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**OPTIMAL WASTE MANAGEMENT CALLS FOR CLARIFICATION OF THE
DISTINCTION BETWEEN WASTE AND NON-WASTE**

UNICE VIEWS AND RECOMMENDATION

I. BACKGROUND

1. The EU waste framework Directive (75/442/EEC as amended by 91/156/EEC) defines the term “waste” as: “*any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard*”. Annex I contains 16 different categories of waste, of which the last covers “*any materials, substances or products which are not contained in the above categories*” thus removing the restrictive character of the list. Article 3, indent 1.b.i of the Directive requires Member States to take appropriate measures to encourage the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials.
2. Authorities often seek guidance to distinguish what is and what is not waste from the European Waste Catalogue (94/3/EC) (EWC). However, the EWC introduction states that: “*The inclusion of a material in the EWC does not mean that the material is a waste in all circumstances. The entry is only relevant when the definition of waste has been satisfied.*” This clarification is often disregarded, and the EWC is wrongly used as a tool for interpreting the waste definition.
3. The EU definition is broad and not sufficiently specific leaving a great deal of room for interpretation by Member States which often encounter difficulties in applying the definition. This has led several Member States to develop guidance documents to clarify application of the waste definition to certain materials. **In order to create a level playing-field for industry and to avoid distortion of competition, barriers to trade and legal uncertainty, a European approach is necessary.**
4. Early in 1993, the Commission was already well aware of the problem and initiated work on a user’s guide to distinguish between waste and product. At the same time, the OECD started discussions on the same issue. In order to avoid duplication, the EU decided to await the outcome of OECD work before finalising its guide. As the OECD initiative is unlikely to be able to progress further due to outside constraints, **the need for the European Union to address the issue now is more pressing than ever before.** This need has been recognised by the Council, the European Parliament, and the Commission:

- The Council Resolution of 24 February 1997 on a Community strategy for waste management, indent 9, states “*the particular need to distinguish more clearly between waste and non-waste goods*”.
- The European Parliament has acknowledged the existence of the problem by commissioning a study on the issue by the Institute for Prospective Technological Studies (IPTS) which recommends as follows: *clarify the distinction between waste and secondary raw material*.
- The Commission recognised in its Communication on the review of the Community strategy for waste management (COM(96) 399 final) that “*no satisfactory definition has yet been found to determine when a material becomes waste and when it becomes a good again (...). Notwithstanding the inherent difficulty of this question, practical implications necessitate further efforts involving all parties concerned, including international organisations, towards finding such definition*”.

II. DEFINITION OF THE PROBLEM

Industrial sites vary considerably from sector to sector and are often complex systems with many integrated activities. In many cases, a by-product of one industry process is the raw material for another process. In others, products discarded by the consumer may return to a commercial cycle or chain of utility. The application of the EU waste definition to these cases is unclear, and often results in costly and unnecessary controls as well as stringent handling requirements.

This not only places an onerous burden on industry but also risks diverting the limited resources of authorities away from the control of waste for final disposal and thus may have a negative impact on the ultimate purpose of the definition, i.e. to ensure an appropriate level of environmental protection.

On the other hand, the absence of a clear definition at EU level leads to intra-EU distortion of competition and barriers to internal trade, because of divergent interpretation of the waste definition by Member States. The implications of this problem are acknowledged in the 5th recital of the Waste Framework Directive 91/156 “any disparity between Member States’ law on waste disposal and recovery can affect the quality of the environment and interfere with the functioning of the Internal Market”. The same adverse impact on competitiveness arises vis-à-vis the world market.

III. UNICE VIEWS AND RECOMMENDATION

UNICE fully supports the spirit of the EU Treaty of achieving a high level of environmental protection, and more specifically, that the essential objective of provisions relating to waste management must be protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste (as indicated in the Waste Framework Directive 75/442/EEC).

At the same time, UNICE is convinced that the unnecessary classification as waste of certain products and materials is an impediment to their recovery, jeopardising the final objective of any waste management policy, i.e. to increase the level of environmental and public health protection and to reduce the quantity and harmfulness of ultimate waste.

UNICE believes that the classification of any material as waste or non-waste should not be inherent in the nature of the material but dependent on its actual use. It is also relevant to consider whether the

material is part of a commercial cycle or chain of utility. Existing International and European standards, classifications or specifications can be useful tools for distinguishing between waste and non-waste in many cases. Sectoral legislation should also be taken into account.

A clear distinction between waste and non-waste at European level is crucial in order to:

- avoid negative impact on the environment and public health,
- ensure optimal waste management,
- promote recovery of resources,
- preserve the competitiveness of European industry,
- allow proper functioning of the Single Market,
- create a level playing-field for the European industry,
- optimise control activities,
- provide legal certainty.

As a result, UNICE urges the Commission to take constructive measures in order to clarify the present situation regarding how waste is defined in the EU. Clear guidelines should be drawn up as to how this waste definition should be interpreted and implemented. Additionally, sectoral guidelines could be issued as and when needed. The desirability of a legislative development could also be evaluated.

UNICE would like to state its willingness to collaborate in this task and to use the expertise of its members in assisting the Commission in this endeavour.

