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**DIRECTIVES ON PRIORITY WASTE STREAMS
BASIC PRINCIPLES IN CURRENT EU PROPOSALS****UNICE COMMENTS****Introduction**

Since several years the European Commission is developing a number of initiatives aiming at managing so called "priority waste stream" such as:

- End-of-life vehicles,
- Waste from electronic and electrical equipment,
- Batteries and accumulators,
- Packaging and packaging waste.

These initiatives incorporate a number of basic principles and horizontal approaches that UNICE would like to comment in this paper.

General remarks

Many end-of-life materials and equipment have traditionally been recovered in order to be utilised as sources of spare parts and valuable materials. Good examples are end-of-life vehicles, industrial scrap metals and used paper. Recycling of these materials is to a high degree economic in EU Member States where secondary material businesses involve tens of thousands of economic operators and hundreds of thousands of persons.

The European Commission seems to base its current approach to the management of priority waste stream on the presumption that all of the priority waste streams have a positive economic value when they enter into the phase of waste management. Unfortunately, this is not true in particular for some complex materials originating from household or the business sector because collection, transport, pre-treatment, high disposal costs of non-recyclable material and recycling of industrial secondary materials usually require substantial financial and human resources. This would suggest that some of the Commission's basic principles, whilst relevant to one priority waste stream, may not be applicable to others.

Points of major concern**1. Restriction of recovery options**

The priority of material recycling over energy recovery through fixed mandatory recycling quotas does not take into account:

- The environmental and economic benefits of saving valuable and non-renewable conventional fuels by recovering energy from combustible, but for material recycling unsuitable, by-products and wastes.
- The progress in energy recovery and emission abatement technologies of thermal processing plants.
- The fact that in many cases there is only marginal demand for recycled materials.

Recycling targets should be ambitious but realistic. Unduly low targets may lead to sub-optimal recycling while very high targets could result in excessive costs without significant environmental benefit. The material recycling levels in the current proposals are not economically or environmentally justifiable.

2. Producer responsibility for end-of-life products

According to the Council Resolution on a Community Strategy for Waste Management of 24 February 1997, the Council believes that “in accordance with the polluter-pays principle and the principle of shared responsibility, all economic actors, including producers, importers, distributors and consumers, bear their specific share of responsibility as regards the prevention, recovery and disposal of waste”. Generally, producers of industrial products have indicated that waste management implications of their products are more and more taken into consideration from the conception phase onwards, and manufacturers accept their strategic role and responsibility in relation to the waste management potential in a product's design, content and construction.

Against this background, UNICE has fundamental difficulties with the approach of transferring the full responsibility for the waste management of the end-of-life product to the producer.

UNICE urges that responsibility for waste management be shared among economic operators and other stakeholders. Most products do not have a single economic operator but a chain of actors, each of whom exercises control over a part of the whole production, distribution and use process.

A negative consequence of pure producer responsibility is that downstream operators have no incentive to improve their activities, because responsibility would in a sense be taken out of their hands. It would also tend to disrupt markets, disturb the hitherto healthy competitive relationship among all the actors, and encourage inflated charges.

In UNICE's view, all economic actors must operate in an environmentally acceptable way under their own responsibility. This includes the last owner who also operates in real-world market systems. This means that the last owner has to take a balanced decision such as when to replace his product e.g. for the majority of consumer goods he should not be encouraged to retain them for too long. The last owner is also responsible for delivering his end-of-life product in a reasonable condition to any authorised handler of such products.

The collection of end-of-life equipment coming from private households is managed and financed by public authorities in most European countries. These authorities already have collection infrastructures in place that provide the widest coverage of households and can take advantage of economies of scale in managing household waste. Industry therefore sees no need to change the existing systems so as to make manufacturers responsible also for collection. Ultimately, the last owner is responsible for the costs of product disposal. However, these should not be excessive or the system may break down. Industry is prepared to discuss suitable models to protect the last owner from excessive costs by keeping the whole system within a sustainable economic framework.

3. Ban of substances

UNICE recognises that the design and production phase should take into account the end-of-life product. It is, however, not for waste legislation either to regulate the use and the marketing of products or to ban the use of substances or materials.

In order to ensure consistency, design and content specifications have to be dealt within the existing EU product legislation. On the other hand, the Commission and the Member States should encourage industry to adopt voluntary measures to improve the environmental performance of its products.

Any decision to limit the use of a substance or material in a product should be based on analysis of the risks resulting not only from the use of this substance or material but also from the use of the product itself and the potential substitutes, and on evaluation of the costs and environmental benefits. Furthermore, any restriction in this respect should not lead to excessive costs for industry, in particular SMEs, or limit technological progress. Implications for world-trade must also not be forgotten.

4. Retroactive liability

Priority waste stream directives are instruments to increase environmental protection by avoiding the generation of waste and facilitating the recovery and disposal of end-of-life equipment. However, the directives presently being discussed in the Commission propose introduction of retroactive liability for manufacturers.

Industry recommends that legislation only applies to end-of-life equipment as from the date of entry into force of the legislation and therefore opposes the inclusion of historical products in the scope. It is evident that the design and production of future equipment will have no impact on historical products.

Furthermore, since retroactive legislation cannot have been anticipated, industry has not had the opportunity to make financial provisions for taking back products sold in the past. Introducing retroactivity in the legislation is legally questionable and could lead to severe problems, even bankruptcy, for many companies.

In paragraph 2 UNICE has stressed the importance that the responsibility for waste management should be shared in a balanced way among all actors involved. Industry is prepared to consider going beyond this and to discuss on a case-by-case basis the idea of taking a broader share of responsibility for managing end-of-life products put on the market after entry into force of legislation on a priority waste stream. This will in any case bring a major change to established systems and will often require lengthy transition periods for adjustment of existing systems and infrastructures.

5. Voluntary initiatives/negotiated agreements

EU directives that leave no place for voluntary initiatives/negotiated agreements could lead to cancellation of existing voluntary initiatives/negotiated agreements within the EU. This would inevitably create high uncertainty in a situation where significant progress has already been made and where functional systems have been introduced. Agreements for the recovery and recycling of end-of-life vehicles serve as fine examples of a voluntary approach that works well. UNICE is convinced that in several EU Member States the cancellation of existing national voluntary agreements would have adverse environmental and economical consequences.

The existing national voluntary schemes¹ should be recognised by the Commission. There is no evidence that the different national schemes create barriers to trade. It is, however, important to find an approach for harmonising the framework conditions for recycling and recycling industries.

6. Lack of appropriate financial solutions for international trade

It is presumable that all costs related to the waste management of an end-of-life product will appear in the country of the last product owner. Consequently, adequate financial means to cover all of these costs must be available in the country of the last product owner when the end-of-life product enters the waste management phase. Solutions for identification and commitment of these financial means have to be developed before taking a decision about legislation for end-of-life products.

A lack of appropriate financial solutions will lead to obstacles to international trade including electronic commerce and distortion of competition as a consequence.

¹ e.g. end-of-life vehicles systems have been introduced in at least 8 EU countries (Austria, France, Germany, Italy, Netherlands, Spain, Sweden and the UK).