts and end of waste is very complicated because we are in a situation that the same material can be considered a byproduct in Member State A and a waste which is no longer a waste in Member State B. These differences between Member States will not be resolved by a byproduct article, nor by a manual on the distinction between wastes and byproducts. The distinction Regardless whether a material is considered a byproduct or end of waste, Member States should guarantee that declassification does not lead to a lower level of environmental protection.

7. Article 7a.1

We like to be added to footnote 41 of IT.

8. Article 7a.2

Replace the word “indicated” in par. 2 by “justified”.

Motivation

“Indicated” is a weak term that suggests that indications that are not scientifically underpinned or questionable suffice to deviate from the hierarchy. For the same reason we have sympathy for the suggestion made by DK.

9. Article 9

We support

- footnote 46 of EL
- footnote 47 of IE

We drop the first part of our footnote 48 as it has been taken on board in article 4a.

FRANCE

Introduction of a new recital dedicated to the responsibility of the waste producer.

"In order to prevent the impact on human health and the environment of the management of waste, it is necessary to clarify the responsibilities for waste management and to reaffirm that any producer or holder of waste must carry out the treatment of waste himself or have the treatment handled by an establishment or undertaking which carries out waste treatment operations in order to ensure a high level of protection of health and the environment."
