

UNICE POSITION ON THE REVISION OF THE WASTE FRAMEWORK DIRECTIVE

UNICE welcomes the fact that the Commission intends to revise the Waste Framework Directive in the near future. UNICE is prepared to contribute actively to the debate and the preparation of a Commission proposal. UNICE's contribution is based on its own "proposal for an amendment to Council Directive 91/156/EEC amending Directive 75/442/EEC on Waste" which was submitted in December 2001. A problem with the current definition of waste in the Waste Framework Directive is that it has had to be clarified by the European Court of Justice (ECJ) so many times that study of case law is the only way to determine what is a waste. The aim of a revision of the Waste Framework Directive should be to give a clearer definition which can be applied by both industry and regulatory authorities without continued reference to the ECJ or case law.

The UNICE proposal of December 2001 ties in with and complements the current rules of the Waste Framework Directive, thus avoiding far-reaching legislative reforms:

- It adds a fourth criterion to the definition of waste. A substance or object is not waste if it can once more be rendered economically useful in its existing form without pre-treatment.
- In addition, the concept of recovery is defined. Waste recovery takes place when the waste is subjected to a process for production of secondary raw materials, fuels and recycled products and generally when waste substitutes other materials.
- By contrast the disposal of waste is defined as a process where waste is definitively removed from the economic circuit.
- Another essential element of the proposal is the determination of when waste ceases to be waste. This is the case when substances or objects meet existing or future European specifications as secondary raw materials after the recovery process is finalised.

As a result, the distinction between waste and non-waste is based on economic viability of recovery operations together with environmental and safety specifications. These are in fact the essential criteria, which take account of first economic realisation of recovery potential and second observance of the necessary safety and environmental specifications.

Discarding

The UNICE proposal suggests clarifying the definition of waste by addressing the term 'discarding' more precisely:

"Discarding substances and objects according to the present directive comprises recovering and disposing of them."

The proposed wording is based on the interpretation supported by the European Court according to which 'discarding' is an important element of deciding whether a substance is 'waste', which refers both to disposal and to recovery operations.

In addition, UNICE suggests the following:

“Discarding does not take place when substances, objects, products including by-products, intermediate products or secondary products are suitable in their existing form either to be used in industrial and commercial processes or to be placed on the market for further use or consumption. The suitability for use in industrial processes can be assumed in particular if the substances in question meet any available specifications for these processes.”

“Should the substance, object or product actually not be used after possible storage, discarding takes place.”

This proposed wording reflects the need to distinguish between recovery-related discarding operations that are subject to waste regulations on the one hand and other cases in which substances and objects are used in the economic circuit. It must be seen in close context to the proposed definition of the term ‘recovery’. UNICE proposes this wording assuming that in any case substances, objects and by-products must meet the same level of risk management as primary raw materials and products thereby ensuring a comparable level of safety for the environment and human health. It is clear that, should the substance actually not be used, discarding takes place.

In 2002 and 2003, the European Court published 2 decisions (C-9/00 and C-114/01) which clarify the distinction between ‘waste’ and ‘product’. The Court ruled that discarding does not take place if

- the reuse takes place without any further processing
- the reuse is not only possible but certain
- the reuse is an integral part of the production process’s economic value.

These Court decisions confirm the UNICE proposal with regard to the term “discarding”. Accordingly, the UNICE proposal on discarding covers any industrial and commercial process (e.g. mining operations), not only production processes leading to the manufacture of a specific product.

UNICE also shares the view of the European Court of Justice (C-9/00 and C-235/02) that industrial by-products are not waste and this should be clarified in the Waste Framework Directive. It is important to distinguish between secondary raw materials that are extracted from waste and by-products that were never waste. The use of guidelines for some specific by-products might be a good way forward to clarify this issue.

Definition of Recovery

The wording used to describe recovery takes on a central significance for distinguishing between different processes and activities. It is essential

- to define the point at which substances and objects undergoing a recovery process cease to be waste,
- to distinguish between *recovery* processes, in accordance with the scope of the term ‘recovery’, and *disposal* processes.

With regard to the term ‘recovery’, UNICE suggests the following definition:

“Recovery of waste:

- *all processes generating secondary raw materials and fuels by using waste or its component parts by means of physical, thermal, chemical or biological treatment, including sorting;*
- *all processes producing products by means of transforming or processing waste or its component parts;*
- *all processes using waste materials to generate materials / chemical compounds; in addition, all processes using waste to generate energy and all processes using waste to substitute other materials, in particular primary raw materials and fuels.”*

Whereas the first indent describes the **result** of the recovery process, i.e. generating secondary raw materials and fuels, the second indent clarifies that recovery may also include the use of waste in the production of final products. Finally, the third indent focuses on describing the different **processes** of waste recovery.

The processes described in the definition are processes in which a variety of products, substances and raw materials as well as waste may be used. Even though the term “recovery” is defined for waste treatment operations in the context of the Waste Framework Directive, this should not exclude the use of other products, substances etc. in the same process.

End of Waste

The need to clarify when waste ceases to be waste is one of the key issues of the current debate. UNICE proposes the following wording:

“Substances and objects that are recovered cease to be waste at the point when the recovery process is finalised.

The recovery process is finalised when no further measures are necessary to enable a substance or object to be put to use as a secondary raw material in industrial (production) processes, as a secondary fuel to generate energy or after manufacture as a product to be placed on the market for use or consumption.”

This wording is in line with the provision laid down in Article 3 paragraph 1 letter b) i) in which Member States shall take measures to encourage the recovery of waste “with a view to extracting secondary raw materials”. As a consequence, waste ceases to be waste as soon as the secondary raw materials have been extracted, rather than at a later stage when they are actually introduced into the economic circuit.

Specifications for Secondary Raw Materials, Secondary Fuels and Products

One of the key objectives of European waste policy is the conservation of natural resources by encouraging recovery and the use of recovered materials (Directive 75/442/EEC, 4th indent). However, recovered materials, i.e. secondary raw materials, must be competitive under market conditions. Annex III of the UNICE proposal 2001 provides that the setting of safety requirements must be subject to technical specifications, reflecting the intended use and an appropriate level for protection of health and environment.

The UNICE proposal suggests that

“Secondary raw materials, secondary fuels and products must comply with the fundamental requirements laid down in Annex III.”

This implies that secondary raw materials, fuels and products meet specifications of health and environmental protection no more no less than equivalent to specifications applicable to primary raw materials, fuels and products.

Definition of Disposal

UNICE also proposes to define the term ‘disposal’. Whereas recovery is defined as a process where the substance or characteristic of waste is retained in the economic circuit, ‘disposal’ is defined as a method of discarding waste in such a way that it is definitively removed from the economic circuit.

Basic principles about recycling and other recovery options

The following basic principles arise time and time again and should be taken as a guide:

- Enable industry to choose the most efficient solution for waste treatment based on environmental, social, economic and technical aspects. Depending on the material and its properties, the sector, the product, local conditions, this can involve either recycling or other recovery options.
- Avoid limiting the possibilities for innovation at all levels of the value chain.
- Ensure consistency between current and future legislation. If definitions are modified or new definitions are introduced, then the target figures listed in product-specific legislation should also be revised accordingly.
- Ensure a level playing field in Europe which includes the same implementation level of the environmental legislation and uniform interpretation of the legal definitions.

The existing waste hierarchy should be applied flexibly and efforts made towards an integrated approach that takes into account products, materials and energy on the base of methodologies to be agreed at multi-sectoral level and including the end-of-life of products and materials.

Exclusion of Unexcavated Contaminated Soil

The European Court decision C-1/03 (van de Walle) addressed the question whether unexcavated contaminated soil should be considered as waste. UNICE supports the explicit exclusion of unexcavated contaminated soil from the scope of the Waste Framework Directive. Given the specific properties of soils, it is necessary to address the management of environmental matters with regard to soils under a separate regime. Indeed, the 6th Environment Action Programme suggests establishing a thematic strategy on soil protection. In many Member States, specific soil management regimes already exist. Therefore, a clear distinction between waste management and soil management should be made.

In addition, other circumstances could arise with regard to fixed items such as buildings. These should also be excluded from the waste definition.

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